



## Robert W. Wood

THE TAX LAWYER

TAXES | 5/07/2013

# Senate Passes Online Sales Tax 69-27 But You Can Avoid It For Now

No one likes tax increases, and the 69-27 Senate vote on the [Marketplace Fairness Act \(S.336/H.R.684\)](#) is a clear one, right? Yes and no. First, this was only the Senate. A tough House vote remains. Even if the House approves, what's it mean?

Legislation giving states the power to compel retailers outside their borders to collect sales tax is touchy for Internet merchants and consumers alike. Tax applies now, but consumers are **supposed** to self-report. Most don't despite the fact that sales and use tax applies in 45 states and D.C.

Still, merchants haven't been required to **collect** it. The [online](#) bill doesn't impose a federal or even a new state tax. While online sellers are required to collect sales tax from customers in their **own** states, under the Supreme Court's 1992 [Quill v. North Dakota](#), they must collect from out-of-state customers only if they have a physical presence in the buyer's state.



Senate Majority Whip Richard Durbin speaks during a news conference about the Marketplace Fairness Act. (Image credit: Getty Images via @daylife)

But now, a [growing number of states](#) say online retailers with in-state affiliates have a physical presence. The controversial bill allows that view. Online sellers complain of 9,600 taxing jurisdictions with unique definitions and rates. Conversely, main street merchants and big box stores say online sellers have an edge. They say sales tax is the great leveler.

Despite the hype and the Senate high fives, a House vote is iffy. Perhaps there will be a compromise, such as raising the controversial \$1 million exemption. Small online sellers, after all, are getting the worst of this law. It shouldn't impact the big sellers much, and shouldn't impact consumers as much as they fear.

Why are consumers not hit as hard as small online sellers? Even where sellers aren't forced to collect sales tax at point of sale, residents in 45 states and DC will very soon be self-reporting. Call me crazy. Maybe not today, and maybe not even this year.

But soon and in droves. It is already happening for businesses and increasingly will hit consumers too. States are getting better at enforcing it, including use tax reporting on income tax returns. However the emotion-riddled debate over Marketplace Fairness ends up, the days of tax-free clicks are probably not long for this world.

Is this fair? Use tax has been around since the 1930s and states need revenue. The biggest objection seems to be general distrust with giving the government any more money for anything. That debate is not an easy one and is far bigger than sales tax. It's almost as big as Amazon....

*You can reach me at [Wood@WoodLLP.com](mailto:Wood@WoodLLP.com). This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*