



## Bad for Business: Internet Sales Tax Legislation

By Bruce Edward Walker

*(Editor's Note: This op-ed has been edited from a commentary that originally appeared April 3, 2013, on MichiganCapitolConfidential.com.)*

Rep. Eileen Kowall, R-White Lake, introduced her Main Street Fairness bill in the Michigan Legislature in February. Also that month, U.S. Sen. Michael Enzi, R-WY, introduced the Marketplace Fairness Act of 2013. Both bills are bad news for Michigan specifically, and the United States in general.

Michigan residents who make out-of-state purchases via the Internet already are required to pay a 6 percent sales tax as they would if the transactions occurred at a traditional brick-and-mortar store within the state. However, the state estimates it loses \$450 million each year from unpaid Internet sales taxes.

Rep. Kowall's and Sen. Enzi's bills seek to force Internet retailers to collect those taxes for remittance to the states where the purchases were delivered. Free market Internet policy analysts, however, are saying both schemes would result in higher costs to consumers if online retailers were saddled with the responsibility of collecting taxes for each U.S. tax jurisdiction.

"The so-called Marketplace Fairness Act is a proposal that does away with any requirement that a business have a physical connection in a jurisdiction before it can be required to levy taxes on its sales," said Bartlett Cleland, policy counsel at The Institute for Policy Innovation, a Texas-based free-market think tank. "If this law were to pass, accessing a Web site of a business would be enough to require that business to pay taxes in the state where the accessor resides.

"The U.S. Constitution was written, in part, in response to, and as a solution for this exact problem, which developed under the Articles of Confederation: state looting across state lines and taxing without representation," Cleland added. "The Constitution included the Commerce Clause as a way to keep overly aggressive states from imposing barriers to trade on the citizens of other states. The Constitution never granted the power to tax out-of-state, and did grant the power of the individual states to protect their citizens from other governments."

Rep. Kowall's Main Street Fairness bill adheres to Commerce Clause principles reinforced by the 1992 Quill v. North Dakota U.S. Supreme

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### Summary

State and federal bills have been introduced to force Internet retailers to collect taxes for remittance to the states where the purchases were delivered. These taxes, however, would result in higher costs to consumers, as well as disadvantage smaller businesses against big businesses such as Amazon.com. These taxes would therefore be an unnecessary and almost certainly expensive proposition for both consumers and business.

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The impending Internet sales tax legislation would hurt small internet retailers, hindering them from competing with big businesses like Amazon.com.

Court ruling by requiring any Internet seller with a physical presence — called a “nexus” — in Michigan to collect and remit Michigan sales taxes.

However, Rep. Kowall’s proposed legislation would serve only as a disincentive for Internet retailers seeking to build warehouses and distribution centers in Michigan. Concomitantly, it would stifle any employment opportunities for these newly squelched sites.

Both pieces of legislation ignore the direct benefits brick-and-mortar stores receive in exchange for the state sales taxes they collect; namely, the roads and other infrastructure that are not equally used by Internet retailers. Further, not every Internet retailer is a gigantic behemoth akin to Amazon or Overstock.com. Retailers who provide services from their respective home offices — and who barely scrape by under the current tax structure of over 7,000 U.S. tax jurisdictions — would find the collecting and remittance of sales taxes in-state or nationwide cumbersome, expensive and potentially fatal to their business.

The effect of these proposed laws would be, rather than “fair” as the naming suggests, profoundly unfair to consumers and small businesses. Legislators should reconsider their propensity to tax value-producing citizens in order to get out of a fiscal bind, particularly during a time when these same citizens are already footing too much of the government bill.

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