



Sales Tax Fairness Overview

The Supreme Court Ruling that Started It All: In 1992 the Supreme Court ruled (*Quill Corporation v. North Dakota*) that complex state and local sales tax rules were a burden to interstate remote retailers, and therefore, Internet and catalog retailers should be exempt from collecting sales taxes unless they have a physical presence or “nexus,” such as a store or warehouse, in the purchaser’s state. As a result of the ruling, the burden to remit sales tax on Internet and catalog purchases currently falls on the consumer. The Supreme Court also said that, under the Commerce Clause of the U.S. Constitution, Congress may grant states the authority to require out-of-state sellers to collect and remit sales taxes.

Streamlined Sales and Use Tax Agreement: In response to the Supreme Court’s ruling, the majority of states have taken steps to simplify their sales tax systems through the Streamlined Sales and Use Tax Agreement (SSUTA). The SSUTA provides one uniform system to administer and collect sales tax, eliminating the burden of the country’s diverse sales tax systems on retailers and granting states the authority to collect sales taxes, without the costly special exemptions for remote sellers. [Twenty four states](#) have passed SSUTA conforming legislation. ***ICSC supports state efforts to conform with SSUTA.***

The Marketplace Fairness Act of 2013: On February 14, 2013, this bipartisan federal bill was introduced in the U.S. Senate by Senators Mike Enzi (R-WY), Lamar Alexander (R-TN), Dick Durbin (D-IL) and Heidi Heitkamp (D-ND) and in the House by Representatives Steve Womack (R-AR), John Conyers (D-MI), Kristi Noem (R-SD), Jackie Speier (D-CA) and Peter Welch (D-VT). The measure grants states the authority to require remote sellers to collect sales taxes as long as those states have complied with one of two simplification options. The first option is conforming sales and use tax codes with the SSUTA. The second option is minimum simplifications that include a single collection authority within the state, a uniform tax base (items must be taxed identically throughout the state-no local exemptions) and state-provided software to calculate and file taxes do on each transaction. The bill also establishes a small business exemption, defining a small business as one that has less than \$1 million in remote sales nationally. On May 6, 2013, the bill was passed in the Senate as S. 743 by a bipartisan vote of 69-27. The House version, H.R. 684, is awaiting consideration by the House Judiciary Committee. ***ICSC supports passage of the Marketplace Fairness Act of 2013.***

Affiliate Nexus Legislation: Affiliate nexus legislation essentially expands the meaning of “nexus” from a simple physical presence to both a physical and affiliate presence. Affiliate programs set up by large online retailers are business relationships with third-party entities, such as bloggers, small retailers that sell products through the online retailer, charities that use online retailers to assist with fundraising, and other businesses that are compensated for driving traffic back to the online retailer’s website (often through links on their own sites). Amazon is one of the largest online retailers that relies on the affiliate business structure, which is why these bills are often called “Amazon Laws.” New York, Rhode Island, North Carolina, Illinois and Arkansas, along with several other states, have passed affiliate nexus laws. In most states, Amazon ended its affiliate programs to continue avoiding sales taxes. Amazon and Overstock challenged the New York law in the courts and ultimately lost in March 2013 with the state’s high court upholding the law. A similar challenge in Illinois resulted the Illinois Supreme Court striking down that state’s law in October 2013. Although there were divergent rulings among the courts on essentially identical laws, the U.S. Supreme Court declined to hear an appeal filed by Amazon and Overstock on the New York ruling in December 2013. This recent denial to hear the online retailers’ appeal does not undo the *Quill* ruling. However, this action does create more uncertainty and inconsistency across the states as some state courts have upheld similar laws while others have rejected them.

There are two main reasons why states are considering affiliate nexus bills: 1) Certain states do not want to undertake the difficult changes needed to comply with the SSTUA. 2) States that have streamlined their sales tax codes are getting tired of waiting for Congress to pass the Main Street Fairness Act. **ICSC is neutral on affiliate nexus bills.**

Note: The coalition that is promoting affiliate nexus bills calls itself “The Alliance for Main Street Fairness.” However, affiliate nexus bills are not connected with the federal Main Street Fairness Act, nor do they streamline state sales and use tax codes to comply with SSTUA.

Amazon Warehouses and Distribution Sites: In August of 2010, the Texas Comptroller sent Amazon a bill for \$269 million for uncollected sales tax because it owns a distribution center in the state, which constitutes physical nexus. Amazon claims that the distribution center is actually owned by a subsidiary, so it is not required to collect sales taxes from residents in the state.

Amazon had negotiated temporary sales tax collection exemptions in many states in exchange for building warehouses in those states. At this point most of the exemptions have expired, and Amazon is collecting in [19 states](#). It still enjoys an exemption in South Carolina until January 1, 2016. ICSC believes that a warehouse or distribution site satisfies the criteria for physical nexus and the subsequent obligation to collect sales taxes in the state. **ICSC opposes states exempting Amazon from the sales tax collection obligation.**

Expanded Nexus Legislation: One strategy that Amazon has used in the states as an attempt to avoid collecting sales tax is claiming the distribution center is a subsidiary or a separate business entity. In response, state legislatures have begun considering legislation that clarifies the types of legal arrangements between remote retailers and in-state distribution centers that establish significant nexus to trigger the sales tax collection obligation. ICSC believes that if a remote retailer is engaged in business in a state through its distribution center, then it has physical nexus in the state and should collect the sales tax like other in-state retailers. **ICSC supports expanded nexus bills.**