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# LEGISBRIEF

BRIEFING PAPERS ON THE IMPORTANT ISSUES OF THE DAY

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## State Efforts to Collect Taxes from Remote Sellers

By Max Behlke

The U.S. Supreme Court ruled in *Quill v. North Dakota* in 1992 that consumers owe applicable sales taxes on purchases made from out-of-state businesses, but that states cannot require those businesses to collect and remit them. The Court reasoned that it was too complicated for sellers to comply with the various sales tax systems of every state in which they made sales. In its opinion, the Court urged Congress to pass legislation to fix the problem because the tax loophole provided an unfair price advantage to out-of-state businesses and because it negatively affected state sales tax collections. In the 24 years since, Congress has yet to act, although the problem has grown, principally due to the proliferation of electronic commerce.

### Did You Know?

- The very first text message was sent in December 1992 in Finland. Today, mobile commerce is the **fastest growing** sector of retail shopping.
- Sales taxes account for half of state tax collections in six states.
- Less than **3 percent** of people voluntarily remit use taxes from out-of-state purchases to their state revenue departments.

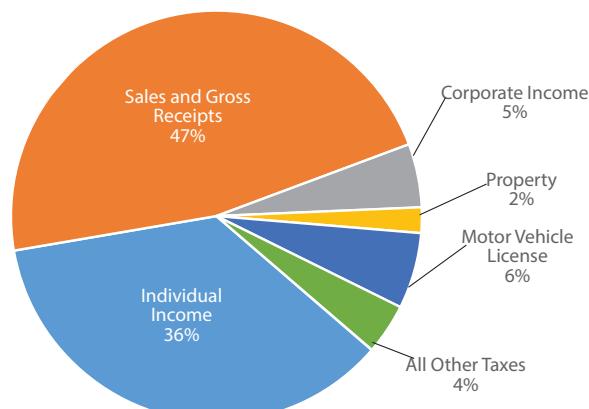
In 1992, few people had personal computers, let alone bought anything online. Now, e-commerce is booming. This past “Black Friday,” for the first time ever, more people shopped online than in stores. For the last five years, e-commerce grew by **15 percent** each year and now accounts for 7 percent of all retail sales. While many people shop online for convenience, many do so because they do not have to pay taxes (even though they technically are required to remit them). In fact, many people go to stores to browse

products and then buy them online to save the 5 percent to 10 percent in taxes. Thus, not only are the states losing billions of dollars each year in owed revenue, but also stores in communities across the country are forced to compete in an unequal marketplace.

### Federal Action

The U.S. Senate overwhelmingly passed the Marketplace Fairness Act in 2013. It would have closed the tax loophole by providing states that complied with certain requirements to simplify tax collections and the authority to collect the taxes they are owed. Because of opposition in the U.S. House, however, it has languished for more than 22 months in the House Judiciary Committee without receiving a hearing. The committee also has failed to consider a more substantive legislative proposal introduced on June 15, 2015—the Remote Transactions Parity Act, which also would provide states collection authority if they meet certain requirements.

State Government Tax Collections by Tax Type



Source: U.S. Census Bureau, 2014

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On the judicial side, the U.S. Court of Appeals for the 10th Circuit in February upheld a 2010 Colorado law that imposed notification and reporting requirements on out-of-state retailers that do not collect sales taxes in the state. The Colorado law requires out-of-state retailers to notify Colorado purchasers that they may be subject to Colorado's use tax; send an "annual purchase summary" to residents who buy more than \$500 in goods with the dates, categories and amounts of purchases; and file an annual "customer information report" with the Colorado Department of Revenue listing their customers' names, addresses and total amounts spent. The Court held that the notification and reporting requirements do not violate the Commerce Clause because they do not discriminate against or unduly burden interstate commerce.

## State Action

The Streamlined Sales and Use Tax Agreement was created by the National Governors Association (NGA) and the National Conference of State Legislatures (NCSL) in the fall of 1999 to simplify the sales tax collection process in order to overcome the complexities highlighted in *Quill*. The agreement minimizes costs and administrative burdens on retailers that collect sales taxes, particularly retailers that operate in several states. Multiple proposals across several Congresses were introduced, beginning in 2003 with the "Streamlined Sales and Use Tax Act" that, if enacted, would have granted states that conformed to the agreement the authority to collect taxes from remote sales. Even though more than half the states that levy sales taxes have joined the agreement, Congress never took action.

To date, 20 states have enacted laws regarding affiliate nexus taxes, or affiliate taxes. The laws require retailers that have contracts with "affiliates"—independent people within the state who post a link to an out-of-state business on their website and receive a share of revenues from that business—to collect the state sales and use tax. This approach presumes that certain individuals and organizations, defined as affiliates of an out-of-state vendor, meet the requisite physical presence that allows the state to require the vendor to collect sales taxes. However, because online retailers canceled their in-state affiliate arrangements and because the laws only apply to remote vendors with affiliate arrangements, few of these states have realized or will realize an appreciable increase in tax collections.

Frustrated by Congress, and perhaps encouraged by the 10<sup>th</sup> Circuit Court opinion, many state legislatures are taking action. In 2016 sessions so far, 24 bills have been introduced in 16 states to require out-of-state companies to collect taxes on Internet sales and remit them to the states. South Dakota enacted a law that requires remote sellers to collect and remit sales taxes if they sell \$100,000 worth of goods or have 200 or more separate sales in the state each year. It is expected to be challenged in court at some point after it takes effect on May 1.

Broadly, the state efforts include:

- Enacting legislation with the intent of reversing the Supreme Court's 1992 *Quill* decision.
- Expanding the types of businesses that states can require to collect and remit taxes.
- Expanding collection requirements to marketplace providers.
- Expanding state reporting and registration requirements.

## NCSL Contact and Resources

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NCSL State and Local Taxation Task Force letter to Legislative Leaders  
regarding remote sales tax collection and draft Legislative Proposal

NCSL, [Estimated Uncollected Use Tax from All Remote Sales in 2012](#)