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Feds Launch Internet Sales Tax Again, So Better Click While You Can

Naming bills in Congress often involves a hook, some wishful thinking by legislators. For example, the Affordable Care Act has turned out to be expensive, with a surprising number of [Obamacare taxes](#), some explicit, some hidden. As the Supreme Court once again pours through ACA to see what's inside of it, as [tax filing time approaches there could be a backlash](#).

Meantime, as a [newly gussied up version](#) of the Marketplace Fairness Act [is unrolled](#), questions are flying whether it would *really* level the playing field with out-of-state sellers or is unfair. There are even some grassroots 'don't tax me' cries, clinging to the notion of the Internet as a tax-free zone. Really, this is just about sales and use tax, and not much has changed.

The Marketplace Fairness Act of 2015 brings back the 2013 bill. With a cadre of support from both sides of the aisle, it would give states the option to require out-of-state businesses, such as those selling online or through catalogs, to collect and use taxes already owed under state law the same way local businesses do.



The Marketplace Fairness Act does not impose a federal tax or even a new state tax. Online sellers are already required to collect sales tax from customers in their own states. But under the Supreme Court's 1992 holding in [*Quill v. North Dakota*](#), retailers don't always have to collect.

They must collect sales tax from out-of-state customers only if they have a physical presence (store, warehouse or office) in the customer's state. Since then, a growing number of states are extending sales taxes to online retailers with in-state sales affiliates. Amazon collects sales tax in [24 states](#) and according to the [Marketplace Fairness Act website](#), is now allied with supporters of the bill.

Some of the claims about the law are hyperbolic. Opponents say it would obliterate the physical presence standard, something they assert is a baseline protection shielding taxpayers from harassment by out-of-state collectors. It seems hard to support that claim, although there's no question the law would help harmonize brick-and-mortar and online sales.

Another claim is that the law would force remote retailers to interrogate their customers about where they live, look up regulations in thousands of taxing jurisdictions across the country, and then collect and remit taxes for distant authorities. See [Letter to Congress: Oppose the Marketplace Fairness Act!](#) Of course, customers already must state a delivery address, and credit card companies verify them too.

Opponents also invoke ultra-complexity, claiming interstate commerce will be harmed. Some say online sellers will be burdened with 9,600 separate taxing jurisdictions, each with its own unique

definitions, holidays, and rates. They claim the law triggers a massive expansion in state tax collection authority, dismantling a vital taxpayer protection upon which virtually all tax systems are based. Most of this is at least overstated.

The Marketplace Fairness Act seems workable, encouraging uniformity and allowing states to collect taxes that in many cases are already owed. Yet the debate is so heated that passage into law could be tough. Still, paying tax may soon be inevitable. After all, states already have the power to tax and 45 states exercise it. Many states have amended their law to define physical presence differently than in the past.

Some of those laws are being tested in court. Eventually, the Supreme Court could even get in on the act. Physical presence of today might not be interpreted the same as it was in 1992 in *Quill*. Besides, even where sellers aren't forced to collect sales tax at point of sale, all of us (in 45 states and DC) should be paying use tax *after* we click. States are getting better at enforcing it, too, including use tax reporting on income tax returns.

So however the emotion-riddled debate over Marketplace Fairness ends up, the days of tax-free clicks are probably not long for this world.

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