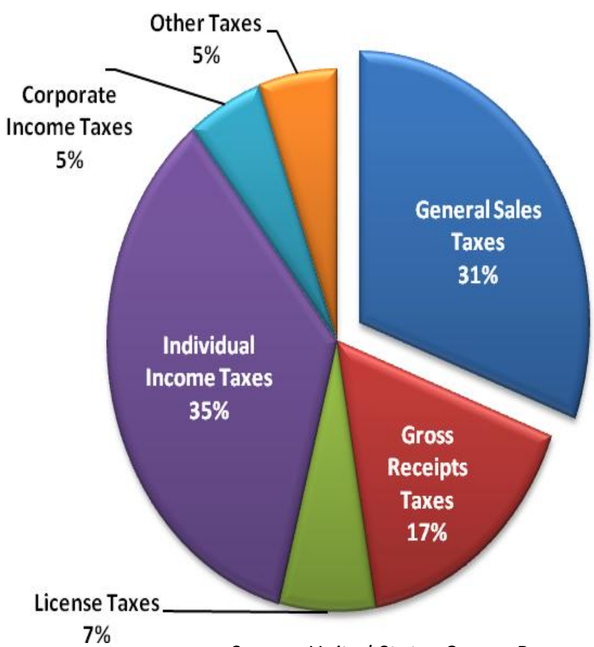
National Conference *of* State Legislatures

The Forum for America's Ideas

State Efforts to Collect Remote Sales Taxes

State Government Tax Collections by Tax Type: 2012



Source: United States Census Bureau

Overview

Fixing the online sales tax collection loophole is, and has been, the top priority of the National Conference of State Legislatures (NCSL). This loophole, created by the Supreme Court, has resulted in loss of revenues for state and local governments and has created an unlevel playing field for our main street and community retailers. NCSL advocates for passage of e-fairness legislation because it levels the playing field for local businesses, which are the economic backbones of our communities that provide employment and tax revenue to fund vital services. **As sales taxes account for over a third of revenues for most states**, including over half of tax collections for six states, the inability to collect taxes that are legally owed constrains states' options to reform their tax code elsewhere. This includes lowering tax rates or requiring states to raise certain tax rates to fund necessary government services.

Additionally, the recent recession has had a debilitating effect on state budgets. According to NCSL's survey of state legislative fiscal officers, **between FY 2008-2013, states closed a cumulative $527.7 billion budget gap, primarily through program reductions.** Raising taxes in the sluggish economy remains an unviable option for most states, so closing the loophole on sales tax collection could provide states with the option of using some of the additional revenue to offset federal spending reductions.

State Efforts

In the absence of federal action, states have sought solutions to the remote sales tax loophole in order to protect their budgets as well as their main street retailers. States have enacted legislation to respond to the concerns raised in the Supreme Court decisions to remove the burden and cost on out of state sellers to collect and remit sales taxes, have enacted affiliate nexus or "Amazon" laws, have increased reporting requirements on retailers, have made deals with online retailers, and have tried other mechanisms to collect the taxes they are already owed. Unfortunately, state attempts alone will not solve the problem; it must be solved by Congress.

Moreover, states have also adopted policies contingent upon passage of a federal bill, including plans to use the money to lower other taxes or eliminate them altogether. States have also obligated the money to programs that were drained of funding during the Great Recession, including infrastructure investment.

This memo details state action on the issue of e-fairness.

Streamlined Sales Tax (SST) States

The Streamlined Sales and Use Tax Agreement was created by the National Governor's Association (NGA) and the National Conference of State Legislatures (NCSL) in the fall of 1999 to simplify sales tax collection. Streamlined has proven that remote sales tax collection is not only possible, but can be done very efficiently, without creating an undue burden on retailers. Since 2005, streamlined states have collected over $1 billion in taxes remitted voluntarily by retailers.

The states that have joined SST are:

Arkansas; Georgia; Indiana; Iowa; Kansas; Kentucky; Michigan; Minnesota; Nebraska; Nevada; New Jersey; North Carolina; North Dakota; Ohio; Oklahoma; South Dakota; West Virginia; Rhode Island; Utah; Vermont; Washington; Wisconsin; Wyoming.

Expanded Nexus/Affiliate Nexus

In 2008, New York State passed the nation's first "affiliate nexus law," which declared that the connection between a remote vendor and an in-state entity, which performs certain work that can be attributed to the remote vendor, constitutes nexus in the state. Thus, the remote vendor would now be required to collect and remit New York sales tax.

Since 2008, other states have enacted legislation that expanded the definition of "nexus" in an effort to collect the taxes they are owed. While the laws' effectiveness vary by state, generally, states have not come close to collecting anticipated revenue. In fact, some states may have lost money after enacting "affiliate legislation" as a consequence of out-of-state vendors severing their relationships with in-state entities. In such instances, the state was still unable to collect the owed taxes and many in-state entities, which saw declining revenues due to the severance of the contract with the remote vendor, reported less income tax.

States that have expanded their definition of nexus are:

Alabama; Arkansas; California; Georgia; Illinois; Iowa; Kansas; Maine; Minnesota; Missouri; New York; North Carolina; Pennsylvania; Rhode Island; South Dakota; Vermont; West Virginia.

Individual State Actions

In addition to joining SST and expanding the definition of "nexus," states have also tried other mechanisms to collect remote sales taxes and have also allocated expected funding to specific areas, including tax reduction and infrastructure spending.

Tax Reduction

Arizona

> House Bill 2465 passed the House Ways and Means Committee in February and awaits consideration by the Rules Committee before being considered by the full House. It would require state tax authorities to determine how much in new sales taxes were collected in out of state sales including those made online in the first year and reduce the following year's income tax rate by the same amount.

Iowa

> "I want to be transparent in my intentions regarding any additional revenues if the Marketplace Fairness legislation ultimately becomes law -- I intend to utilize any related revenue that the State would receive to enable further tax relief to Iowans, including income tax reductions."
>
> – *Governor Branstad in a Letter to Representative Steve King*

Maine

> "I have pledged to lower Maine income taxes and stop wasteful government spending. One powerful tool in achieving these goals would be to have the ability to collect taxes that are already due."
>
> – *Governor LePage in a Letter to Senators Olympia Snow and Susan Collins*

Missouri

In 2013, Governor Jay Nixon vetoed legislation that would have made any revenue collected from federal remote sales tax legislation be offset with reductions to the personal income tax. The issue is again under consideration in 2014.

Ohio

In 2013, Governor Kasich signed into law a budget that would dedicate all revenues from federal e-fairness legislation to reducing their state's income tax.

Rhode Island

In his state of the state address on January 15, Governor Chafee proposed to lower the corporate income tax rate from 9 percent to 6 percent contingent on whether Congress allows states to collect the sales tax on purchases made through out of state sellers including those made online.

Utah

In 2013, Utah enacted Senate Bill 58, which creates a restricted account for all sales tax revenue collected from online merchants and suggests the revenue be used to cut taxes.

Tennessee

Gov. Bill Haslam, House Speaker Beth Harwell, and Senate Speaker Ron Ramsey, all support the Marketplace Fairness Act and have indicated that they would like to use some of the revenue generated from online sales tax collection toward reducing current state taxes.

Wisconsin

In 2013, Governor Walker signed into law a budget that would dedicate all revenues from federal e-Fairness legislation to reducing their state's income tax.

Infrastructure Funding

Maryland

The enacted transportation bill of 2013 depends on e-fairness revenue for transportation funding. If a federal bill does not pass by January 2015, an additional gas sales tax is triggered.

Virginia

The enacted budget of 2013 depends on e-fairness revenue for the transportation plan's funding. If a federal bill does not pass by January 2015, the wholesale gas tax will increase 1.7% to cover additional funding cost.

Reporting Requirement

Colorado

Enacted in February 2010, Colorado requires online retailers to provide a detailed purchase report, by January 31 of each year, to customers with made more than $500 of annual Colorado purchases the previous year. Colorado also requires the remote retailers to provide a summary purchase report, with the total amount of each customer's annual Colorado purchases, to the Colorado Department of Revenue by March 31. This law is currently the subject of a legal challenge brought by the Direct Marketing Association and others. In the meantime, the U.S. District Court has suspended enactment of the law while the legal challenge proceeds.

Oklahoma

Enacted in June 2010, retailers selling into Oklahoma are required to provide notice to consumers who may owe use tax on the purchase.

South Dakota

Enacted in April 2011, retailers selling into South Dakota are required to provide notice to consumers who may owe use tax on the purchase.

Vermont

Enacted in May 2011, retailers selling into Vermont are required to provide notice to consumers who may owe use tax on the purchase.

About NCSL

NCSL is the bipartisan national organization that represents every state legislator from all fifty states and our nation's commonwealths, territories, possessions and the District of Columbia. NCSL is the voice of state legislatures in our federal system as we advocate on behalf of the states' agenda: supporting state sovereignty and state flexibility and protecting against unfunded federal mandates and unwarranted federal preemption.