

**Testimony before the House Taxation Committee
HB 2103 – Sales Tax Nexus
Presented by J. Kent Eckles, Vice President of Government Affairs
Wednesday, February 13th, 2013**

The Kansas Chamber appreciates the opportunity to present testimony in favor of House Bill 2013.

The issue:

Online-only retailers are exploiting a loophole in the current sales tax system to avoid collecting local sales tax. The collection of any local sales tax is required by law for all brick and mortar and retail stores that exist in Kansas, but online-only retailers shirk this responsibility. This negatively impacts nearly every sector of our economy – both public and private – at a time when most Americans are struggling to climb out of the economic downturn. Some examples:

It hurts local businesses: The sales tax loophole enjoyed by large online-only retailers gives them anywhere from a 5-10% price advantage over brick-and-mortar stores in Kansas—stores that hire local workers, and pay payroll, income and property taxes to state and local government. This significant and unfair advantage is putting hard working retailers on Main Street out of business and millions of U.S. jobs at risk.

It unnecessarily puts consumers at risk: Consumers may think they're getting items tax -free online. But U.S. consumers are still legally required to pay a "use tax" equivalent to the sales tax to the state when they file their tax returns – or risk being audited or penalized. Naturally, most citizens do not pay because the process is onerous and difficult to calculate. And while online vendors have the technology to collect sales tax at the point of sale, they choose not to.

It is costing local & state government: Every day, the State of Kansas and local governments are losing money because online businesses are exploiting tax loopholes. It has been estimated that the U.S. government could lose more than \$11 billion in uncollected taxes from online sales in 2012 – money that could help pay for education, law enforcement, healthcare, emergency response, or transportation projects. Enforcing the collection of online sales tax would generate much-needed revenue and help close critical budget gaps without having to institute new taxes.

We urge the committee to pass HB 2103 and level the playing field for Kansas retailers.

The Kansas Chamber, with headquarters in Topeka, is the leading statewide pro-business advocacy group moving Kansas towards becoming the best state in America to do business. The Chamber represents small, medium and large employers all across Kansas.





NO SPECIAL TREATMENT FOR ONLINE-ONLY RETAILERS!

We Need A Level Playing Field So All Businesses Abide By The Same Rules

ONLINE-ONLY RETAILERS HAVE AN UNFAIR COMPETITIVE ADVANTAGE OVER MAIN STREET.

Online-only retailers are exploiting a legal loophole from the pre-Internet era that allows them to avoid collecting sales taxes. Meanwhile, local brick-and-mortar businesses collect sales taxes at the point of purchase every single day. As a result, Internet-based retailers receive a government-sanctioned price advantage of up to 10 percent in many states.

THE GOVERNMENT SHOULD NOT BE PICKING WINNERS & LOSERS.

America is built on a free-market economy that encourages business competition. By allowing some businesses to avoid collecting sales taxes, while others are required to do so, the government is effectively picking winners and losers in the marketplace. Nobody likes paying or collecting sales taxes, but everyone should be playing by the same rules.

MAIN STREET BUSINESSES & JOBS ARE AT RISK.

There are more than one million retail outlets in the United States that employ almost 14 million people. When local retailers lose sales to out-of-state, online-only retailers due to an unfair competitive advantage, it threatens jobs nationwide and damages local businesses that create those jobs, pay their property and income taxes and build our communities.

SUPPORT E-FAIRNESS

E-Fairness will **NOT** CREATE A **NEW TAX**. It will:

- Enforce the collection of an already existing tax in a simple and fair manner.
- Provide an even-handed solution to sales tax collection that would require online-only retailers to play by the same rules as every other business.
- Provide states with the clear authority to require retailers to collect sales taxes.
- Promote real business competition and help protect our local business base.
- Protect individual consumers from being audited or penalized for unmet tax obligations.

IT'S TIME WE HOLD ONLINE-ONLY RETAILERS TO THE SAME REQUIREMENTS AS EVERY MAIN STREET RETAILER.

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It's a matter of simple fairness.

Alliance for Main Street Fairness (AMSF)

Why Change The Law?

System:

Common sense would dictate if someone buys a product online, they should pay the same sales tax as anyone would if they had gone to the store in person.

But a massive loophole is being exploited whereby online-only retailers aren't collecting sales tax at the point of purchase despite the fact that the tax is still due; and small brick-and-mortar businesses are at a significant disadvantage as they are collecting the tax as required by law. This is an antiquated system that needs to be modernized for 21st Century commerce.

The truth is; a sale is a sale is a sale. Whether it takes place online or at a local business, a sale is made, a transaction has occurred and the sales tax is owed. The same rules should apply online that apply on Main Street. It is a question of fairness and evenhandedness.

Small Businesses / Competition:

The unfair disadvantage our local small businesses are experiencing leads to less commerce at brick-and-mortar establishments that contribute so much to our community. These employers can't compete with online giants that don't collect sales taxes and don't have the same local presence in our communities.

Local businesses support our civic organizations, sports teams and are permanent members our community. But unless the system is corrected, local retailers will become endangered species as they are being punished for following the law and collecting sales taxes while their competitors are not.

Individuals Exposed:

Just because the online merchant doesn't collect the tax, doesn't mean it is not due. Stores like Amazon and Overstock are leaving individuals who purchase items on their Web sites exposed as these purchasers are carrying an unmet tax liability. In fact, individuals can be audited and penalized for any unmet sales tax obligation that hasn't been paid.

Each year, our tax forms make specific inquiries with regard to purchases made online or through other remote sellers and whether the sales tax was paid. Due to the fact that these online-only retailers do not collect the tax at the point of sale and do not inform purchasers it is their responsibility to record the amount of sales tax due and pay it directly to the state, their customers are exposed as they are carrying an unmet tax liability that could result in an audit.



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Why Change The Law?

Institute Fairness:

If the issue remains unresolved of some retailers collecting the sales tax at the point of purchase, while others exploit a loophole and do not, states that are currently experiencing massive budget deficits are going to increase other taxes and fees, like property taxes, sales taxes and/or income taxes, which is already happening across the country.

The reality is that states have massive liabilities and unfunded mandates they cannot finance without additional revenue or cutting of essential services. It only makes sense to collect a tax that's already due before instituting new taxes on everyone.

It's important to understand that collecting the sales tax won't hurt small businesses that operate online; in fact, there will be exemptions for the smallest sellers and free tax assistance for eBay and Etsy sellers.

Lastly, tax revenue generated from online sales that's already due can be used to pay down deficits and get us back on track toward fiscal responsibility.

Affiliates:

At the same time online-only retailers falsely say e-fairness will cost jobs, they threaten to fire in-state affiliates if required to collect the sales tax, which small businesses are obligated to do every single day.

The truth is that brick-and-mortar stores use affiliates in these same states and collect the sales tax. Online-only retailers are more concerned with exploiting a loophole that allows them to enjoy an artificially low sales price than defending jobs. As a result, small businesses are forced to lay off workers because they are unable to compete on a level playing field.

Corporate Welfare:

States should not cut special deals with companies like Amazon when looking at economic incentives for companies to open new distribution centers or other facilities in their states. Those special deals are nothing more than corporate welfare, and they come at the expense of Main Street businesses that have to collect the sales tax at the point of purchase and operate at a competitive disadvantage when compared to online businesses receiving such corporate welfare.

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Sales Tax Collection Myth/Fact

MYTH: MYTH: Legislation to require online-only companies to collect sales taxes is a new tax.

FACT: Purchases made over the Internet are not tax free. When Amazon and other online-only retailers fail to collect the sales tax on a purchase, it falls to consumers to track and remit that tax when filing their personal, state income tax. Forcing consumers to keep receipts and add up their purchases to compute additional sales tax liability every year is a confusing and onerous burden.

MYTH: Requiring online-only retailers to collect the sales tax will result in less Internet commerce and hurt the economy.

FACT: The fact that online-only retailers are able to exploit a loophole and fail to collect the sales tax at the point of purchase, results in an unfair advantage over local, brick-and-mortar businesses that are required to collect the tax at the point of purchase. These employers can't compete with online giants that don't collect sales taxes and don't have a local presence in our neighborhoods. Unless the system is corrected, local retailers will become endangered species as they are being punished for following the law and collecting sales taxes, while their competitors are not. This is a matter of common sense and basic fairness.

MYTH: Online-only retailers will simply pull their affiliates from states rather than collect the sales tax.

FACT: One of the reasons it is so important to correct this deeply flawed system, which is hurting our small businesses and exposing individual taxpayers, is that the Internet will only play a more vital role in the marketplace in the decades to come. The increased traffic and purchasing power will mandate that any and every business looking to compete and succeed will need to have a powerful Web presence. We believe this to be true of the online-only retailers that refuse to collect the sales tax just as it is true of any business.

Furthermore, both the state and Federal government cannot allow online-only retailers to put a gun to their head demanding special treatment. If online-only retailers choose to damage their own business model and their relationships with a state's online community, that's their choice. Other companies will gladly fill the void and work with online affiliates. Brick-and-mortar competitors have online relationships with affiliates and collect the sales tax, and have said they will expand that presence if online-only retailers make the mistake of creating a vacuum. Furthermore, online-only retailers have maintained their affiliate relationships in New York and collect the sales tax.

MYTH: If online-only retailers terminate their affiliate relationships, it will result in lost jobs as the affiliate companies will be forced out of business.

FACT: The fact is that legislation that ensures the sales tax is collected equitably will actually increase jobs. The loophole online-only retailers exploit is hurting small businesses and resulting in lost jobs. Additionally, the facts are that most affiliates work with multiple retailers – most of which collect sales taxes at the point of purchase. The bottom line is that there is no excuse for online-only retailers to continue to hide behind the Quill decision, which was written before Internet commerce was even a factor in the marketplace.

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Sales Tax Collection Myth/Fact

MYTH: Legislation requiring online-only companies to collect sales taxes is ill-conceived and unenforceable. The better route is to wait for a national solution.

FACT: Currently, New York is enforcing a law passed in the state requiring online-only retailers to collect the sales taxes. And mega, online-only retailers are complying with the law and remitting the revenue generated by collecting the sales tax. Such legislation not only creates a fair marketplace and reduces the burden on unknowing consumers who carry a tax liability, it ensures critical personnel and services like police, fire and teachers are adequately funded.

MYTH: Collecting the sales tax would be extremely burdensome for online-only retailers as it would require them to develop, test and install new software, which would be costly and time consuming.

FACT: The reality is that the software and Web applications necessary to collect the sales tax have already been developed and put in place by numerous retailers that choose to adhere to the law and collect the sales tax. The alternative is not the system that we have today where individual taxpayers are required to record purchases they make online and either carry an unmet tax obligation or pay at the end of the year, a responsibility most are not even aware is theirs. The correct solution is for online-only retailers to harness Web applications that already exist for collecting the sales tax and to do so at the point of purchase.

MYTH: No one is negatively impacted and consumers benefit by being able to purchase goods on the Internet without paying the sales tax.

FACT: Across the board, everyone – including the purchaser – is put at risk by the fact the sales tax is not collected at the point of purchase by online-only retailers. The buyer has an unmet tax liability that could result in an audit. Employers that are forced to collect the tax are losing business and may be forced to close or lay off workers. And states, with massive budget deficits are going without revenue that could help ensure they pay down their debt and finance critical services like law enforcement and emergency personnel. The only group that benefits is mega, online-only retailers who get a special deal.

