

Sales Tax Collection on Internet Sales

Revenue Laws Study Committee

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Summary

- ❑ Issue: US Supreme Court in Quill required physical presence before a retailer must collect state sales tax
- ❑ Good News: Many Internet retailers now have physical presence in NC
- ❑ Recent developments:
 - US Supreme Court may reconsider Quill
 - Federal legislation
 - State responses to Quill



Good News

- ❑ Most revenue from Internet sales to NC residents likely collected
 - ❑ Census data shows most Internet transactions are business-to-business
 - 84% NC businesses report use tax
- ❑ Top-10 e-retailers (2014 list) are either physically present, have a public registration number, or state that tax is collected
- ❑ \$6 million use tax voluntarily reported by individuals

Top US Retailers

Rank	US E-Retailer (2013 NRF)	Top 100 Retailers (2015 NRF)	US E-Retailer (2014 Internet Retailer)
1	Amazon.com	Wal-Mart Stores	Amazon.com
2	Wal-Mart Stores	The Kroger Co.	Apple
3	Apple	Costco	Wal-Mart Stores
4	Liberty (QVC.com)	The Home Depot	Staples
5	Macy's	Walgreen	Sears Holding
6	Costco Wholesale	Target	Liberty (QVC.com)
7	Best Buy	CVS Caremark	Netflix
8	The Home Depot	Lowe's (NC)	Macy's
9	Newegg	Amazon.com	The Home Depot
10	Staples	Safeway	Dell

US Supreme Court

- ❑ Quill Corp. v. North Dakota (1992)
 - Bright-line test for physical presence
- ❑ Direct Mktg. Ass'n v. Brohl (2015)
 - Justice Kennedy's concurring opinion: "unwise to delay any longer a reconsideration of the Court's holding in Quill. ... Quill now harms States to a degree far greater than could have been anticipated earlier."
 - Facts: Colorado required out-of-state retailers to report customer information



Federal Legislation

□ Proposals

- Marketplace Fairness Act (MFA) (S 698)
- Remote Transactions Parity Act (RTPA) (H 2775)

State Responses

- ❑ Use tax
- ❑ Affiliate nexus (“Amazon Laws”)
- ❑ Amnesty programs
- ❑ Simplified sales tax collection and reporting
- ❑ Reporting requirements
 - To collect use tax from customers.
 - Example: Colorado in Direct Mktg. Ass'n case

State Responses - continued

- ❑ Direct challenges to Quill
 - Alabama regulation (effective 1/1/16) applies to remote seller making over \$250,000 in prior year sales to Alabama customers
- ❑ NCSL proposes states challenge Quill
 - Expand definition of nexus beyond physical presence
 - Expand collection requirements to marketplaces
 - Expand reporting and registration requirements

NC Responses

- Use tax
- Affiliate nexus (“Amazon Laws”)
- Amnesty programs
- Simplified sales tax collection and reporting
 - Streamlined Sales and Use Tax Agreement (SSUTA)



G.S. 105-164.8(b) Remote Sales

- ❑ Retailer engaged in business in State
- ❑ Person domiciled, resident, or citizen of State
- ❑ Retailer maintains physical presence
- ❑ Retailer solicits or transacts business in State by representatives (“affiliate nexus”)
- ❑ Nonresident retailer who purchases advertising is *not* engaged in business in this State based solely on the purchase of the advertising



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