

# INTERNET SALES TAX

*By far, the most significant tax compliance and collection issue facing Florida and other states is the application of sales and use taxes to sales by remote vendors, or those without a physical presence in the state. These transactions can be performed by telephone, mail, or Internet, but due to the overwhelming volume of online sales, this tax is commonly referred to as the Internet Sales Tax.*

## HOW DID WE GET HERE?

The U.S. Supreme Court has ruled that a retailer must have a physical presence (referred to as "nexus") in a state for that state to require the retailer to collect sales and use taxes from in-state purchasers. The Court reasoned that because local taxing schemes are so complicated and varied, forcing collection from each and every purchase would place an undue burden on interstate commerce, and ruled that only Congress has the authority to require collection, but that states must first simplify their sales tax laws in order for Congress to act.

When a Floridian purchases from a seller located outside of Florida, the retailer does not have to collect the sales and use tax at the time of the transaction, although the tax is still legally owed to the state. However, few Florida residents know that they are required by law to pay the proper amount of sales tax owed on these transactions directly to the Florida Department of Revenue, and even fewer actually make these payments.

Due to a lack of state specific e-commerce data and the inability for the state of Florida to track these purchases, estimates of the sales tax revenue on remote sales due to the state vary. The most widely cited estimates are those done by Drs. Donald Bruce and William Fox of the Center for Business and Economic Research at the University of Tennessee. Their most recent study, done in 2009, estimates Florida's sales tax losses from uncollected e-commerce sales at \$803.8 million for FY2011-12. This represents growth of 57 percent from 2007. The authors contend their methodology is conservative and view the estimates as the "lower bounds on the expected sales tax revenue losses."



"I am very concerned about the principle of the matter, that there is a tax that exists, that nobody is collecting and it's sorrowful in my eyes that the legislature's turned a blind eye to this and it's come to the fact they say it's a new tax and it's not."

- Barney Barnett, Vice Chairman,  
Publix Super Markets  
Former Chairman, Florida TaxWatch

# IT MUST BE REMEMBERED: THIS IS NOT A NEW TAX

Not requiring internet sellers to collect sales tax not only erodes Florida's tax base, but also creates an unfair advantage over "brick and mortar" retailers and "clicks and bricks" retailers with both online and traditional stores in Florida. A 6% to 7.5% price break is hard to overcome for Florida's retailers. These businesses have invested in stores and employees and collect our taxes, as well as contribute property and other taxes, but compete against vendors who do not. This unfair situation is untenable for Florida businesses, and a change must be made to level the playing field.



"A lot of consumers will come in and look at your merchandise... and then go on the Internet and buy the same merchandise for 7 or 8% less."

- Ambassador Mel Sembler  
CEO, The Sembler Company

While federal action to mandate that all remote sellers collect and remit state sales taxes would be optimal, there is legislation pending before the 2012 Florid Legislature that provides an opportunity to bring "E-Fairness" to Florida and get more remote sellers to collect and remit the tax on the sales they make. There are two main types of legislation—"affiliate" laws which expand and clarify what constitutes nexus, and Streamlined Sales and Use Tax Agreement (SSUTA) laws.



"There is not really a day that this isn't an issue to me. I can't remember a day when this wasn't something that I thought about and frankly the damage has progressed so much that bookstores are closing all the time and this is a huge part of the reason why, a huge part. I want it fixed."

- Carla Jimenez, Owner,  
Inkwood Books

Affiliate laws make it clear that remote sellers that have affiliated persons in the state have nexus in the state. Affiliates include—among other things-- those which sell a similar line of products and do so under the same or a similar business name; advertise, promote, or facilitate sales; maintain an office, distribution facility, or warehouse; and deliver, install, assemble, or perform maintenance services for the sellers to the state.

The SSUTA is the result of the cooperative effort of 44 states, the District of Columbia, local governments, and the business community to simplify sales and use tax laws and minimize costs and administrative burdens on retailers that collect sales tax. States that have become fully compliant SSUTA members become part of a compact where sellers voluntarily remit taxes to member states.

**It must be remembered: this is not a new tax**--Sales tax is already due from the buyer. Additionally, any new revenue raised by E-Fairness legislation could be used to reduce another tax, or taxes that are currently being collected. Governor Rick Scott and many legislative leaders have said this is important for their support.



We don't mind competing. We'll compete with the internet dollar for dollar... We haven't opened a store in three years. We were opening two and three stores a year...We'd like to get back to opening stores."

- Sandy Fortin, CEO, S&J Sports

# TAXWATCH RECOMMENDATION

*The Florida Legislature should enact E-Fairness legislation to begin leveling the playing field for Florida business and begin collecting revenue legally due to Florida.*

*The Legislature should consider affiliate legislation, as well as legislation to become fully compliant with the Streamlined Sales and Use Tax Agreement (SSUTA) in a revenue-neutral manner as recommended by Florida TaxWatch in its April 2009 report "How to Make Streamlined Sales Tax Legislation Revenue Neutral."*



**"The reality is that it's costing tremendous numbers of jobs in the state of Florida... giving retailers advantages over other retailers..."**

**There are damages here.  
The damages will be severe."**

**- Michael Pearlman,  
President & CEO, BrandsMart**

## VIGILANT RESEARCH BY TAXWATCH ON THIS ISSUE

Report and Recommendations of the Government Cost Savings Task Force for FY 2012-13

Report and Recommendations of the Government Cost Savings Task Force for FY 2011-12

Report and Recommendations of the Government Cost Savings Task Force to Save More Than \$3 Billion, March 2010

Constructive Ideas to Help Florida Address the Budget Shortfall, January 2009

Florida Must Become a Full Member of the Streamlined Sales Tax Project - April 2007

Major Issues Facing Florida's Taxation and Budget Reform Commission - February 2007

Joint Report of the Florida TaxWatch Cost Savings Task Force & The Center for a Competitive Florida Task Force on Tax System Modernization - March 2003

Twenty States have Now Simplified Their Sales Tax Laws to Promote the Streamlined Sales Tax Project; Florida Must Get on Board - October 2003

Florida Joins the Streamlined Sales Tax Project: An Important First Step in Modernizing Florida's Tax System - August 2001

For more information on this important issue, contact Florida TaxWatch at 850.222.5052



Florida TaxWatch Research Institute, Inc.

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## About Florida TaxWatch

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Florida TaxWatch is a statewide, nonpartisan, nonprofit, taxpayer research institute and government watchdog that over its 32-year history has become widely recognized as the watchdog of citizens' hard-earned tax dollars. Its mission is to provide the citizens of Florida and public officials with high quality, independent research and education on government revenues, expenditures, taxation, public policies, and programs, and to increase the productivity and accountability of Florida Government.

Florida TaxWatch's research recommends productivity enhancements and explains the statewide impact of economic and tax and spend policies and practices on citizens and businesses. Florida TaxWatch has worked diligently and effectively to help state government shape responsible fiscal and public policy that adds value and benefit to taxpayers.

This diligence has yielded impressive results: in its first two decades alone, policymakers and government employees implemented three-fourths of Florida TaxWatch's cost-saving recommendations, saving the taxpayers of Florida more than \$6.2 billion -- approximately \$1,067 in added value for every Florida family, according to an independent assessment by Florida State University.

Florida TaxWatch has a historical understanding of state government, public policy issues, and the battles fought in the past necessary to structure effective solutions for today and the future. It is the only statewide organization devoted entirely to Florida taxing and spending issues. Its research and recommendations are reported on regularly by the statewide news media.

Supported by voluntary, tax-deductible memberships and grants, Florida TaxWatch is open to any organization or individual interested in helping to make Florida competitive, healthy and economically prosperous by supporting a credible research effort that promotes constructive taxpayer improvements. Members, through their loyal support, help Florida TaxWatch bring about a more effective, responsive government that is accountable to the citizens it serves.

Florida TaxWatch is supported by all types of taxpayers -- homeowners, small businesses, large corporations, philanthropic foundations, professionals, associations, labor organizations, retirees -- simply stated, the taxpayers of Florida. The officers, Board of Trustees and members of Florida TaxWatch are respected leaders and citizens from across Florida, committed to improving the health and prosperity of Florida.

With your help, Florida TaxWatch will continue its diligence to make certain your tax investments are fair and beneficial to you, the taxpaying customer, who supports Florida's government. Florida TaxWatch is ever present to ensure that taxes are equitable, not excessive, that their public benefits and costs are weighed, and government agencies are more responsive and productive in the use of your hard-earned tax dollars.

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***Integrity • Productivity • Accountability • Independence • Quality Research***



**Improving Taxpayer Value, Citizen Understanding, and Government Accountability**

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