

**Testimony before the House Tax Committee
HB 2610 – E-Fairness
Presented by J. Kent Eckles, Vice President of Government Affairs
Wednesday, March 7th, 2012**

The Kansas Chamber appreciates the opportunity to present testimony in favor of House Bill 2610.

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 2610 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.



eFairness 101

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 a state, 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. For example:

It hurts local businesses: The sales tax loophole enjoyed by Amazon and other large online-only retailers gives them anywhere from a 5-10% price advantage over brick-and-mortar stores in our community—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 governments billions: Every day states and local governments are losing money because online businesses are exploiting tax loopholes. In fact, 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.

How Did We Get Here?

Today, online shopping is here to stay, earning billions of dollars in revenue for online only retailers, yet due to the outdated Supreme Court ruling from 1992, state governments have been unable adjust local tax laws to the dynamics of internet retailing. This outdated ruling is robbing states and their residents of needed resources and revenue to keep vital services and benefits available to the community and is putting jobs at risk.

Walmart believes that the communities that we serve deserve better than this unfair and harmful system.

What's Happening Now?

Amazon was incorporated in 1994 in the state of Washington, where the company collects and remits sales tax on behalf of the state – just like any other business with an in-state presence. Almost 20 years later, Amazon has facilities in 11 additional states throughout the country including **AZ; DE; IN; KS; KY; NV; NH; PA; SC; TN and VA.** With that growth and the additional physical presence should come the responsibility to collect and remit local sales tax. Yet Amazon refuses to collect the sales tax in some states where it has expanded to have a physical presence. And in fact, the company has launched an aggressive campaign to legalize this unfair and harmful practice.

Right now, Amazon is systematically working its way through the states where it has a physical presence and asking for a sweetheart deal that would give a sales tax exemption to the online-only retailer for several years to come. The company was unsuccessful in **Texas and California**, where legislators instead passed eFairness legislation requiring online-retailers with an in-state physical presence to collect the sales tax. However, retailers in California are now fighting vigorously to stop a referendum backed by Amazon that would repeal the new law. And legislators in **South Carolina** approved the special deal, giving Amazon a tremendous and potentially renewable tax benefit and a significant advantage over the state's traditional retailers.

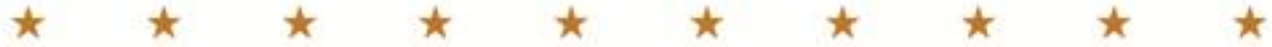
Several other states not yet hit up for Amazon's special deal have considered eFairness legislation, including **Alabama, Hawaii, Maine, Massachusetts, Minnesota, Washington, and Vermont.**

What Can You Do?

We believe that all sales should be treated equally so that the communities where our families, customers and associates live and work have the necessary public funding for education, law enforcement, healthcare, emergency response, transportation projects, and more, that will enable them to live better. We also believe in playing by the rules – and playing fair. We would hope that all businesses – including online-only retailers – would want to do the same.

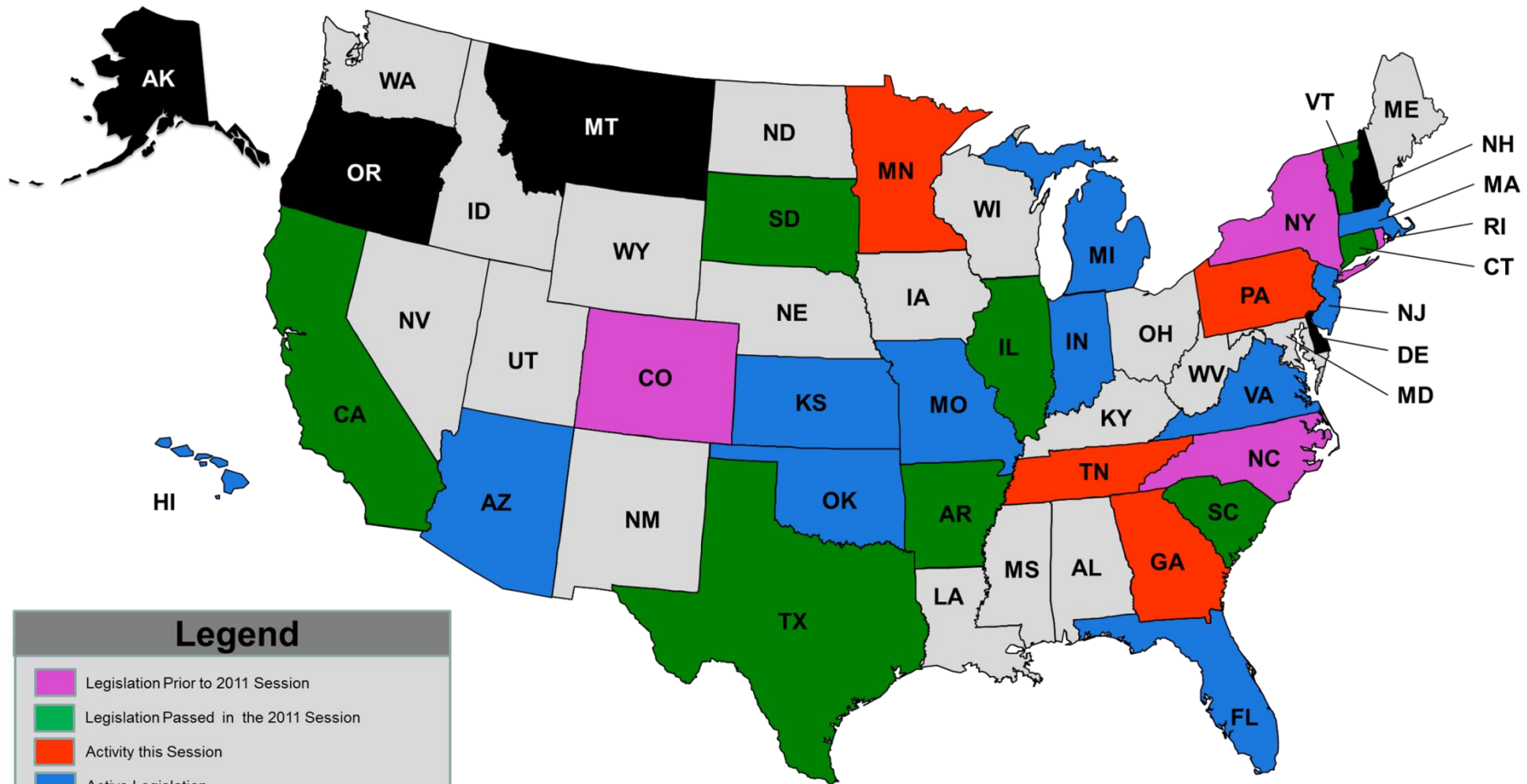
eFairness legislation would create a level playing field and would allow fair competition between all businesses. It would allow the marketplace to choose who wins and who loses, rather than the government. This commonsense solution would ensure that nobody is punished because they have a store, are employing people, and growing the local economy.

For more information on eFairness legislation and what you can do to level the playing field in your state, visit www.standwithmainstreet.com



State of E-Fairness Legislation in the U.S.

2012



The Truth About eFairness Legislation

MYTH: Requiring online-only retailers to collect sales taxes would impose an additional tax on consumers and the business community.

FACT: eFairness legislation DOES NOT create any new taxes. Purchases made over the Internet were never intended to be tax-free. In fact, when Amazon and other online-only retailers fail to collect the sales tax on a purchase, the onus is on consumers to pay a “use tax” to the state when they file their tax returns, a burden required by law.

MYTH: Purchasing products from an online-only retailer is beneficial to consumers because they don’t have to pay sales tax.

FACT: Almost every product purchased online requires a sales tax to be collected. Consumers may think they’re getting items tax-free online, but this is simply not the case. Online-only retailers are exploiting a loophole to garner additional sales. Many bricks-and-mortar retailers currently have online sites where consumers can shop online, many which use readily available technology to collect the local taxes, as required. These taxes are then delivered back to the state and the local community, to help provide vital services like education, law enforcement, and emergency responders.

MYTH: Online-only retailers provide low income communities with products at a discounted rate by not charging sales tax.

FACT: Many of the poorest Americans are subsidizing online commerce. Many Americans in minority and rural communities do not have access to the Internet or a credit card – both essential to online shopping. These Americans are limited to shopping in Main Street stores where, as required by law, sales tax is collected at the point of sale. When purchases are made from online-only retailers and sales tax is neither collected by the seller nor remitted by the buyer, those who do not have Internet access or credit cards and dutifully pay the required sales tax are in effect subsidizing the state and community services that tax revenues provide for those who don’t pay.

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

FACT: Purchases made online generate hundreds of billions of dollars in revenue each year and help support the economy. The fact that online-only retailers are able to exploit a loophole and refuse to collect the sales tax at the point of purchase, results in an unfair advantage over local businesses that are required to collect the tax at the point of purchase. Bricks-and-mortar retailers can’t compete with online-only retailers that don’t collect sales taxes, don’t employ local residents, and don’t have a local presence in our neighborhoods. Unless the loophole is corrected, local retailers will become an endangered species and local communities will continue to lose millions of dollars in revenue.

MYTH: If forced to collect and remit sales tax, online-only retailers will simply pull their affiliates from states and rob them of potential income and jobs.

FACT: The Internet is here to stay, and it will only continue to play a more vital role in the marketplace for decades to come. Most retailers cannot exist without a web presence, whether they are a local shop on Main Street or a larger retailer with numerous locations. Many of these local retailers have already adopted an online presence, which utilizes local marketing affiliates to garner new customers, and they

have implemented the technology needed to collect sales tax. 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 to support the local retailers that are delivering revenues to the community. For example, New York law requires online-only retailers to collect and remit the state's sales tax if they pay commissions to New York-based marketers for sending them customers, and it certainly appears that neither Amazon nor Overstock's business in New York has been impaired.

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 that sales tax is collected equitably will actually increase jobs. The loophole online-only retailers exploit is hurting small businesses because they can no longer compete with the online-only retailers and they are forced to cut local residents from the job force. 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 a nearly twenty year old Supreme Court decision, which was written before Internet commerce became the major part of the economy that it is today.

MYTH: Streamlined Sales Tax legislation has already been passed in my state. Now we just have to wait on the federal government to act.

FACT: eFairness legislation could benefit the tax revenues of your state and does not negate SSTP. Twenty-four states have joined the Streamlined Sales Tax Project since it started in 2000. As a result about 1800 online only retailers have started collecting and remitting sales tax within most states. Unfortunately, some of the largest online-only retailers refuse to collect sales tax when a state passes "Streamline" because they are waiting for federal action. SSTP needs more than 24 states on board to pass legislation through Congress and it is time to look at what options may bring other states to the table.

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: Some states have already passed tax fairness legislation and online-only retailers are complying with the law. For example in New York they are finally delivering the revenues generated by their sold goods, and they are still thriving. Enacting eFairness legislation quickly creates a fair marketplace and reduces the burden on unknowing consumers who carry a tax liability, it ensures critical personnel and services like teachers, police, and emergency responders are adequately funded. National legislation may permanently close the loophole in due time, but as more states continue to lose vital revenues, immediate state action is still necessary.

MYTH: Collecting the sales tax would be extremely burdensome on small businesses.

FACT: If state eFairness legislation is passed, most small businesses would already be collecting in that state because they have a physical presence. The majority of retailers support a small business exemption. For instance, the Mainstreet Fairness Act, contemplates excluding small out of state online-only retailers from collecting and remitting but defers to the SSTP governing board on the definition of what is a "small business." We support other options that include exempting businesses with less than \$500,000 in sales to residents of another state.

MYTH: Grocery stores are not impacted by online-only retailers.

FACT: Some online-only retailers have gotten into the grocery business. Customers are able to choose their grocery items online and have them delivered to their home within 24 hours and in some cases the same day.

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 responsibility of collecting and remitting state and local sales tax should not be pushed on to individual consumers by billion dollar online-only retailers. The correct solution is for online-only retailers to harness readily available Web applications for collecting the sales tax and to do so at the point of purchase.

MYTH: If eFairness laws are passed small businesses will suffer because they cannot afford the compliance staff or infrastructure required for them to collect sales taxes in every state to which they sell.

FACT: The Mainstreet Fairness Act would institute a national framework for eFairness. Other options authorizing states to require collection by out of state retailers would also protect small businesses from too large a burden of collecting sales tax in other states. An acceptable bill would only require companies to collect if they make at least \$500,000 in sales to residents of a state in which they have no presence; conversely, businesses with annual sales of less than \$500,000 to residents of a state, would be exempt from collecting and remitting sales tax assuming they have no other presence in the state.

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 ones that benefit are the online-only retailers who get a special deal.

For more information on tax fairness legislation, and what you can do to level the playing field in your state, visit www.standwithmainstreet.com