



Written by [Jack Kenny](#) on May 7, 2013

Senate Passes Bill for Taxing Internet Sales

The U.S. Senate [approved](#) a bill Monday by a vote of 69-27 authorizing states to require out-of-state sellers to collect and remit state and local taxes on sales made to in-state customers. Called the Marketplace Fairness Act of 2013, the bill pits “brick-and-mortar” retail establishments against online sellers, whose Internet sales are not taxed by the various states where they ship their products. Organizations representing traditional retailers claim the bill will eliminate an unfair tax advantage for online sellers, while opponents claim taxing Internet transactions will stifle growing businesses and entangle online sellers in the tax laws of 45 states and the District of Columbia.



Passage of the bill is far from certain in the Republican-controlled House, where most GOP members have signed the Americans For Tax Reform pledge to vote against new or increased taxes. ATR President Grover Norquist has opposed the legislation, as have organizations such as the Heritage Foundation and Freedom Works and the libertarian Cato Institute. The bill’s supporters, including the National Retail Federation and the Retail Leaders Industry Association, claim the measure would enable states to collect their sales taxes from remote sellers in the same way they do from in-state retailers. The bill is also supported by the National Governors Association, since states would have collected an additional \$23 billion in revenue last year if Internet sellers had been subject to state sales taxes, according to the National Conference of State Legislatures.

In most retail sales, the seller is required to collect the sales tax from the customer and pass it on to the state, local, or county taxing authority. But states currently have no legal jurisdiction over an out-of-state seller. Many states require residents to report and pay a sales tax, often called a “use tax,” on their purchases from out-of-state vendors, though few customers do. The U.S. Supreme Court has ruled in a number of cases that for a state to require a remote seller to collect and remit taxes, the seller must have a physical presence in the state. In [Quill v. North Dakota](#) (1992), however, the court held that Congress could alter or abolish that requirement under its authority to regulate interstate commerce.

[John Donahoe](#), president of the Internet giant [eBay](#), has sent out millions of e-mails, urging online shoppers to oppose the bill. “For consumers, it means more money out of your pocket when you shop online from your favorite seller and small-business shop owner,” Donahoe said in the e-mail. The eBay president has also argued the bill will subject an online business to the laws and regulations of some 9,646 taxing jurisdictions of the various states and municipal and county subdivisions.

The bill exempts companies with annual gross sales of less than \$1 million. It also requires each state that enacts legislation for collecting taxes from out of state sellers to meet “minimum simplification requirements.” There must be a “single entity” within the state responsible for all state and local sales



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and use tax administration, return processing, and audits; there must be a single sales and use tax return to be filed with that single entity; the state may not require a remote seller to file sales returns any more frequently than is required for in-state sellers; and there must be of a single audit of remote seller for all state and local taxing jurisdictions within the state. The state must also provide free software to calculate taxes due on each transaction.

The “simplification” means the remote seller won’t have to file returns with every town, city, or county that has a sales tax of its own. But since there are only five states (Alaska, Delaware, Montana, New Hampshire, and Oregon) that have no sales tax, the seller could, depending on the locations of his customers, still have up to 46 (45 states and the District of Columbia) “single entities” collecting taxes on his sales. And that’s not all, given the way Section 4 (8) defines a “State”:

The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

In other words, the seller could be paying taxes and filing monthly or quarterly returns to any number of the more than half a hundred taxing entities among the United States and its territories, and be subject to audit by each of them. “With the way the bill is going to work, people are going to end up calling it the Tax Audits from Hell Act of 2013,” [predicted](#) Dan Holler of Heritage Action, the lobbying arm of the Heritage Foundation.

The lead sponsor among the 66 representatives who have signed on to the House version bill is Arkansas Republican Steve Womack, whose third congressional district includes Bentonville, the corporate home of Walmart, the world’s largest retailer. Walmart is among the national chains backing the legislation. Amazon, the world’s largest online retailer, has opposed the legislation in years past, but is supporting the current bill. Amazon has added warehouse and distribution centers and is already paying sales taxes in a number of states. Opponents of the bill claim Amazon sees it as an opportunity to burden the competition, since it is better able than its smaller online sellers to hire the accountants needed to deal with various sales tax requirement of the different states and territories.

Should the bill become law, a state would be able to require tax-collecting services from sellers who do not live or work in the state and who do not receive water, sewer, police and fire protection, and other services that in-state retailers do. Dan Crippen, executive director of the National Governors Association, argued in a recent [op-ed article](#) in the *Wall Street Journal*, that services Internet sellers should help pay for include “state roads for the delivery of their products, plus the protections of the state court systems to enforce business contracts.”

The bill was placed on “fast track” for quick passage by Senate Majority Leader Harry Reid (D-Nev.). The Financial Services Roundtable, a group that represents nearly 100 of the country’s largest financial services companies, had called for hearings on the impact the legislation could have on retail investors. “Based on how the tax is crafted, it would hit all financial services firms, and, our real worry — consumers who are saving and investing,” the roundtable’s senior vice president of public policy, Scott Talbott, said in an e-mail last month.

Republican leadership in the House has not committed to taking up the legislation, which must go through the Judiciary Committee. Should the bill eventually pass, it will almost certainly be signed into law by President Obama, who has expressed his support for it.

“By wiping away geographic limits to state tax authority, the bill would impose serious burdens on



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Internet retail and undermine basic tax policy principles,” [said](#) Andrew Moylan, senior fellow at the R Street Institute, a conservative think tank. “It is now up to conservative leaders in the House of Representatives to stop this bad legislation in its tracks.”



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