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The Collection of Sales Tax on Internet Purchases is on the Policy Table, But it will Struggle for Attention

Florida does not actively attempt to enforce the collection of sales/use taxes on Internet purchases, or from other remote out-of-state retailers. Florida law is very specific and says that if the sales tax is not collected at the time of sale, the purchaser is required to remit a use tax directly to the state; but there is no active enforcement of this requirement.

Collection proponents assert it is necessary to require the remote vendors to collect the sales tax at the time of sale in a way that would not violate the Federal Constitution.



By Rheb Harbison
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Two bills now introduced in the 2012 Florida Legislature seek to level the Florida sales tax competitive playing field between the state's brick and mortar retailers and Internet-based retailers with no physical nexus to the state.

Although Florida law currently requires the imposition of sales tax on Internet purchases, a business without a physical nexus has no duty to collect and remit the tax revenue to the state.

Instead, customers are required to self-report the purchase and pay a use tax to the Florida Dept. of Revenue.

As a practical matter, that does not happen, nor does the state actively attempt to enforce the collection.

A long-frustrated Florida Retail Federation and other large business associations based in Tallahassee have asserted year after year that Internet-based retailers have a competitive price advantage over those retailers with a Florida nexus by at least the total of the sales tax, collected or not collected. They claim the collection of the sales tax on Internet-based sales could bring as much as \$2 billion a year into state coffers.

"The out-of-state merchant not only doesn't collect or pay taxes in Florida, but uses this fact to gain a price advantage through being able to sell an item at a lower cost simply because he or she doesn't collect the tax due on the sale," the Florida Retail Federation says in an issue paper on its web site, FRF.org.

But that argument has fallen on deaf ears as long as no-tax Republicans have controlled the Florida Legislature and the Executive Office of the Governor.

Other States Take Action

Recent efforts by California and other states to redefine "nexus", and therefore resolve the collection issue, have given Florida proponents new energy to make a big push for passage in 2012.

California successfully leveraged the issue with Amazon.com, and last year the company ultimately agreed to collect that state's sales tax.

In a September 2011 story, the *Wall Street Journal* reported that Amazon Chief Executive Jeff Bezos confirmed the retailer would collect taxes on its sales to California residents by 2013.

The Florida Retail Federation and its allies are hoping the national momentum is building enough to convince the Florida Legislature to clarify its position on the collection of the tax, and also pass legislation changing and expanding the definition and application of "nexus" to include companies that exploit the Florida retail market through remote means.

Bills Filed in Florida; but it's Uphill

[*House Bill 861*](#), by Rep. Mike Horner (R-Kissimmee) and [*Senate Bill 1514*](#), by Sen. Nancy Detert (R-Venice) seek to resolve the issue, but passage clearly remains an uphill fight.

Even though the imposition of the sales tax is already law, and is technically not a "new" tax, Senate President Mike Haridopolos (R-Melbourne) nonetheless believes the bills' passage would be counter to the Legislature's pledge not to raise taxes. He vows the bill will not pass if it results in a net increase in taxes collected by the state.

Governor Rick Scott has also taken that position. In remarks to the editors of the *Daytona Beach News-Journal* at a November meeting, Scott said the situation is not fair to Florida's retailers, but that he does not want to "take more money out of the private sector."

"Is it raising taxes to have a mechanism that helps Florida collect the sales taxes we're already supposed to pay?" said Scott. "If it's out of your pocket, that's a tax."

Scott has however agreed to consider the legislation, but like Senate President Haridopolos, only if the legislation is revenue neutral – meaning there will have to be a corresponding reduction in tax collection somewhere else in the law, e.g., a reduction in the corporate income tax.

The presumed criticism then becomes a shift of tax burden from corporations into the pockets of Floridians.

Status of Florida Legislation

The 2012 House bill was pre-filed in December, but is yet to be heard by any of the three House committees to which it has been referenced. The Senate bill was filed on January 5 and has yet to be referred to any Senate committees for a hearing. Both will struggle to pass in the 2012 Florida Legislative Session. ■

Florida Legislature in Convenes Early

Florida's Legislature comes into session today, two months early, to grapple with the issue of legislative and congressional redistricting. The 60-day session is due to adjourn on Friday, March 9, unless extended.



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Rheb has 31 years of progressive senior level experience in lobbying, public affairs, communications, media relations, and marketing in both the public and private sectors. Rheb counsels clients on political action strategy and is also responsible for fundraising and the activities of the Firm's political action committee, which supports the election of local and state candidates for public office.

In May, he will begin participating in a series of candidate interviews with 2012 legislative candidates. He has participated in legislative candidate interviews throughout his career. The political intelligence gained in the interview sessions inure to the benefit of the firm's clients who are involved in the political process and elections.

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