



International Council  
of Shopping Centers

# E-COMMERCE TAXATION

## Issue Brief

*Updated June 2002*

### ISSUE

The Internet is rapidly becoming America's new marketplace. While tax policy should not discourage consumers from exploring this new purchasing channel, it should not favor Internet purchases over store purchases either. Instead, tax policy should provide a level playing field for traditional retail businesses, mail order companies and Internet-based merchants. All levels of government need to work together to formulate a state and local sales and use tax system that is uniform, equitable and streamlined. This new system should reduce administrative costs and burdens for all businesses and consumers. Adopting an efficient sales tax system would not only preserve the sales tax base of state and local governments, but it would also promote fair trade among all sellers of consumer goods.

### BACKGROUND

Through the years, Congress and the courts have addressed the issue of state-imposed sales and use taxes on remote sellers as it applied to mail-order merchants. However, the advent of Internet commerce brings a new focus and sense of urgency to this issue. The Internet marketplace is rapidly expanding, yet it remains mostly free from traditional forms of taxation. The current dilemma facing Congress is whether to grant states authority to collect taxes on remote e-commerce sales (which some claim could slow Internet commerce) or maintain the current tax collection system (which gives most on-line sellers an unfair advantage over traditional merchants and reduces state and local tax revenues).

In 1998, Congress enacted a three-year moratorium which expired on October 21, 2001 on Internet access taxes and new, multiple or discriminatory taxes on electronic commerce. In addition, it established an Advisory Commission to examine Internet taxation and interstate sales transactions. Unfortunately, the Commission failed to reach a consensus on the collection of state and local sales taxes on remote sales. However, it did issue a majority report that recommended not only extending the moratorium, but also creating special "nexus" carve-outs and sales tax exemptions for Internet businesses.

A multi-state organization composed of representatives from 27 states and Washington, DC has approved various proposals of the Streamlined Sales Tax Project and/or the National Conference of State Legislatures, including those relating to state and local sales tax rates and sales tax holidays. The group expects to act on all proposals by this summer and incorporate them into a multi-state agreement -- which would then go to the states for ratification.

### LEGISLATION

ICSC supports legislation introduced by Senators Byron Dorgan (D-ND) and Mike Enzi (R-WY), S. 512, and Representatives Ernest Istook (R-OK) and William Delahunt (D-



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#### OPPOSING VIEWPOINTS

MA), H.R. 1410, that, in addition to extending the moratorium, would give those states that simplify their sales tax systems the authority to collect remote sales taxes. Unfortunately, a Senate amendment that would have provided such authority was tabled, and the underlying bill, H.R. 1552 – which simply extends the moratorium for two more years – was passed and later signed into law. This two-year extension, however, will give state and local governments additional time to devise a simplified and workable sales tax collection system that will hopefully be part of the next moratorium extension.

Many Internet-based retailers claim that imposing remote sales tax collection requirements on them would be too burdensome, given the thousands of state and local taxing jurisdictions across the country. While we agree that states and localities need to simplify their sales and use tax systems, there is currently software available that can adequately determine, collect and remit a merchant's remote sales taxes.

Our opponents also claim that states are currently flush with cash, and therefore need not be concerned with uncollected sales taxes on electronic commerce. While most, but not all, states are currently enjoying budget surpluses, if the economy continues to soften and more sales gravitate from traditional stores to the Internet, states and localities could find themselves with budget deficits and forced to cut back on essential services or raise other taxes.

#### OUR POSITION

ICSC believes that tax policy should be consistent and equitable for all forms of consumer purchases – whether they take place in 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. ICSC does not oppose the actual substance of the moratorium, however, we believe that any extension should also give those states that simplify their sales tax systems the authority to require remote sellers to collect sales and use taxes on their behalf. ICSC is working with other real estate organizations and the e-Fairness Coalition to promote a level playing field for all merchants.

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