

E-commerce

# US justices to rule on sales tax 'shelter' for online retailers

BARNEY JOPSON — WASHINGTON

The Supreme Court will consider whether online retailers can keep an exemption to collecting sales tax, in a case that could shape the future of e-commerce in the US.

The court will today hear arguments over a 26-year-old tax break that allows online retailers to offer significant savings to their shoppers, but has been described by critics as a "constitutional tax shelter".

The Supreme Court case comes as President Donald Trump has been attacking Amazon with accusations that include claims that the company does not raise sales tax, even though Jeff Bezos's e-commerce retailer collects tax on many transactions.

As concerns about the power of big technology companies mount in Washington and beyond, the case is a high-profile example of the US courts being asked to rule on whether current law has been rendered redundant, or outdated, by the internet.

Bricks-and-mortar retailers, and a majority of US states, argue that the sales tax exemption — which applies to online retailers making sales in states where they do not have a physical presence — is outdated and results in unfair competition.

Marty Jackley, South Dakota's attorney-general, will today urge the justices to abolish the exemption at the Supreme Court, in a case that his state brought against three other online retailers, including Wayfair, a furniture seller. He said his state was troubled by the harm e-commerce was doing to "mom and pop" retail stores and by the potential sales tax revenue that South Dakota was losing.

"There is great harm happening and it's happening to those mainstream business that are being placed at an unfair disadvantage because of [the exemption], which creates essentially a constitutional tax shelter . . . that is neither fair nor right," said Mr Jackley.

Online companies such as eBay have strongly defended the exemption. Ebay said removing it would create "undue burdens" on small independent sellers that thrive on its platform.

While Amazon is not directly involved in the case, it will be affected by its outcome. Amazon had come under fire for not collecting state and local sales taxes from its customers long before Mr Trump took aim at the company, partly because Mr Bezos owns the Washington Post, which Mr Trump repeatedly describes as "fake news".

But in around 2012, Amazon began to execute a U-turn, agreeing to start collecting tax in a number of states as it simultaneously built new warehouses in order to speed up its deliveries.

Amazon currently collects tax on its own sales in 45 states and the District of Columbia. But it allows third-party sellers to make their own decisions on whether or not to collect sales tax. If the exemption were abolished they would be obliged to collect it.

Big bricks-and-mortar retailers, such as Walmart, Target and Best Buy, would emerge as winners if the court scrapped the exemption because their rivals would face the same tax burden.

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