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With Key Vote Looming In Senate, Click And Pay Internet Sales Tax Is Here

Legislation giving states the power to compel retailers outside their borders to collect online sales tax is a touchy subject for Internet merchants and consumers alike. Tax applies now, but consumers are supposed to self-report. Most don't despite the fact that sales and use tax applies in 45 states and D.C.



Photo credit: Wikipedia

The pending [Marketplace Fairness Act \(S.336/H.R.684\)](#), which could be voted on in the Senate as early as today, doesn't impose a federal tax or even a new state tax. Online sellers are **already** required to collect sales tax from customers in their **own** states. But under the Supreme Court's 1992 [Quill v. North Dakota](#), retailers don't always have to collect when sending goods to buyers in **other** states. They must collect sales tax from out-of-state customers only if they have a physical presence (store, warehouse or office) in the customer's state.

Today, a [growing number of states](#) extend sales tax to online retailers with in-state sales affiliates. Thus, [Amazon](#) started collecting tax in Pennsylvania,

Texas, California and Connecticut according to the [Marketplace Fairness Act website](#). Brick-and-mortar stores — from mom and pop to Wal-Mart — the world's biggest retailer, back the legislation. Amazon also supports it, while [eBay](#) is against it. Opponents say the law would obliterate physical presence as a baseline protection.

Meanwhile, even without federal legislation, new state laws defining physical presence differently are being tested in court. Eventually, the Supreme Court could even get in on the act. Physical presence today might not be interpreted today the same as it was in [Quill](#) in 1992.

The Senate already voted yes on a nonbinding version of the bill as part of a budget amendment. But now the Senate votes to end debate and move forward. While Senate approval seems likely, its future in the House is less clear. Meanwhile, some states are keying their own **income** taxes to the bill.

For example, the Ohio House of Representatives included in a state budget bill a reduction in Ohio's personal income tax rates conditioned on passage of the Marketplace Fairness Act. Ohio is thus trying to give legislators and consumers a reason to support paying sales tax so state income taxes could be lowered. It's a clever spin on what is not the most popular bill.

Tax increases aren't popular, but despite the emotion-riddled debate, this bill really isn't one. Even where sellers aren't forced to collect sales tax at point of sale, all of us (in 45 states and D.C.) are supposed to pay use tax **after** we click. States are getting better at enforcing it, too, including use tax reporting on income tax returns. However the Marketplace Fairness Act ends up, the days of tax-free clicks are likely to end soon.

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