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Attention Online Shoppers: Amazon Tax Hearing Means Better Get Clicking

The House Judiciary Committee is holding a [hearing](#) on the Internet sales tax. The title, [Exploring Alternative Solutions on the Internet Sales Tax Issue](#), sounds a little desperate. Although the Senate passed the [Marketplace Fairness Act of 2013](#), the Republican-controlled House didn't and the bill languished. But now the House Judiciary Committee is taking a stab at other ways to skin a very large and very unruly cat.

Still, these basic principles on Internet sales tax aren't a bad starting point:

1. **Tax Relief** – Using the Internet should not create new or discriminatory taxes not faced in the offline world. Nor should any fresh precedent be created for other areas of interstate taxation by states.
2. **Tech Neutrality** – Brick-and-mortar, exclusively online, and brick-and-click businesses should all be on equal footing. The sales tax compliance burden on online Internet sellers should not be less, but neither should it be greater than that on similarly situated offline businesses.



(Photo credit: thisisbossi)

3. No Regulation Without Representation – Those who would bear state taxation, regulation and compliance burdens should have direct recourse to protest unfair, unwise or discriminatory rates and enforcement.

4. Simplicity – Governments should not stifle businesses by shifting onerous compliance requirements onto them; laws should be so simple and compliance so inexpensive and reliable as to render a small business exemption unnecessary.

5. Tax Competition – Governments should be encouraged to compete with one another to keep tax rates low and American businesses should not be disadvantaged vis-à-vis their foreign competitors.

6. States' Rights – States should be sovereign within their physical boundaries. In addition, the federal government should not mandate that States impose any sales tax compliance burdens.

7. Privacy Rights – Sensitive customer data must be protected.

The House Judiciary Committee [hearing](#) isn't going to stop brick and mortar retailers from complaining. In one [poll of over 1,200 small independent retailers](#), more than 75% said the tax disparity was negatively impacting their sales.

In all, 45 states and the District of Columbia have [sales tax](#). The only states without statewide sales and use taxes are Alaska, Delaware, Montana, New Hampshire, and Oregon. If you go down to the store you'll pay sales tax, online maybe not. But these days, [many states](#) have expanded the nexus that make sales tax apply.

Amazingly, famously no-tax [Amazon](#) now collects tax in 20 states: Arizona, California, Connecticut, Georgia, Indiana, Kansas, Kentucky, Massachusetts, Nevada, New Jersey, New York, North Carolina, North Dakota, Pennsylvania, Tennessee, Texas, Virginia, Washington, West Virginia and Wisconsin. Commencing in January 2016, you'll be taxed on Amazon purchases in South Carolina too.

Of course, if you buy from a small merchant that doesn't charge you, you are still liable for use tax, the counterpart to your state's sales tax. The Marketplace Fairness Act, which passed the [Senate](#), would allow states to require online retailers to collect state sales taxes. When Amazon asked the Supreme Court to [hear its challenge](#) to New York's demand that it collect tax from shoppers in New York, the Supreme Court [said no](#).

What about the constitutional implications of forcing merchants to collect tax when they have no stores in a state? The prevailing law remains 1992's [Quill Corp. v. North Dakota](#). There, the Supreme Court ruled that no state can constitutionally force an out-of-state merchant to collect sales or use tax unless it has a nexus—physical presence—in the state. A store is enough, and much less evidently may be too.

Even if the site where you buy doesn't have a physical store in your state, a warehouse or distribution facility may be enough for tax nexus with your state. And the efforts at federal legislation and state collection efforts will continue. Most online sales will soon face either sales or use tax, and the states are getting better at collecting.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.