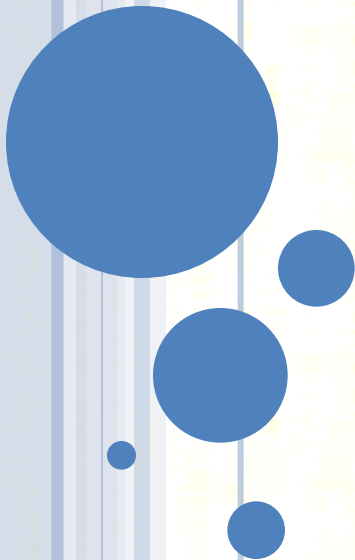


THE ISSUE OF ONLINE SALES TAXES

Southern Legislative Conference

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**Representative Joe Hackney
North Carolina House of Representatives**



WHY CAN'T STATES COLLECT SALES TAXES FROM OUT OF STATE SELLERS?

The Supreme Court ruled in the 1967 *Bellas Hess* case and the 1992 *Quill v. North Dakota* case that consumers owe sales tax when they purchase goods through catalogues or over the Internet, but ruled that states cannot force out of state retailers to collect the tax as it puts an undue burden on interstate commerce.



WHY IS THIS A PROBLEM?

- Online remote sellers simply are not required to collect the tax in the same way that local businesses do – which puts local businesses at a disadvantage.
- In some states, this can mean a 5 to 10% price advantage for out of state retailers.
- A study by the University of Tennessee found that States will be unable to collect as much as \$23 billion in owed taxes for FY 12. A number that will only increase with the expansion of electronic commerce.



UNCOLLECTED USE TAX FROM ALL REMOTE SALES IN 2012 FOR SLC STATES

Alabama	\$ 347,734,399
Arkansas	\$236,311,930
Florida	\$1,483,690,010
Georgia	\$837,610,389
Kentucky	\$224,484,309
Louisiana	\$808,311,357
Mississippi	\$303,286,360
Missouri	\$430,191,928
North Carolina	\$436,517,492
Oklahoma	\$296,348,658
South Carolina	\$254,290,538
Tennessee	\$748,480,889
Texas	\$1,777,090,593
Virginia	\$422,651,971
West Virginia	\$103,284,206



WHAT ARE THE OPTIONS FOR STATES?

- Become a Member of the Streamlined Sales Tax and Use Agreement
- Pass an Affiliate Nexus or "Amazon Law"
- Enact notice laws that require the remote vendor to provide information about the use tax to buyers
- Urge Congress to pass legislation that would give states remote collection authority



THE STREAMLINED SALES TAX AND USE AGREEMENT (SSTUA)

- The Streamlined Sales and Use Tax was created by the National Governor's Association (NGA) and the National Conference of State Legislatures (NCSL) in the fall of 1999 to simplify sales tax collection.
- The Agreement minimizes costs and administrative burdens on retailers that collect sales tax, particularly retailers operating in multiple states. It encourages volunteer "remote sellers" selling over the Internet and by mail order to collect tax on sales to customers living in the Streamlined states.
- To date, 24 of the 44 states that have statewide sales taxes have passed the conforming legislation.



STREAMLINED SALES TAX MEMBER STATES

COLLECTION TOTALS

	2011 Totals	October 2005 to present
Arkansas	\$ 9,545,195	\$ 39,811,513
Georgia	\$ 2,023,450	\$ 2,023,450
Indiana	\$ 11,979,601	\$ 49,164,067
Iowa	\$ 9,483,000	\$ 51,763,638
Kansas	\$ 14,244,034	\$ 55,842,015
Kentucky	\$ 9,542,628	\$ 37,919,582
Michigan	\$ 17,400,998	\$ 82,798,183
Minnesota	\$ 13,180,220	\$ 47,537,290
Nebraska	\$ 14,515,925	\$ 70,878,879
Nevada	\$ 9,927,409	\$ 50,129,216
New Jersey	\$ 16,509,112	\$ 74,838,264
North Carolina	\$ 22,409,757	\$ 100,179,513
North Dakota	\$ 2,382,838	\$ 10,556,316
Ohio	\$ 21,834,339	\$ 81,907,739
Oklahoma	\$ 20,590,757	\$ 69,696,661
Rhode Island	\$ 1,734,340	\$ 6,463,426
South Dakota	\$ 2,154,443	\$ 10,063,899
Tennessee	\$ 17,456,916	\$ 83,505,772
Utah	\$ 4,551,292	\$ 15,888,361
Vermont	\$ 1,299,154	\$ 5,424,441
Washington	\$ 9,895,784	\$ 30,558,457
West Virginia	\$ 3,357,016	\$ 11,360,975
Wisconsin	\$ 1,884,526	\$ 4,532,107
Wyoming	\$ 1,852,205	\$ 8,947,077
	\$ 239,754,940	\$ 1,001,790,843

As of April 2012, member states of the Streamlined Sales Tax and Use Agreement have collected over \$1 Billion in sales taxes from remote transactions from volunteer retailers since collection began in 2005.

Note: Rhode Island and Washington joined in 2007, Wisconsin joined in 2009 and Georgia joined in 2011.



AFFILIATE NEXUS OR "AMAZON" LAWS

- Amazon taxes (also known as affiliate nexus taxes or affiliate taxes) require retailers that have contracts with "affiliates" -- independent persons within the state who post a link to an out-of-state business on their website and get a share of revenues from the out-of-state business -- to collect the state's sales and use tax.
- The approach presumes that certain individuals and organizations in the state that have a specified relationship with the out-of-state vendor are affiliates of the vendor that constitutes the requisite physical presence in the state to allow the state to require the vendor to collect sales tax.
- To date, 9 states have passed a version of this law: New York, North Carolina, Rhode Island, Illinois, Arkansas, Connecticut, Vermont, California, Georgia



EFFECTIVENESS OF "AMAZON" LAWS

- States enacting affiliate nexus provisions projected significant revenue gains. California estimated that full compliance with the new law would generate an additional \$317 million of sales tax for FY 2012-2013 (this represents revenue to be collected from vendors that customers would otherwise have been paying as use tax).
- However, it is unlikely that any of the states, other than New York, realized or will realize an appreciable increase in tax collections. This is because in the nine states, two large Internet vendors— Amazon and Overstock, canceled their in-state affiliate arrangements (Amazon did not cancel in New York though). Other vendors may have done the same. The Performance Marketing Association estimates that about 200 remote vendors cancelled their contracts with New York residents.



EFFECTIVENESS OF "AMAZON" LAWS

- Cancellation of such contracts not only means that the affiliate nexus law won't apply, but also that state income revenues will drop due to the reduced income of the affiliates. The PMA estimates that prior to enactment of affiliate nexus legislation in Illinois, the approximate 9,000 affiliates there paid about \$22 million in state income tax.
- The new laws have also resulted in litigation. Both Amazon and Overstock filed lawsuits in New York challenging the constitutionality of the provision. Others have also filed suits.
- Finally, the affiliate nexus laws only potentially reach remote vendors with affiliate arrangements. Thus, states continue to face use tax collection challenges for sales by other remote vendors.



NOTICE LEGISLATION

- A few states, including Colorado, South Dakota, Oklahoma and Vermont, enacted notice laws that require the remote vendor to provide information about the use tax to buyers.
- While this legislation does not require the vendor to collect the tax, it reminds consumers that they are responsible for remitting it.
- Example of reporting requirement for online retailers:
For Oklahoma purchasers, the tax may be reported and paid on the Oklahoma individual income tax return [Form 511] or by filing a consumer use tax return [Form 21-1]. The referenced forms and corresponding instructions are available on the Oklahoma Tax Commission website, www.tax.ok.gov.



FEDERAL LEGISLATION

- The bottom line is that states will never be able to collect the full amount of taxes that are currently owed to them without federal action.
- In the House, **The Marketplace Equity Act** (HR 3179), sponsored by Representatives Steve Womack (R-AR) and Jackie Speier (D-CA), was introduced on October 11, 2011.
- In the Senate, **The Marketplace Fairness Act** (S 1832) was introduced by Senators Mike Enzi (R-WY), Dick Durbin (D-IL), Lamar Alexander (R-TN), Roy Blunt (R-MO), John Boozman (R-AR), Bob Corker (R-TN), Mark Pryor (D-AR), and John Rockefeller (D-WV) on November 9, 2011.
- The introduced federal legislation addresses the concerns of the two Supreme Court decisions and gives states the authority to collect the over \$23 billion that will be owed to them for FY 12.



MARKETPLACE EQUITY ACT SPONSORS

There are currently 49 sponsors of the Marketplace Equity Act. The Sponsors below are from SLC states.

Representative Bachus (R) Alabama

Representative Cohen (D) Tennessee

Representative Conaway (R) Texas

Representative Crawford (R) Arkansas

Representative Crenshaw (R) Florida

Representative Deutch (D) Florida

Representative Diaz-Balart (R) Florida

Representative Duncan (R) Tennessee

Representative Ellmers (R) North Carolina

Representative Green (D) Texas

Representative Griffin (R) Arkansas

Representative Johnson Jr. (D) Georgia

Representative Marchant (R) Texas

Representative Miller (D) North Carolina

Representative Olson (R) Texas

Representative Poe (R) Texas

Representative Rigell (R) Virginia

Representative Ross (R) Florida

Representative Scott (R) Georgia

Representative Scott (D) Virginia

Representative Shuler (D) North Carolina

Representative Womack (R) Arkansas



WOULD THIS BE CREATING A NEW TAX?

No. Consumers are required under state laws to pay sales and use taxes on the goods they purchase, but online remote sellers simply are not required to collect the tax in the same way that local businesses do – which puts local businesses at a disadvantage. Consumers can be audited and charged with penalties for failing to pay sales and use taxes, but too often States are unable to enforce this requirement.



FEDERAL LEGISLATION

- State legislators and governors are making the push to pass the Marketplace Fairness Act, S. 1832, in the Senate and the Marketplace Equity Act, H.R. 3179, in the House. After the November elections, Congressional leadership has signaled that this legislation could be part of an omnibus bill that would include the expiring tax cuts and other appropriations measures.
- **This is where we need your help.** We are asking state legislators to contact their members of the United States Senate and House to urge them to support the Marketplace Fairness Act and the Marketplace Equity Act.

