

GOVERNMENT

Potential US Supreme Court battle on online sales tax should be on luxury's radar

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The challenge to the law was inspired by a comment from Justice Kennedy, who implied he would be open to revisiting the ruling. Image credit: Pixabay

By DANNY PARISI

The 1992 U.S. Supreme Court ruling "*Quill v. North Dakota*" may not be familiar to most, but this case is at the heart of a current legal dispute that could alter the way ecommerce operates in the United States, with particular ramifications for the luxury industry.

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Earlier this year, South Dakota passed a law saying that any retailer that does a certain amount of business within a state, even if they have no physical presence there, must collect sales tax. The fight against this law from a collection of online retailers could make it all the way to the Supreme Court and have lasting effects on sales tax and online shopping in the entire country.

"The states would clearly love to have this long-sought revenue," said Scott Anderson, senior consultant at **FitForCommerce**, Short Hills, NJ. "We think that the industry would need time for the ecommerce platform and accounting software providers to build this functionality into their systems.

"The merchants will most likely have to swallow the incremental administrative costs as today's shoppers are so price-sensitive. The customers, too, will be affected, as they'll just have to pay the taxes since all merchants will have to collect them."

Quill v. North Dakota

The law on sales tax for online shopping is simple on its face. In order for a state to collect sales tax from a retailer, that retailer must have a physical presence in the state.

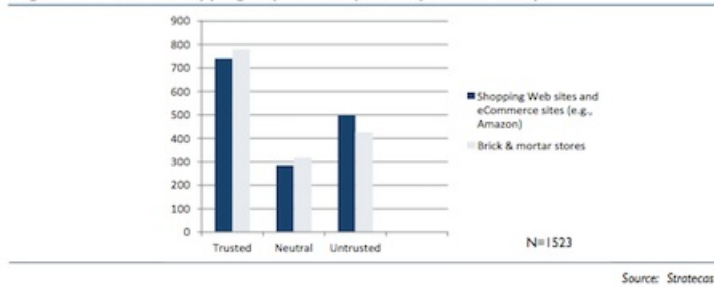
On its surface this makes sense, but today, almost all retailers have some digital aspect to them and many are solely digital.

This means that potentially trillions of dollars in sales tax are being lost when customers purchase things online from a business that does not have a presence in the state.

However, South Dakota recently passed a law that says that any retailer doing more than \$100,000 worth of business

in the state, including in online sales, must collect sales tax whether they have a presence there or not.

Figure 3: Trust in Shopping Experience (Use of personal data)



Consumers trust bricks-and-mortar over ecommerce. Image credit: Frost & Sullivan

This was met with opposition from some online retailers, who contested this law and brought it all the way to the South Dakota Supreme Court, which ruled in favor of the retailers and struck down the law.

However, the proponents of this law were anticipating this and South Dakota is now expected to bring the fight to the Supreme Court, to finally rule once and for all on how sales tax should be collected for online retailers.

In 1992, when *Quill v. North Dakota* was ruled, online retail's presence was not nearly as dominant and the potential loss of sales tax was considered negligible.

Now however, online shopping is a dominant force in the world. This change in scenarios has even led Supreme Court Justice Anthony Kennedy to comment recently that he would like to take another crack at *Quill*, implying that the Supreme Court's initial ruling may have been wrong or outdated.

While it is not guaranteed that the Supreme Court will revisit this law, or that if they do, they will side in favor of South Dakota, the comments from Mr. Kennedy seem to imply at least one judge is willing to take a second look.

The luxury impact

While online retailers and states will have serious consequences for any retailer in the country, luxury brands have a few distinguishing features that should make them pay attention.

For one, given their price, luxury goods are affected by sales tax to a greater extent. If the law is changed, luxury goods could see a significant price increase when sales tax is taken into account.

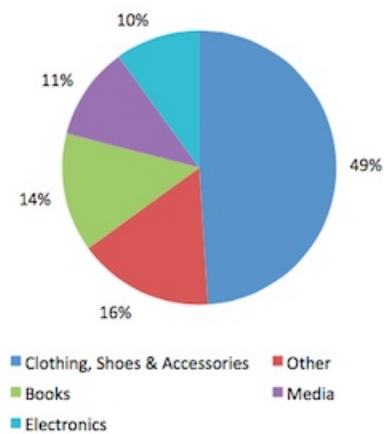
Additionally, most luxury brands and retailers have both an online and physical presence, meaning they do not have quite as much skin in the game as purely online retailers.

The key to retail's survival is the ability to closely integrate ecommerce with bricks-and-mortar business models, especially for luxury retailers.

In a new whitepaper, Frost & Sullivan has laid out what challenges the retail field is facing, most notably in pressure from ecommerce, and how retailers can stay competitive. Luxury retailers have a different set of challenges than the rest of retail, but ecommerce still plays a major role ([see story](#)).

One area of luxury that will definitely be affected is the policies change is the fashion resale category, whose members typically lack any sort of physical presence and whose annual revenue is growing at a significant rate.

Figure 1. US Resale Market by Segment (%)



Source: ThredUP/Fung Global Retail & Technology

Fashion dominates the resale market. Image credit: Fung Global

The fashion market category that relies on consigning high-end apparel and accessories is witnessing a period of enormous growth, outpacing the full-price segment of its industry by 20 percent, according to a new report from Fung Global Retail & Technology.

The entire resale industry is expected to grow from \$18 billion in 2016 to \$33 billion by 2021. This data comes from retail think tank Fung Global Retail & Technology, which released the "Fashion Re-Commerce Update" report to dig into exactly how and why this sector has been taking off ([see story](#)).

When and if *Quill v. North Dakota* is revised, it will have a serious effect on the way sales tax is collected in the modern digital retail landscape, and luxury brands and retailers should be watching this case with a close eye.

"It's a tough call on the outcome of this case," Mr. Anderson said. "My guess is that the legal system will eventually get to parity between bricks vs. only clicks as it relates to tax.

"Meaning, all current online tax advantages will be removed by the legal system."