

Hearing on the  
Constitutional Limitations on States' Authority to Collect Sales Tax in E-Commerce

Before the  
Committee on the Judiciary  
United States House of Representatives

November 30, 2011

Testimony of

Paul Misener  
Vice President for Global Public Policy  
Amazon.com

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Thank you, Chairman Smith and Ranking Member Conyers, for inviting me to testify. Amazon has long supported an even-handed federal framework for state sales tax collection and, to that end, we have participated in the Streamlined Sales Tax Project for over a decade, and we are pleased to participate in this hearing. Amazon strongly supports enactment of a federal bill with appropriate provisions.

Mr. Chairman, Congress – and only Congress – may, should, and feasibly can authorize the states to require out-of-state sellers to collect the sales tax already owed.

At the Philadelphia Convention, which the Founders convened principally to consider the challenging issue of trade among the states, Congress was granted exclusive power to regulate interstate commerce. Exactly two centuries later, in 1987, North Dakota challenged this exclusivity and, following five years of litigation, the U.S. Supreme Court held in *Quill v. North Dakota* that requiring out-of-state sellers to collect tax would impose an unconstitutional burden on interstate commerce. The *Quill* court also confirmed that Congress eventually could “disagree with our conclusions” and that this issue is “not

only one that Congress may be better qualified to resolve, but also one that Congress has the ultimate power to resolve.”

Far from an e-commerce "loophole," the constitutional limitation on states' authority to collect sales tax is at the core of our Nation's founding principles. For this reason, Amazon has steadfastly opposed state attempts to require out-of-state sellers to collect absent congressional authorization.

Mr. Chairman, Congress *should* authorize the states to require collection, with the great objects of protecting states' rights, addressing the states' needs, and leveling the playing field for all sellers.

States' rights should be protected. States need the freedom to make their own revenue policy choices. For example, Texas has chosen to eschew personal income tax, and that decision makes the Texas budget particularly sensitive to uncollected sales tax. The right of Texas to make this policy choice effective should be protected. Congress should protect the states' rights, and authorize them to require collection of sales tax revenue already owed, and doing so would not violate pledges that are limited to questions of income tax rates and deductions.

The states' financial needs should be addressed. The states face serious budget shortfalls, yet the federal government faces its own fiscal challenges. Congress should help address the states' budget shortfalls without spending federal funds, by authorizing the states to require collection of the billions of revenue dollars already owed.

Fairness among sellers should be created and maintained. Sellers should compete on a level playing field. Congress should not exempt too many sellers from collection, for these sellers will obtain a lasting *un-level* playing field versus Main Street and other retailers. Congress should rectify the current imbalance and avoid a future imbalance.

Mr. Chairman, Congress feasibly *can* authorize the states to require collection. The facts in the *Quill* decision arose a quarter of a century ago, and the Supreme Court's decision was rendered a year before the World Wide Web was invented. With today's computing and communications technology, widespread collection no longer would be an unconstitutional burden on interstate commerce, and Congress feasibly can authorize the states to require all but the very smallest volume sellers to collect.

Much attention has been paid to the size of a "small seller exception" threshold in federal legislation – and rightfully so. Such a threshold, which would exempt some sellers from a collection requirement, must be kept very low to attain the objectives of protecting states' rights, addressing the states' needs, and creating fairness among sellers.

In this context, several kinds of small volume sellers must be considered.

Foremost are the Main Street small business retailers who, unless the small seller exception threshold is kept very low, will forever face an *un-level* playing field compared to a newly-created exempt class of out-of-state sellers.

Next are the online advertising affiliates, tens of thousands of whom have lost jobs or income as the result of ineffective, counterproductive sales tax laws recently enacted in a half-dozen states. Congress should act to make such laws uninteresting and irrelevant to the states – and thereby immediately restore the lost jobs and income – by authorizing the states to require collection.

Small volume online sellers have received most of the attention, and not without reason. No one wants these sellers to shoulder alone burdens compared to those faced by the small business retailers who already collect sales tax in our local communities. Yet no one should want these online sellers to take advantage of a newly-created *un*-level playing field over small Main Street businesses, and no one should want government to pick business model winners and losers this way.

The consequences of the threshold level to states' rights, the states' needs, and fairness are very significant, because a surprisingly large fraction of e-commerce is conducted by smaller volume sellers. For example, nearly 30% of uncollected sales tax revenue today is attributable to sellers with annual online sales below \$150,000, and only one percent of online sellers sell more than this amount. In other words, a \$150,000 exception would deny the states nearly 30% of the newly-available (yet already owed) revenue, but would exempt from collection 99% of online sellers. Any higher threshold would deny the states even more revenue and keep the playing field even more un-level.

Fortunately, today's computing and communications technology will allow all online sellers to collect and remit tax like Main Street retailers.

Large volume online sellers already have and use this technology. Amazon and Overstock, for example, collect tax on sales to consumers in states where our retail businesses have nexus. And the online arms of large multichannel retailers collect in the states where they have retail stores. Quite obviously, state sales tax can be collected nationwide, at least by larger volume sellers like Amazon, Overstock, and the multichannel stores, for they have the technology.

This technology is not limited to large sellers. Rather, service providers also make the technology available to medium and small volume sellers. Thus, collection is either *by* sellers or *for* sellers. There are many service providers already: ADP, Avalara, and FedTax, for example.

Two other examples come to mind: Amazon and eBay.

Both companies use sophisticated computing and communications technology to serve their seller customers. But, while Amazon is prepared to make its technology available as a service to help sellers by collecting sales tax for them, eBay seeks to avoid any role in collection, claiming that small volume sellers will be burdened and, implicitly, that eBay's technology is not capable of helping its largest sellers to collect. And these claims are made despite the fact that eBay manages to collect the transaction fees it charges its sellers, and despite the fact that eBay already calculates state sales tax for eBay sellers, all the way down to the local jurisdiction level. Amazon and many other service providers will help smaller online sellers collect; surely eBay can as well.

In conclusion, Mr. Chairman, Congress may, should, and feasibly can attain the objectives of protecting states' rights, addressing the states' needs without federal spending, and leveling the playing field for all sellers – but only if any “small seller exception” is kept very low.

The time to act is nigh. Amazon is grateful for this hearing, and we look forward to working with you and your colleagues in Congress to pass appropriate legislation as soon as possible.

Thank you. I look forward to your questions.

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