



ICSC Office of Global Public Policy

Issue Brief: Sales Tax Fairness

The Issue:

In 1992 the Supreme Court ruled that diverse state and local sales tax rules were a burden to retailers engaged in interstate commerce (*Quill Corporation v. North Dakota*) and that Internet and catalog retailers should not be required to collect sales taxes unless they have a physical presence, such as a store or warehouse, in the purchaser's state. As a result, some Internet and catalog retailers without physical stores do not collect sales taxes, while other "clicks and bricks" retailers with both online and traditional stores are required to collect sales taxes on all sales. This is not only unfair to traditional brick and mortar retailers, but costs states billions of dollars in lost revenue. The Supreme Court advised that allowing states to require collection is an issue that "Congress may be better qualified to resolve, and one that it has the ultimate power to resolve."

The majority of states have taken steps to simplify their sales tax systems: 41 states and the District of Columbia have approved the Streamlined Sales and Use Tax Agreement (SSUTA) and 21 states have passed legislation to implement the SSUTA. The agreement provides one uniform system to administer and collect sales taxes thus streamlining the country's more than 7,500 diverse sales tax jurisdictions, each of which has different definitions of taxability. As the SSUTA continues to be implemented at the state level, Congressional action is required at the federal level to allow states to collect taxes from out-of-state sellers.

While the Internet marketplace has rapidly expanded, sales tax collection for e-commerce sales lags behind. States and localities are experiencing budget deficits, which may result in higher business/property taxes and reduced resources for schools, parks, law enforcement, first responders and other governmental services. According to estimates prepared by the University of Tennessee's Center for Business and Economic Research in July 2004, states lost \$15.5 billion in uncollected taxes in 2003. That number is expected to grow to between \$21.5 and \$33.7 billion in 2008 if state and local governments remain unable to collect sales taxes from online purchases.

Our Position:

In the 110th Congress, ICSC supports S. 34, the Sales Tax Fairness and Simplification Act sponsored by Senator Mike Enzi (R-WY). The House version of this legislation is H.R. 3394 introduced by Congressman Bill Delahunt (D-MA), Congressman Spencer Bachus (R-AL) and Congressman Ray Lahood (R-IL). This legislation promotes simplification and fairness in the administration and collection of sales and use taxes and authorizes states to collect taxes from out-of-state sellers.

ICSC believes that tax policy should be consistent and equitable for all forms of consumer purchases – whether they take place on Main Street, at shopping centers, via mail-order or over the Internet. Internet retailers should not receive a tax advantage at the expense of traditional retailers and state and local governments.

Opposing Arguments:

1. Opponents claim that allowing states to collect remote sales taxes is a "new" tax.
2. Opponents argue that it would be too costly and burdensome to require remote retailers to collect sales taxes for other states and localities.

ICSC's Response:

1. S. 34 does not impose a new tax; it permits states to collect what is currently owed to them from retailers and purchasers in other states, but not adequately enforced. Internet retailers should not receive a tax advantage at the expense of traditional retailers and state and local governments.
2. Due to improvements in technology since the 1992 Supreme Court ruling, inexpensive software is available that easily determines and remits the amount of taxes owed to taxing jurisdictions throughout the country.

For more information, contact Betsy Laird at blaird@icsc.org or (202) 626-1406.