

The Retail Contractor

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NEWSLETTER

The Moving Pieces of E-Commerce Legislation

What it means to our industry

By Steve Bachman, President/CEO, Retail Construction Services, Inc.; Vice President, Retail Contractors Association



Steve Bachman

As a result of the 1992 ruling by the U.S.

Supreme Court in *Quill vs. North Dakota*, states were prevented from collecting sales tax from e-commerce transactions unless the seller has a physical presence in the state. This decision basically ensured that mail order companies such as Wayfair, Overstock, and others, did NOT have to collect state sales taxes for purchases made by consumers and shipped to them

in their state, unless they had a retail store there, i.e. Sears, Wards, JC Penney.

When this law was created, the industry did not see a relevance or need as the market was a very small percentage of total retail dollars spent, and the collection process was considered fairly burdensome. Last fall, South Dakota filed a petition for certiorari, under the case name *South Dakota v. Wayfair, Inc.*, urging the U.S. Supreme Court to "abrogate *Quill*'s sales-tax-only, physical-presence requirement." The state is arguing that advances in technology make it easier to track and collect taxes on e-commerce purchases. The Justices heard oral arguments in April, and a decision is expected by the end of the Court's current term in June.

At the time of the 1992 ruling, a few of these companies, as named above, had a fairly large brick and mortar footprint that the average customer shopped in regularly (again, think Sears, Wards, JC Penney), which were not impacted or wouldn't benefit from the law. In addition, when the law was enacted the "internet" was not even referenced, only the "goliath" mail order business.

Fast forward to today, when brick and mortar retail sales are contracting amid the advancement and sophistication of e-commerce and online shopping, whether it is through mail order catalogs or companies who really have only a virtual presence. The goliath of 1992 has now given way to the e-commerce leviathan.

In 1992, the mail order segment was \$180 billion. Today, online sales are roughly \$6 trillion.

When the law was enacted, the physical presence clause gave mail order a sales advantage; their pricing appeared to be lower because they did not have to collect sales tax. This lost tax revenue was still to be collected, but the burden was on the consumer, who rarely—if ever—paid.

Quill's reasoning conflates two distinct concepts: retailers' obligation to collect sales taxes and customers' obligation to pay sales taxes.

Main Street retailers suffered the loss, and so did local communities without the revenue from the collection of sales tax.

When *Quill* was decided, it was not feasible for states to identify customers of absentee retailers, and the amount of lost sales taxes—while large—had not yet reached the level of "extreme harm" that is now depriving states of their ability to fund their education systems, health care services, and infrastructure.

Amazon, as an early entrant, located its facilities in remote areas rather than heavily populated areas so that the tax imposed on its items did not affect the sales price in major markets. This trounced Barnes and Noble with a price advantage, with the Bronx store in New York City as the first Amazon casualty.

Today, Amazon DOES collect and subsequently pay sales tax on its purchases. However, this is a recent development.

The premises and promises of the physical presence requirement have not held true. *Quill* assumed that: (1) if absentee retail (then, mail order) lost its tax shelter, it would not thrive; (2) if a retailer was not physically present in a state, it

In 1995, three years after *Quill* was decided, *Newsweek* (then still a print publication) scoffed at the notion that "e-commerce and business will shift from offices and malls to networks and modems" and declared that a "local mall does more business in an afternoon than the entire Internet handles in a month."

would not be persistently active there; (3) if absentee retailers were not required to collect taxes, their sales would be "tax exempt"; and (4) if an absentee retailer were required to collect sales taxes, the burden would be onerous.

Indeed, retailers hesitate to expand into new states fearing—as respondent Overstock.com puts it—that it is not "worth the cost of additional sales tax burden to open a new facility in [a new] state."

Under further consideration by the Court, we currently have the following arguments:

- E-commerce is huge and robust and does not need a tax shelter;
- E-commerce is omnipresent even without a physical footprint;
- Sales/use taxes are owed regardless of whether they are collected at the point of sale; and
- Collecting sales/use taxes online is straightforward.

In 1992, only 2% of American households had internet access. Today, that number is 89%. Amazon's capitalization is greater than Walmart, Target, and Costco combined.

In 1995, three years after *Quill* was decided, *Newsweek* (then still a print publication) scoffed at the notion that "e-commerce and business will shift from offices and malls to networks and modems" and declared that a "local mall does more business in an afternoon than the entire Internet handles in a month."

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RCA's mission is to promote professionalism and integrity in retail construction through industry leadership in education, information exchange, and jobsite safety.

The Retail Contractor NEWSLETTER

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Three years later, Nobel Prize-winning economist Paul Krugman declared that “[b]y 2005 or so, it will become clear that the Internet’s impact on the economy has been no greater than the fax machine.”

Now, let’s consider how some companies have responded to the re-opening of the case. As Overstock.com puts it, e-commerce “is here to stay.”

Many of the businesses represented in the current case operate successful online stores—as well as brick-and-mortar stores—and those online stores collect sales taxes. They can speak from experience when they say that collecting sales taxes online is not a crippling burden. Case in point: if e-commerce success required an exemption from sales tax collections, Walmart would not be expanding its online portal and offering free second-day delivery without any membership fee.

Over the course of decades, conventional retailers have invested billions of dollars to literally build up local communities, only to discover that this footprint carries a significant competitive tax disadvantage when it comes to retail sales, whether in their own stores or via their online portals.

So, what does it mean to states when they can start collecting the sales taxes owed, currently estimated at \$8 to \$13 billion annually? Will it go into the general fund, can it help support schools, infrastructure, or are there other uses?

What will the landscape look like for construction, our industry? Consider this: as Amazon’s practices confirm, warehouses and distribution centers will be moved closer to population centers, reducing delivery times and cost. In fact, some absentee retailers might even decide to join the local community and open a store on Main Street, as Amazon has, or set up shop in a mall near you.

In conclusion, we ask you to consider supporting the following organizations who have enjoyed in the current Supreme Court case:

- The Retail Litigation Center
- National Retail Federation
- American Specialty Toy Retailing Association
- American Lighting Association
- American Supply Association
- American Veterinary Medical Association
- Auto Care Association
- Council of State Retail Associations
- Food Industry Association Executives
- Home Furnishings
- Independent Office Products and Furniture Dealers Association
- Jewelers of America
- National Association of College Stores
- National Grocers Association
- National Association of Electrical Distributors
- National Association of Wholesaler-Distributors
- National Ski and Snowboard Retailers Association
- National Sporting Goods Association
- North American Retail Hardware Association
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A version of this article first appeared in the CCR April 2018 eNewsletter.

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President's Message

Rick Winkel, CEO, Winkel Construction, Inc.,



Rick Winkel

I would like to take this opportunity to thank the Board of Directors for giving me the opportunity to serve as President of the Retail Contractor's Association. As many of you know, I have the honor of being the first second-generation president of the RCA. My father, Bill Winkel, a.k.a. Keeper of the Scrolls, was president in 1993, and a founding member of the RCA. I was grateful that he was in attendance at the annual meeting to see me take

the helm of an organization of which our family has been a part since its inception.

We had a great turn out for the annual conference in Dallas in March, and what a conference it was! A couple of the highlights: Rich Chapman, author of *The Greater Game*, spoke about how leadership is everyone's business. If you were not in attendance for Rich's presentation, I recommend that you grab a copy of his book.

Anirban Basu, Chairman & CEO of Sage Policy Group, Inc. once again entertained everyone while presenting his economic outlook. Our Advisory Board members hosted a discussion on retailer and landlord expectations of GCs, the state of the industry, and upcoming retailer initiatives. Lastly, we had a panel of industry experts discussing the changing tides in retail.

Following the annual conference, we held our second annual golf tournament, at the Cowboys Golf Club. The weather and event were great and we are looking forward to continuing this tradition next year.

If you were not able to be at this year's conference, I can tell you that one of the greatest reasons for being a RCA member is the time spent with other members. The amount of industry knowledge among the RCA membership is in valuable. I invite all members to make sure that they are in the room anytime that the RCA gathers.

Currently, our most significant initiative is the Superintendent Training Program. We have partnered with FMI and are in the process of finalizing the training manual, course, and exam. We anticipate implementing the course for the general membership in fall of 2018.

The RCA continues to be a strong organization and I look forward to serving as the President and accomplishing the goals set forth by the organization.

If you have any feedback or ideas for the organization, please contact me. We are always looking for ways to continue strengthening the organization. I hope everyone has a successful year!

Rick

— rickw@winkelconstruction.com

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Justin Elder

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david@hjmartin.com

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RCA Membership

RCA members must meet and maintain a series of qualifications and are approved by the Board of Directors for membership. They have been in the retail construction business as general contractors for at least five years; agree to comply with the Association's Code of Ethics and Bylaws; are properly insured and bonded; are licensed in the states in which they do business; and have submitted letters of recommendation.

COMPANY	CONTACT	PHONE	STATE	EMAIL	MEMBER SINCE
A. F. Alber General Contractor, Inc.	Anthony Alber	215-249-4885	PA	office@afalber.com	2015
Acme Enterprises, Inc.	Robert Russell	586-771-4800	MI	rrussell@acme-enterprises.com	2009
All-Rite Construction Co., Inc.	Warren Zysman	973-340-3100	NJ	warren@all-riteconstruction.com	1993
Atlas Building Group	Brian Boettler	636-368-5234	MO	bboettler@abgbuilds.com	2017
BALI Construction	Kevin Balestrieri	925-478-8182	CA	kevin@bali-construction.com	2017
Bogart Construction, Inc.	Brad Bogart	949-453-1400	CA	brad@bogartconstruction.com	2008
Buildrite Construction Corp.	Bryan Alexander	770-971-0787	GA	bryan@buildriteconstruction.com	2013
Burdg, Dunham and Associates	Harry Burdg	816-583-2123	MO	harry@burdg-dunham.com	2016
Comet Construction	Bernard Keith Danzansky	561-672-8310	FL	barney@dananzsky.com	2016
Commercial Contractors, Inc.	Kenneth Sharkey	616-842-4540	MI	ken.t.sharkey@teamcci.net	1990
Commonwealth Building, Inc.	Frank Trainor	617-770-0050	MA	frankt@combuild.com	1992
Construction One, Inc.	Bill Moberger	614-235-0057	OH	wmoberger@constructionone.com	2015
David A. Nice Builders	Brian Bacon	757-566-3032	VA	bbacon@davidnicebuilders.com	2011
De Jager Construction, Inc.	Dan De Jager	616-530-0060	MI	dandj@dejagerconstruction.com	1990
Desco Professional Builders, Inc.	Bob Anderson	860-870-7070	CT	banderson@descopro.com	1995
DGC Capital Contracting Corp.	Gerry Ryan	914-664-7244	NY	gryan@dgccapital.com	2013
Diamond Contractors	Lori Perry	816-650-9200	MO	loriperry@diamondcontractors.org	2015
DLP Construction	Dennis Pigg, Jr.	770-887-3573	GA	dpigg@dlpconstruction.com	2008
E.C. Provini, Co., Inc.	Joseph Lembo	732-739-8884	NJ	jlembo@eprovini.com	1992
Eckinger Construction Company	Philip Eckinger	330-453-2566	OH	phil@eckinger.com	1994
EDC	Christopher Johnson	804-897-0900	VA	cjohnson@edcweb.com	1998
ELAN General Contracting Inc.	Adrian Johnson	619-284-4174	CA	ajohnson@elanc.com	2010
Elder-Jones, Inc.	Justin Elder	952-345-6069	MN	justin@elderjones.com	1990
EMJ Corporation	Ray Caitlin	972-580-1210	TX	RCaitlin@emjcorp.com	2014
Engineered Structures, Inc.	Mike Magill	208-362-3040	ID	mikemagill@esiconstruction.com	2016
Fi Companies	Kevin Bakalian	732-727-8100	NJ	kbakalian@ficompanies.com	2017
Fortney & Weygandt, Inc.	Greg Freeh	440-716-4000	OH	gfreeh@fortneyweygandt.com	2013
Fred Olivieri Construction Company	Dean Olivieri	330-494-1007	OH	dean@fredolivieri.com	1992
Fulcrum Construction, LLC	Willy Rosner	770-612-8005	GA	wrosner@fulcrumconstruction.com	2014
Go Green Construction, Inc.	Anthony Winkco	412-367-5870	PA	anthony@ggc-pgh.com	2017
Gray	Robert Moore	714-491-1317	CA	ramoore@gray.com	2005
H.J. Martin & Sons, Inc.	David Martin	920-494-3461	WI	david@hjmartin.com	2016
Hanna Design Group	Jason Mick	847-719-0370	IL	jmick@hannadesigngroup.com	2016
Harmon Construction, Inc.	William Harmon	812-346-2048	IN	bill.harmon@harmonconstruction.com	2017
Hays Construction Company, Inc.	Roy Hays	303-794-5469	CO	r.hays@haysco.biz	2002
Healy Construction Services, Inc.	James Healy	708-396-0440	IL	jhealy@healyconstructionservices.com	1996
Herman/Stewart Construction	Terry Varner	301-731-5555	MD	tvarner@herman-stewart.com	1995
Howard Immel Inc.	Pete Smits	920-468-8208	WI	psmits@immet-builds.com	2018
International Contractors, Inc.	Bruce Bronge	630-834-8043	IL	bbronge@iciinc.com	1995
J. G. Construction	Jack Grothe	909-993-9332	CA	JackG@jgconstruction.com	1998
James Agresta Carpentry Inc.	James Agresta	201-498-1477	NJ	jim.agresta@jacarpentryinc.com	2013
KBE Building Corporation	Michael Kolakowski	860-284-7110	CT	mkolakowski@kbebuilding.com	1998
Kerricook Construction, Inc.	Ann Smith	440-647-4200	OH	ann@kerricook.com	2012
Lakeview Construction, Inc.	Kent Moon	262-857-3336	WI	kent@lvconstruction.com	1998
M. Cary, Inc.	Bill Tucker	631-501-0024	NY	btucker@mcaryinc.com	2014
Management Resources Systems, Inc.	Doug Marion	336-861-1960	NC	dmarion@mrs1977.com	1992
Marco Contractors, Inc.	Martin Smith	724-741-0300	PA	marty@marcocontractors.com	1994
Metropolitan Contracting Co., Ltd.	Jane Feigenbaum	210-829-5542	TX	jfeigenbaum@metcontracting.com	1995
Montgomery Development Carolina Corp.	John Fugo	919-969-7301	NC	jfugo@montgomerydevelopment.com	1999
Murray Costello Construction, Inc.	Murray Costello	239-482-2770	FL	Susan@MCIUSA.com	2014
National Building Contractors	William Corcoran	651-288-1900	MN	bill@nbccconstruction.us	2013
Pinnacle Commercial Development, Inc.	Dennis Rome	732-528-0080	NJ	dennis@pinnaclecommercial.us	2012
Prime Retail Services, Inc.	Donald Bloom	866-504-3511	GA	dbloom@primeretailservices.com	2014
PWI Construction, Inc.	Jeff Price	480-461-0777	AZ	price@pwiconstruction.com	2003
R.E. Crawford Construction LLC	Jeffrey T. Smith	941-907-0010	FL	jeffs@recrawford.com	2011
Rectenwald Brothers Construction, Inc.	Art Rectenwald	724-772-8282	PA	art@rectenwald.com	1996
Retail Construction Services, Inc.	Stephen Bachman	651-704-9000	MN	sbachman@retailconstruction.com	1998
Retail Contractors of Puerto Rico	Sean Pfent	586-725-4400	MI	spfent@rcofusa.com	1996
Rockford Construction Co.	Thomas McGovern	616-285-6933	MI	info@rockfordconstruction.com	2014
Royal Seal Construction, Inc.	Gene Colley	817-491-6400	TX	gene@royalseal.com	1994
Russco, Inc.	Matthew Pichette	508-674-5280	MA	mattp@russcoinc.com	1995
Sachse Construction and Development Corp.	Jeff Katkowsky	248-647-4200	MI	jkatkowsky@sachseconstruction.com	2009

(Continued on page 5)

Scheiner Commercial Group, Inc.	Joe Scheiner	719-487-1600	CO	joe@scheinercg.com	2012
Schimenti Construction Company, Inc.	Matthew Schimenti	914-244-9100	NY	mschimenti@schimenti.com	1994
Shames Construction Co., Ltd.	Carolyn Shames	925-606-3000	CA	cshames@shames.com	1994
Shrader & Martinez Construction, Inc.	Ronald Martinez	928-282-7554	AZ	info@shradermartinez.com	1990
Singleton Construction, LLC	Denise Doczy-Delong	740-756-7331	OH	denisedelong@singletonconstruction.net	2012
Solex Contracting	Gerald Allen	951-308-1706	CA	jerry@solexcontracting.com	2015
Southwestern Services	John S. Lee	817-921-2466	TX	JLee@southwesternservices.com	2017
Sullivan Construction Company	Amanda Sullivan	954-484-3200	FL	amanda@buildwithsullivan.com	2012
Taylor Brothers Construction Company, Inc.	Jeff Chandler	812-379-9547	IN	jchandler@tbcci.com	2014
TDS Construction, Inc.	Robert Baker	941-795-6100	FL	inbox@tdsconstruction.com	1994
Thomas-Grace Construction, Inc.	Don Harvieux	651-342-1298	MN	don.harvieux@thomas-grace.com	2012
Timberwolff Construction, Inc.	Mike Wolff	909-949-0380	CA	mike@timberwolff.com	2008
TJU Construction, Inc.	Tim Uhler	530-823-7200	CA	tim@tjuconstruction.com	2016
Tom Rectenwald Construction, Inc.	Aaron Rectenwald	724-452-8801	PA	arectenwald@trcgc.net	2010
Trainor Commercial Construction, Inc.	John Taylor	415-259-0200	CA	john.taylor@trainorconstruction.com	2012
Travisano Construction, LLC	Peter J. Travisano	412-321-1234	PA	pj@travisanoconstruction.com	2015
Tri-North Builders, Inc.	Randy Danielson	608-271-8717	WI	rdanielson@tri-north.com	2015
Triad Retail Construction	Jay Dorsey	281-485-4700	TX	j.dorsey@triadrc.com	2013
Warwick Construction, Inc.	Walt Watzinger	832-448-7000	TX	walt@warwickconstruction.com	2008
Weekes Construction, Inc.	Hunter Weekes	864-233-0061	SC	hweekes@weekesconstruction.com	1990
Westwood Contractors, Inc.	Mike McBride	817-302-2050	TX	mikem@westwoodcontractors.com	1990
William A. Randolph, Inc.	Tony Riccardi	847-856-0123	IL	tony.riccardi@warandolph.com	2011
Winkel Construction, Inc.	Rick Winkel	352-860-0500	FL	rickw@winkel-construction.com	1990
Wolverine Building Group	Michael Houseman	616-949-3360	MI	mhouseman@wolvgroup.com	2012
Woods Construction, Inc.	John Bodary	586-939-9991	MI	jbodary@woodsconstruction.com	1996

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RCA's 28th Annual Conference

RCA's 28th Annual Conference was held March 16-18, at the Gaylord Texan in Grapevine, Texas. About 150 members, retailers, architects, and sponsor representatives attended the event, which included keynote speakers, panels, receptions, owners' event, and a golf tournament.

Save the date for our 29th Annual Conference, to be held prior to SPECS, March 1-3, 2019, back at the Gaylord Texan.



Advisory Board panel: Ken Christopher, Brad Sanders, Kristen Roodvoets, Jason Miller & Steve Olson



Vice President Rick Winkel presented President Brad Bogart with a gavel in recognition of his service.





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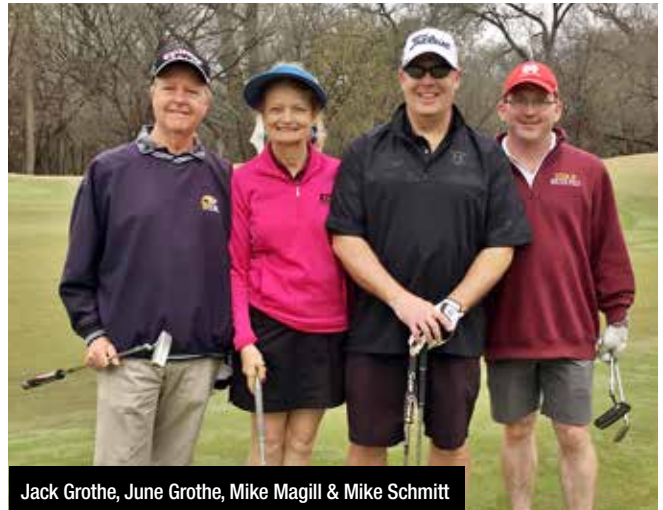
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