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## Background

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The Internet has opened up an exciting channel of commerce, but it has also opened questions about how to properly tax sales made over the Internet. Under the Supreme Court's *Quill* decision, remote sellers, such as an Internet retailer, are not required to collect sales and use taxes for sales made to buyers located in states where the seller does not have a physical presence.

The *Quill* decision has resulted in a situation where large Internet retailers do not collect sales taxes, while traditional "brick-and-mortar stores" are required to collect sales taxes on all sales. The absence of sales tax collection on Internet sales risks eroding the sales tax base of the states and providing internet retailers with unfair tax advantages that are not available to traditional brick and mortar retailers. The *Quill* decision made clear that Congress has the authority to take action to cure this inequity.

Instead of enacting legislation to provide a level playing field for sales tax collection, legislation was enacted in 1998 to impose a 3-year moratorium on new Internet access taxes and on multiple or discriminatory taxes on electronic commerce, and on November 28, 2001, legislation was signed that extended the moratorium for an additional 2 years. The legislation did not address the more important issue of how to collect sales taxes on remote sales.

Unfortunately, merely extending the current moratorium does nothing to address the main issue of allowing states to require remote retailers to collect and remit sales taxes. Extending the moratorium only delays a decision on this issue and allows the current inequitable situation to continue to the detriment of states and the "bricks and mortar" retailers that compete with remote sellers. Therefore, the e-Fairness Coalition urges Congress, the Administration, and the state and local governments to work together to simplify state sales tax systems and provide equitable sales tax collection for all retail sales.

## Streamlined Sales Tax and Use Tax Agreement (SSUTA) Fact Sheet

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### This Is...

**About simplification** - SSUTA would streamline the country's more than 7,500 diverse sales tax jurisdictions, each of which has different definitions of what is taxable. States must enact legislation to simplify their sales tax systems as a first step to Congressional passage of legislation permitting states to require collection of sales tax by remote sellers.

**About fairness** - All commercial transactions should be treated the same way - whether the goods are purchased in a store on "Main Street" or remotely - in a catalog or on the Internet.

**About need** - Financially strapped local and state governments lost between \$9 and \$13 billion each year during the past three years in uncollected sales tax due to remote sales.

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### This Is Not...

**A new tax** - SSUTA enables the collection of sales and use taxes already owed to state and local governments under existing tax laws.

**A "banned" tax** - The Internet Tax Freedom Act of 1998 prohibits the creation of any new and discriminatory taxes on the Internet. SSUTA does not affect new or discriminatory taxes.

**A tax on the Internet** - SSUTA is an agreement about collection of owed taxes on purchases made online and via catalog - not the use of the Internet itself.

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### Other Important Facts:

- According to a report by the Center for Business and Economic Research, state and local government lost between \$15.5 and \$16.1 billion in 2003 as states are unable to collect sales taxes from online sales. The report projects that 2008 revenue loss for state and local governments would range between \$21.5 billion and \$33.7 billion, with the greatest losses occurring in states that rely most heavily on the sales tax as a revenue source.
- According to the Institute for State Studies, local and state governments will lose as much as \$54.8 billion by 2011 in uncollected remote sales taxes.
- According to the U.S. Census Bureau, 33 percent of state revenues come from sales taxes.

- E-commerce sales are projected to grow eight-fold in just 10 years from \$754.6 billion in 2001 to an astounding \$6.09 trillion in 2011.
- Holiday online orders were up by 29 percent during the 2004 holiday season, according to comScore Networks.
- The Commerce Department reported that the fourth quarter 2004 e-commerce estimate increased 22.3 percent ( $\pm 2.6\%$ ) from the fourth quarter of 2003 while total retail sales increased 8.3 percent ( $\pm 0.5\%$ ) in the same period.
- To take part, states will be required to adopt authorizing legislation and enact certain simplification measures, including adopting uniform product codes and sourcing rules, developing uniform definitions of state tax laws, creating a central, one-stop registration system, and limiting the frequency local governments can change their tax rates.
- Requiring on-line merchants to collect sales tax does not create a new tax and is, therefore, not affected by the Internet Tax Freedom Act (ITFA).

- **Internet Tax Policy Myths and Facts**

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- **Myth:** Supporters of remote sales tax collection are pushing legislation to create new taxes on the Internet.
  - **FACT:** We oppose creating any new taxes on the Internet, including access taxes or discriminatory taxes. We support the collection of the sales and use taxes that are already owed to state and local governments under existing tax laws. We support collection in a fair and equitable manner for all transactions, whether consumers shop at a store on "Main Street" or on the Internet.
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- **Myth:** State and local governments are attempting to tax the Internet.
  - **FACT:** The Streamlined Sales and Use Tax Agreement (SSUTA) does not create a new tax. Currently, consumers are legally required to pay a corresponding use tax on online purchases when the seller does not collect the sales tax. Many consumers do not understand their use tax responsibility, and compliance with use tax requirements is very low. Therefore, millions of Americans that shop on the Internet or through catalogs are in violation of the law. We advocate taking the burden of paying the use tax off of the consumer and providing all merchants with equal sales tax collection responsibilities.
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- **Myth:** Congress has already banned Internet taxes.
  - **FACT:** The Internet Tax Freedom Act of 1998 prohibits the creation of any new and discriminatory taxes on the Internet. SSTA does not affect new or discriminatory taxes. Congress did not pass laws to prevent states from charging and collecting existing sales and use taxes.
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- **Myth: State funded programs like education, law enforcement and transportation will not be affected if online transactions remain untaxed.**
  - **FACT:** According to the U.S. Census Bureau, 33 percent of state revenues come from sales taxes. If online and mail order sellers are not required to collect sales taxes, state and local governments stand to lose as much as \$33.6 Billion in 2008. Sales tax revenues fund essential government services including education, law enforcement and transportation. If sales and use taxes are not collected on remote transactions, state and local governments will have to find other ways to offset their losses. Alternative financing could include increasing property taxes and sales tax rates.
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- **Myth: Taxing E-commerce will slow the growth of the Internet.**
  - **FACT:** A level playing field is best for the new economy. A Jupiter Research report released in February 2003 states that collection of a sales tax on Internet purchases "will not be a significant impediment to the growth of the online retail channel." The bottom line: collection of sales tax on online purchases would have little impact on "virtual" business.
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- *The e-Fairness Coalition ([www.e-fairness.org](http://www.e-fairness.org)) represents the retail and real estate industries. The Coalition advocates fairness for businesses and consumers. It supports a level playing field that ensures consumers are treated fairly regardless of where they choose to shop - in traditional or online stores. Its members include brick-and-mortar and online retailers, retail corporations and associations, publicly- and privately-owned shopping centers, outlet centers and independently owned shops.*
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## News Articles

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IMMEDIATE RELEASE: Tuesday, December 11, 2007

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### **E-Fairness Coalition Strongly Supports H.R. 3396 The Sales Tax Fairness and Simplification Act**

*Current tax law creates un-level playing field in many key industries.*

**WASHINGTON, DC**—The e-fairness Coalition calls for the passage of a more simplified and fair sales tax system. The current patchwork system of state taxation policies and regulations creates an unnecessary burden on commerce, including the key industries of real estate, retail and telecommunications.

On Thursday, December 6th 2007, the Judiciary Subcommittee on Commercial and Administrative Law held a hearing on H.R. 3396 The Sales Tax Fairness and Simplification Act. The e-fairness Coalition supports H.R. 3396, introduced by Congressman William Delahunt (D-MA) and calls for further action on the legislation in 2008.

H.R. 3396 grants federal authorization to the Streamlined Sales and Use Tax Agreement (SSUTA) that has been approved in 22 states. SSUTA provides for simpler sales tax provisions and provides businesses with a uniform database for collecting sales and use taxes.

The three main issues with current tax laws which create an un-level playing field are:

- Brick and Mortar retailers of all sizes are always required to collect on sales taxes while remote retailers are not required to collect sales tax on transactions.
- Businesses that operate nationwide must comply with nearly 7,500 taxing jurisdictions which create significant administrative costs that are then passed on to the consumer.
- Billions of dollars a year in uncollected sales tax revenue is being lost due to the remote tax gap creating State budget shortfalls.

The passage of H.R. 3396 would level the playing field:

- Decrease red tape, paperwork, overhead costs—no longer 7,500 taxing jurisdictions; no overlapping taxing jurisdictions.
- Exempt businesses with revenues less than \$5 million—H.R. 3396 contains a small business exception that exempts small online entrepreneurs and catalog sellers with less than \$5 Million in nationwide gross remote taxable sales from the out-of-state collection responsibility.
- Simplify collection process—uniform definitions of products and product based exemptions; uniform rules for sourcing; uniform procedures for certification of tax administration software; uniform rules for bad debts; uniform requirements for tax returns and remittances; consistent electronic filing and remittance methods.

- Encourage fairness for local merchants—stops internet retailers from undercutting local merchants in our communities by requiring all to collect sales and use taxes.
- Straight talk to consumers—consumers both online and in person will pay the same amount for taxes giving an equal playing field to both consumers and retailers.

Addressing state budget shortfalls provides H.R. 3396 with its most compelling reason to enact this key legislation. In 2008 state and local governments could lose as much as \$33.6 billion in sales and use tax revenue from untaxed online and remote sales. H.R. 3396 would prevent revenue loss from occurring and help reverse projected State Government budget short falls. H.R. 3396 would prevent states and localities from resorting to raising taxes and instead implement a tax that should already be collected.

The e-fairness coalition believes the passage of H.R. 3396 is vital to the health of the new economy. The e-fairness coalition encourages further action on H.R. 3396 and its sister bill in the Senate S. 34. Both legislations should be passed and sent to the President in 2008.

The e-fairness Coalition includes brick-and-mortar and online retailers, retail corporations and associations, publicly and privately-owned shopping centers, outlet centers and independently owned shops.

Download: [e-fairness Coalition Strongly Supports H.R. 3396.doc](#) (Microsoft Word document: 48Kb)

## Additional FAQ's

**Question:** There are 7,500+ diverse sales tax jurisdictions now but how many will there be if H.R. 3396 is passed? Will there be one tax jurisdiction or one for each of the 45 states that have sales tax?

**Answer:** The tax jurisdictions will stay the same if The Sales Tax Fairness and Simplification Act (STFSA) passes, just that what is considered taxable will be uniformed across the country. STFSA will allow for the states that have streamlined their sales tax laws to collect sales taxes.

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**Question:** There is a \$5 million threshold, but what if someone is selling 4.5 million and they have not been collection sales tax, but then their sales go over 5 million? What do they do?

**Answer:** Small Business Exception- No seller shall be subject to a requirement of any State to collect and remit sales and use taxes with respect to a remote sale if--

(1) the seller and its affiliates collectively had gross remote taxable sales nationwide of less than \$5,000,000 in the calendar year preceding the date of such sale; or They do not start collecting until they actually reach the \$5,000,000 threshold. So let's say in 2007 you sold \$4,999,999 of gross remote taxable sales nationwide. In 2008 you would not collect. But if in 2008 you reached the \$5,000,000 threshold you would then have to start collecting taxes in 2009.

(2) the seller and its affiliates collectively meet the \$5,000,000 threshold of this subsection but the seller has less than \$100,000 in gross remote taxable sales nationwide.

**Follow up question:** OK, but what if a company has been collection sales tax THINKING they would reach the \$5,000,000 level and then they DON'T reach it? What do they do with the taxes they collected? And does this say that a company with sales of 5 million in sales via local distribution, which has over \$100,000 in Internet or Mail Order sales, must collect sales tax if they go over the \$100,000? And what if they have not been collecting taxes all year and then in December they exceed 100K?

**Answer:** Again it is based on calendar year so the following year they would have to start collecting.

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**Question:** What if your sales are over 5 million and you have been collecting sales tax and your sales fall to 4.5 million, do you keep the taxes collected?

**Answer:** Then the next year you would not collect on the sales tax.

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**Question:** Are the taxes based on where the item(s) are ship to?

**Answer:** Taxes are based on where the item is shipped to.

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**Question:** What happens if a manufacturer drop ships a product for a seller and the order is sent C.O.D. to the buyer? Does the manufacturer collect the taxes and then send the taxes to the seller who had the item(s) drop shipped and then the seller handles the distribution of the taxes?

**Answer:** The seller always will handle the collection of the sales tax. So the C.O.D. price should include sales tax.

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**Question:** Does STFSA cover sales via mail order?

**Answer:** The federal legislation and the streamline process also handles mail order, or catalogue sales.

For further information on the streamline sales tax process please visit [www.streamlinedsalestax.org](http://www.streamlinedsalestax.org)

## **Coalition Partners**

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