

## **Internet Tax Simplification: Is It Really That Simple?**

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E-commerce sales account for barely more than 1 percent of aggregate retail sales nationwide, but states fear an increasing loss of tax revenue to internet sales at a time when state budgets face a fiscal crisis. The National Conference of State Legislators task force has drafted model legislation for states to collectively streamline and simplify their sales- and use-tax systems to make it more "e-commerce friendly."

### **Fifty-One Taxing Jurisdictions is Fifty Too Many for E-Commerce**

With more than 7,000 taxing jurisdictions nationwide—from state governments to mosquito abatement districts—streamlining and increased efficiency is desirable. But even if an internet retailer need only comply with one tax rate and submit to one jurisdiction per state, it is still subject to fifty-one different tax authorities.

1. U.S. Supreme Court precedent requires that a sufficient nexus exist between the taxing authority and the taxed entity. Sales taxes are often viewed as a tax on the consumer – that's not really true. It's the collecting entity, the retailer selling the taxed good or service, which is the true taxpayer, for it is the retailer that must collect and remit the money collected to the state authority. Retailers are not required to collect taxes when their only connection with customers in the taxing state is by mail. This precedent has long exempted mail-order companies from collecting sales taxes from buyers living outside the retailer's home state.
2. Congress has wide latitude to regulate interstate commerce, and states are prohibited from unduly burdening interstate commerce. The Internet Tax Freedom Act essentially is a law stating that certain internet-related items, such as access, are not sufficient to qualify as a nexus for constitutional purposes – but it doesn't outlaw imposition of a retail sales tax. This is where the States see their opening: by simplifying their laws, they hope to substantiate their case so that Congress will allow them to impose internet sales taxes.
3. Placing the burden of collecting sales taxes on out-of-state sellers doesn't make sense. These retailers use none of the state's resources; they should not be burdened by the state's tax collection efforts. Only a few states allow companies to keep a portion of those collections to partially offset administrative costs.
4. If there must be a tax, what makes sense is an origin-based tax. A company's domicile would be its principal place of business as defined by the UCC. This has many advantages over a destination-based tax: It would require no new federal legislation; compliance would be simple, and it protects each state's right to establish its own tax rates, exemptions, and projections. It also protects the privacy of the buyer, as the seller would have no need to determine his or her location. We already have origin-based sales taxes for physical stores. A purchaser of a novel at a bookstore in Virginia pays the Virginia sales tax even if he or she lives in Maryland.