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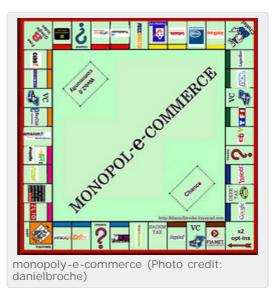


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Aug. 2 2012 - 10:21 pm

## Enjoy Your Last Cheap Clicks Before Online Sales Tax Sticks

The <u>Senate Committee on Commerce</u>, <u>Science & Transportation</u> may sound like a big yawn. Washington is chockfull of committees and hearings that aren't exactly rip-roaring. But this committee's meeting August 1st covered a vast and controversial landscape: online taxes. The narrower scope: The so-called <u>Marketplace Fairness Bill and what</u> some say is the necessary leveling of the playing field.



Amazon was right there pitching online taxes, urging the Senate to push the bill through quickly. More than a few people find it odd that Amazon is behind it. The online giant was long the darling of those regarding sales taxes with a Scrooge-like "*Bah*! *Humbug*!"

But the writing is on the wall for Amazon. Plainly, its helping itself by making sure its competitors have to pay tax too. A representative of Amazon.com urged Congress to enact the Marketplace Fairness Act. The bill, <u>S. 1832</u>, would require online retailers who exceed a revenue threshold to collect and remit state sales tax on online purchases in all states.

The Senate's Commerce, Science, and Transportation Committee hearing doesn't mean passage is a certainty. Still, consider that the Senate bill has 240 supporters including <u>Best Buy</u>, Target and Walmart, not to mention Amazon. But eBay objects to the small-business exemption which maxes out at \$500,000 in gross annual sales.

There are <u>three federal bills</u> on internet sales tax kicking around Washington. The House bill exempts sellers up to \$1 million in gross annual sales. The Senate bill exempts only half that. Brian Bieron, senior director of federal government relations at eBay, complains the \$500,000 figure is too long and that small businesses will suffer hugely.

**Nexus?** Current law requires online retailers to collect and remit state sales tax only in states where they have **physical** operations. Amazon, which remains No. 1 in Internet Retailer's <u>Top 500 Guide</u>, thinks the lower the better for the exemption. That way merchants of even modest sales figures would have to collect the tax.

Isn't this unconstitutional? No. In 1992's *Quill Corp. v. North Dakota*, the Supreme Court ruled that no state can constitutionally force an out-of-state merchant to collect sales or use tax unless it has a nexus—physical presence—in the state.

But the Court actually *invited* Congress to pass a *national* law. The constitutional prohibition is only on the states. Today, twenty years after *Quill*, change is coming. Better click soon if paying sales tax makes you say "Bah! Humbug!"

Robert W. Wood practices law with <u>Wood LLP</u>, in San Francisco. The author of more than 30 books, including Taxation of Damage Awards & Settlement Payments (4th Ed. 2009 with 2012 Supplement, <u>Tax</u> <u>Institute</u>), he can be reached at <u>Wood@WoodLLP.com</u>. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.