

## Mandatory Sales Tax Collection From Out-of-State Sellers



## Proposed Legislation

### Background

For more than a century, Tennessee residents have been making purchases from out-of-state sellers: through catalogs, televised home shopping, and now predominantly online sales. Even though these out-of-state retailers sell the same goods found in local stores, Supreme Court decisions stretching back decades have prevented states from requiring online retailers to collect sales tax lawfully due at the time of sale, unless that seller had a physical presence in the state.

In their 2018 decision, *South Dakota v. Wayfair, Inc.*, the Supreme Court found that states may require sales tax to be collected on purchases from out-of-state sellers with substantial sales within the state. This decision creates a path for Tennessee to adopt mandatory collection of sales tax from sellers instead of relying on the voluntary remittance program that's been in place since 2007.

It's already the law in Tennessee that residents buying out-of-state goods must remit a use tax (essentially, sales tax) on those purchases to the state, but this places the burden of collection on citizens instead of sellers. The efforts of Tennessee leaders working with the Streamline Sales Tax Project have resolved most of the complexities related to collecting from out-of-state sellers. The state can seize the opportunity created by the Supreme Court's ruling and their own history of addressing this issue to require collection of sales tax on purchases from out-of-state sellers.

### Problem

The lack of mandatory sales tax collections from out-of-state sellers creates an uneven playing field for Main Street retailers across Tennessee. Local businesses create jobs, pay taxes, and contribute to their community, but their out-of-state competitors sell the same products and make no such contributions.

Some entities, such as Amazon, have chosen to collect sales tax revenue as part of the state's voluntary remittance program. However, they could choose not to at any time, as many other out-of-state sellers choose not to participate. This costs the state and local governments millions in lost general fund revenue that could be used to serve Tennessee citizens. It also allows out-of-state sellers to decide whether or not they maintain their tax advantage over local businesses.

Continuing the status quo means losing revenue and hurting Tennessee retailers.

### Remedy

Adopt mandatory sales tax collections for out-of-state sellers doing substantial business in Tennessee.

#### Make these technical corrections:

Require "destination sourcing" so sales tax revenues flow to the municipality or county where their resident purchased the good.

Retain "point-of-sale sourcing" for in-state purchases to guarantee that sales tax revenues collected by a local business stay in that community.

Modify Single Article Sales Cap provisions to ensure a workable solution between the state and local governments.

