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## Is Internet Tax Constitutional?

The [internet tax](#) debate is a confusing one. It is often phrased as “taxing the internet,” something that surely only a luddite would propose. What’s really going on is that merchants and consumers are being taxed just as they always were. But there’s a new wrinkle.

In some ways, there’s little difference between internet sales on the one hand and telephone and mail order sales on the other. Of course, if anything sounds luddite-like these days it would pursuant to those now seemingly antiquated ways of buying and selling nationwide. But when it comes to taxes, the key differences are not so much about the internet as about the meaning of nexus. That requires some explanation.

**What’s Nexus?** States like Illinois and New York that seem to be going for the gusto with their so-called Amazon taxes are clearly facing court challenges. Amazon says New York’s law violates [Quill Corp. v. North Dakota](#), the 1992 U.S. Supreme Court decision ruling that a business had to be physically present in a state before it could be forced to collect use tax. A warehouse, showroom or office was enough. Merely shipping into a state was not.

Let’s be clear what Amazon taxes do. First, they tax sales in their particular state. That seems unexceptional. If you buy something in a New York shop, you’ll pay New York state sales tax.

What if you buy from the L.L. Bean catalog store in Maine over the phone from your home in New York and have the item shipped to you?

Since 2007, you also pay New York sales tax on that purchase. In that year L.L. Bean opened its first store in New York.

Perhaps the rules about “nexus” haven’t changed since the Supreme Court announced them in 1992. Yet states like Illinois and New York believe technology requires a new and more expansive view of nexus. The playing field today is decidedly different, they assert.

These state tax laws not only attribute nexus to a seller who has a physical store, warehouse or office inside their borders. They go on to say that a company has nexus if it does business with an affiliate inside the state’s borders. What’s an affiliate?

Amazon’s program is the most widely watched, and involves independent sellers who want to latch on to Amazon’s power and presence. If you’re a home-based business selling dolls in Illinois, you can set up a website and start selling, collecting sales tax just on sales within Illinois. Sales to buyers in other states would be constitutionally protected interstate commerce, meaning the state can’t force you to collect sales tax.

But if you become an [Amazon affiliate](#), you’ll be able to have a little piece of Amazon’s marketing prowess and increase your exposure. Is that nexus with New York? Some states think so, even though you don’t have a store inside the state.

Amazon is fighting New York’s tax in court. Moreover, as soon as [Illinois](#) enacted its Amazon tax, Amazon [cut its affiliate deals](#) in the state. That meant 9,000 sellers were out of luck and probably wanted to leave Illinois themselves.

Understandably, retailers everywhere worry about competition and a tilted playing field when it comes to taxes passed on to buyers. It seems inevitable that the federal Congress or the U.S. Supreme Court will have to address this mess eventually. Sooner would clearly be better.

For more, see:

[The Internet Tax Mirage](#)

[N.Y. Appeals Court Revives Amazon’s Sales Tax Suit](#)

## [Amazon Tax Case Could Hit Supreme Court](#)

### [Amazon Tax Attacks](#)

#### [States, business watch for effects of Illinois tax](#)

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