



## Robert W. Wood THE TAX LAWYER

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### Sweeping Amazon Tax Fast Approaching

Earlier this week the [House Judiciary Committee](#) held hearings on H.R. 3179, the [Marketplace Equity Act of 2011](#). With a name like that, you know it has to be a tax bill! There are [three federal bills](#) on internet sales tax kicking around Washington, and one has a good chance of passing.

In fact, despite grumbling by Overstock.com and others, eventual passage seems likely. The [bill](#) would authorize states to require all sellers making remote sales to collect and remit sales and use taxes regardless of where they are located. The main condition is that the states must implement a simplified system for administering sales and use tax collection for remote sellers.

**What's a remote seller?** One without a *physical presence* in the state. Without a physical store, office, warehouse or even salespeople in the state, a seller is remote.

What's all this mean in practical terms? The clicking and buying you've been doing won't be tax-free much longer. Overstock.com is making a



(Photo credit: Sofandani)

huge push against this—see [The Rights and Wrongs of Taxing Internet Retailers](#)—but Amazon and many others support the measure.

Besides, it's probably inevitable. The 45 states with sales and use tax laws are losing many billions every year. See [Widespread Amazon And Internet Taxes Coming Soon](#). What's more, their losses are getting progressively bigger as online sales account for an ever larger share of the market.

If you're a small online seller, though, take heart. The bill would exempt remote sellers with gross sales of \$1M or less nationally and \$100,000 or less in the state. (A competing bill would reduce the \$1M figure to \$500,000.) It also contains streamlined and simplified compliance procedures designed to reduce the burden from collecting tax across many state lines.

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. Besides, in most states you are already subject to use tax when you have goods sent to you in your home state. It is only the **collection mechanism** for the use tax that is debatable. In many states today you must report use tax due on purchases you make from out-of-state (including on the internet). Enforcement is weak now but that is changing.

Bottom line? Like it or not, state and local governments need sales tax dollars. Amazon and many other companies see the writing on the wall. Get ready.

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