



Written by [Daniel Sayani](#) on November 3, 2011

Republicans Introduce Bill Pushing Internet Sales Taxes

The days of tax-free Internet shopping may soon be coming to an abrupt end, if two Republican senators have their way. Sens. Mike Enzi of Wyoming and Lamar Alexander of Tennessee are currently preparing to introduce new legislation that would allow states to force Amazon.com and other out-of-state online retailers to collect sales taxes. Their bill has the backing of several key corporate retailers, including Wal-Mart Stores, Best Buy, Home Depot, and other companies that are currently required to collect sales taxes. At issue is whether online retailers should have to collect sales taxes in states where they're making sales. Currently, online shoppers are supposed to report purchases for tax purposes but usually don't.

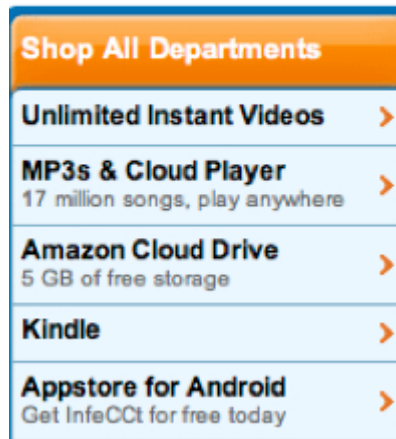
"It's time to close the online sales tax loophole," says Jason Brewer, a vice president at the Retail Industry Leaders Association in Arlington, Va., which represents big box stores. "Amazon and companies like it are no longer fledgling startups."

The Republican-led legislative effort has a clear precedent in legislation introduced by Senate Democrats last year. The so-called [Main Street Fairness Act of 2010](#) was introduced by Sen. Dick Durbin (D-Ill.), and called for taxes on online purchases, under the presumption that local retail outfits are placed at a comparative disadvantage to online retailers due to discrepancies in taxation. The justification for these measures is a reprise of arguments that state tax collectors have made for at least a decade: they claim that Amazon.com, Overstock.com, Blue Nile, and other online retailers that don't always collect taxes are unreasonably depriving states of revenue, and that they enjoy an unfair competitive advantage over local retailers that must collect taxes, [according to](#) CNET's Declan McCullagh. (The latter argument ignores added shipping and handling charges added to online purchases that often exceed the amount of sales tax levied on purchases at local stores, making the online goods more expensive, albeit more convenient, for the consumer.)

The concept of paying a state tax on online purchases is known as a "use tax," and requires that consumers voluntarily cough up the exact amount owed each year at tax time. Since 2006, New York State and California have both enacted provisions calling for voluntarily-paid taxes on internet commerce, and according to the U.S. Commerce Department, business-to-consumer e-commerce sales amounted to \$88.6 Billion last year; at an average tax rate of around 6.5 percent, that means the total amount of use tax due from consumers would be a maximum of \$3.6 billion.

Not everyone buys those figures, which are calculated by tax agencies that may have their own incentives to embellish. Steve DelBianco, executive director of the NetChoice Coalition, said those numbers are overestimates. "Nine out of every 10 dollars in e-commerce is business to business — that

amazon.com





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means business users, the vast majority of which pay their use taxes as a result of effective state audits,” said DelBianco, whose coalition counts 1-800-Contacts, eBay, Orbitz and Yahoo as members.

In an [interview](#) with the *Nashville Business Journal* on October 26, Sen. Alexander said he backs enabling states to make online retailers collect sales taxes that consumers are supposed to be paying by law. Alexander said the legislation he’s developing would offer states an option of either joining the national streamline sales tax system or meeting minimal requirements, with the goal of creating consistent collection requirements for nationally operating online retailers. “I hope that we can introduce legislation quickly, and that it will be bipartisan,” Alexander said.

It comes as no surprise that Sen. Alexander is leading the push for greater taxation; he has emerged as a proponent of increased taxes over the years, placing him at odds with more conservative Republicans. Advocates of the “use tax” are, by definition, advocates of increased government. Advocates for consumer protection and individual liberty fear that the federal legislation (a federal law empowering states to collect taxes rests on questionable constitutional grounds) will result in particularly brutal consequences for consumers. The state of South Carolina, for instance, has already signed a deal with the U.S. Customs Service to obtain records about state residents who import expensive items from abroad; has sent out random mailings to taxpayers; and has added a line to its income tax return. Such measures can easily be replicated in other states, especially considering that the proposed legislation will facilitate such practices.

In 2004, Sen. Alexander co-sponsored similar legislation with Sen. Tom Carper (D-Del.) that would have opened the door for federal and state governments to tax both Internet purchases and Internet access. Dick Armey, current Chairman of FreedomWorks, said at the time that Alexander’s bill is a “ruse” and a “smokescreen for the states and local governments that want to tax the Internet and Internet services. This legislation is being offered as the last stand for the legions of tax collectors, regulators, and tax lawyers who want to be able to tax and control the Internet. The stakes are huge.”

Jerry Cerasale, senior vice president of government affairs at the Direct Marketing Association, says that portion of the bill is especially worrisome. “It allows states to require — or as I like to say, conscript — remote sellers to collect taxes without having to join ‘streamlined,’ ” he says.

In addition, the Supreme Court, in 1992, ruled against such proposals in theory, in [Quill Corp. v North Dakota](#), arguing that in general, retailers currently can’t be forced to collect sales tax on out-of-state shipments unless they have offices in those states, because retailers aren’t required to collect sales taxes from customers who live in states where they don’t have a physical presence, or “nexus.” And with more than 7,500 taxing jurisdictions, each with its own rules and ability to conduct audits, compliance with each is not a trivial task, making such legislation legally cumbersome.

Furthermore, the proposed legislation actually penalizes Internet shoppers to a degree much higher than under Sen. Durbin’s [Streamlines Sales and Tax Use Agreement](#), which says that states that adopted a “streamlined” approach — aimed at simplifying their tax system — can require out-of-state retailers to “collect and remit sales and use taxes.” A recent draft of the Republican Alexander-Enzi bill obtained by CNET appears to be even more pro-big box retailer than the Democratic version. It lets state tax collectors force sales tax collection in some cases, assuming the states centralize some tax functions including audits, without requiring them to go through the more extensive simplification procedures spelled out in the Streamlined Sales and Use Tax Agreement. It also says that any small business with more than \$500,000 in “gross annual receipts” can be ordered to collect taxes, a much lower limit than before.



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The legislation has been met with [opposition](#) from Republicans and Democrats alike. Sens. Ron Wyden (D-Ore.) and Kelly Ayotte (R-N.H.) are planning to introduce a resolution today saying that no laws should be enacted that would let states impose “burdensome or unfair” taxes on Internet retailers. The forthcoming bipartisan resolution, which is nonbinding, is an attempt by Wyden and Ayotte to put their colleagues on record as opposing taxes that would have a harmful economic effect. The resolution says that the type of taxes envisioned by big-box retailers “would adversely impact hundreds of thousands of jobs, reduce consumer choice, and impede the growth and development of interstate commerce.” A similar resolution in the House, H.R. 95, was introduced in Congress in February, and has the notable support of Rep. Ron Paul (R-Texas), who opposes the Alexander-Enzi bill’s draconian taxation measures and ill effects on the free market.



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