



November 2017

SALES TAXES

States Could Gain
Revenue from
Expanded Authority,
but Businesses Are
Likely to Experience
Compliance Costs

GAO Highlights

Highlights of [GAO-18-114](#), a report to congressional requesters

Why GAO Did This Study

Over the past two decades, e-commerce sales have grown rapidly, greatly expanding a category of sales known as remote sales. Under current law, states cannot require all businesses to collect taxes on remote sales. Congress has been considering proposals to change this. Little current, nationwide information exists to inform the debate.

In this report, GAO (1) estimated revenue states and localities could gain by being able to require businesses to collect taxes on all remote sales, and (2) described what is known about the related compliance costs and challenges to businesses, and administrative costs and challenges to states.

GAO estimated 2017 revenue gains to state and local governments based on actual and estimated sales data for remote sellers, excluding certain sales that were exempt from taxation or already collected by remote sellers with a substantial presence in a state. Ranges for GAO's estimates were based on a number of key assumptions that were varied based on available data. To describe related costs and challenges to businesses and states, GAO interviewed officials from state revenue agencies, subject matter specialists, and a wide variety of retailers with remote sales and the organizations that represent them.

GAO provided a draft of this report to subject matter specialists who agreed with the general approach that GAO followed in making its estimates.

What GAO Recommends

GAO is not making recommendations in this report.

View [GAO-18-114](#). For more information, contact James R. McTigue, Jr. at (202) 512-9110 or McTigueJ@gao.gov.

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SALES TAXES

States Could Gain Revenue from Expanded Authority, but Businesses Are Likely to Experience Compliance Costs

What GAO Found

Forty-five states and the District of Columbia levy taxes on the sale of goods and certain services, including those sold remotely, such as over the Internet. In 1992, the Supreme Court ruled in *Quill v. North Dakota* that a state can only require a business to collect and remit sales tax if the business has substantial presence, referred to as nexus, in that state. However, the decision stated that Congress could pass legislation to overrule this limitation. In general, under present law, if a seller does not have nexus in a state, and therefore does not collect tax, then a purchaser is required to pay a use tax in the same amount to his or her state government.

GAO estimated that state and local governments can, under current law, require remote sellers to collect about 75 to 80 percent of the taxes that would be owed if all sellers were required to collect tax on all remote sales at current rates. GAO found that the extent to which state and local governments can require businesses to collect taxes varies with the type of remote seller and by state.

GAO Low and High Scenario Estimates of State and Local Government 2017 Potential Revenue Gains from Expanded Tax Collection Authority on Remote Sales

Dollars in billions	Low scenario estimate	High scenario estimate
Business-to-consumer (B2C)		
Internet retailers	3.2	4.8
E-marketplace sellers	3.9	6.2
Other remote retailers ^a	1.5	1.8
(less consumer use tax compliance)	(0.2)	(0.2)
B2C total	8.4	12.5
Business-to-business (B2B)		
Merchant wholesale e-commerce ^b	1.0	2.9
(less business use tax compliance)	(0.9)	(2.0)
B2B total	0.1	0.9
Grand total (B2B + B2C)	8.5	13.4

Source: GAO analysis of Forrester Research, Internet Retailer, U.S. Census Bureau, and company financial data. | GAO-18-114

Note: Totals may not sum due to rounding. These estimates are the potential revenue state and local governments could gain in calendar year 2017 if granted the legal authority to require all remote sellers to collect taxes on all remote sales.

^aIncludes catalog, mail-order, call center, and television shopping channel retail companies.

^bMerchant wholesale e-commerce sales includes manufacturers' sales branches and offices, but excludes agents and brokers, and excludes sales made via electronic data interchange networks.

GAO estimated that state and local governments could gain from about \$8 billion to about \$13 billion in 2017 if states were given authority to require sales tax collection from all remote sellers. This is about 2 to 4 percent of total 2016 state and local government general sales and gross receipts tax revenues.

Some businesses would likely see increases in several types of costs if required to collect taxes on all remote sales. These costs would be higher for businesses not currently experienced in multistate tax collection. Officials from state revenue departments told us that they generally do not anticipate major administrative costs or challenges if given the authority to require businesses to collect tax on all remote sales.

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Abbreviations

B2B	business-to-business
B2C	business-to-consumer
CPA	Certified Public Accountant
NAICS	North American Industry Classification System

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November 16, 2017

The Honorable Ron Wyden
Ranking Member, Committee on Finance
United States Senate

The Honorable Jeanne Shaheen
Ranking Member, Committee on Small Business and Entrepreneurship
United States Senate

Over the past two decades, electronic commerce (e-commerce) sales have grown rapidly, but, under current law, states cannot require all e-commerce businesses to collect taxes on sales to residents of their states.¹ Congress has been considering proposals that would allow this. In 2000, when we last looked at remote sales, we found that the data available at the time were not well suited to track rapidly evolving Internet activity.²

Today, even with better information on the potential revenue losses, debate still exists over both estimates of lost revenue to states and on the ability of all businesses—particularly small businesses and businesses in states that do not have sales taxes—to collect and remit taxes to jurisdictions across the country in a cost-effective way. There is also uncertainty about the costs and other challenges of expanded collection that could be incurred by state revenue agencies.

You asked us to review the effects on businesses and state revenue agencies of legislation that would grant states the authority to require businesses to collect and remit taxes on all remote sales. This report (1) estimates how much revenue state and local governments could gain by being able to collect taxes on sales made by all remote sellers, (2) describes what is known about the costs and challenges remote sellers experience in trying to comply with current state tax laws, and how those costs and challenges might change if states were given the authority to require businesses to collect on all remote sales, and (3) describes what

¹*Quill v. North Dakota*, 504 U.S. 298, 318 (1992).

²GAO, *Sales Taxes: Electronic Commerce Growth Presents Challenges; Revenue Losses are Uncertain*, [GAO/GGD/OCE-00-165](#) (Washington, D.C.: June 30, 2000).

is known about costs and challenges states face in requiring remote sellers to collect taxes.

To estimate the revenue that state and local governments could gain by being able to collect taxes on all remote sales, we updated a model we originally developed in 2000 to perform similar analyses. We used data—that we determined to be reliable—on the volume and composition of Internet and other remote sales, the taxability of remote sales, and the extent to which sellers already collect and purchasers already pay tax on remote sales. Detailed information about our methodology, including the data sources we used, is provided in appendix I.

To identify the types of costs and challenges that businesses will likely face if required to collect and remit taxes on all remote sales, we reviewed literature, conducted market research on software used by businesses to facilitate tax collection, and identified knowledgeable parties from whom we could solicit information. We interviewed representatives from 12 legal, advocacy, or accounting groups and we solicited them for contacts in the remote sellers' business community whom we could interview. We reviewed witness testimony before congressional committees on the subject of remote sales to understand the costs associated with sales and use tax collection as well as to identify groups and individuals to interview. We interviewed a non-generalizable sample of more than 20 businesses or their representatives. This includes businesses of different sizes, from different industries, and included businesses with and without sales tax obligations. We also attended conferences of the American Bar Association and the American Catalog Mailers Association where the topic of remote sales tax collection was discussed.

To describe what is known about costs and challenges that state revenue agencies might face in requiring all remote sellers to collect taxes, we interviewed representatives from the National Conference of State Legislatures, the Federation of Tax Administrators, the Multistate Tax Commission, and the Streamlined Sales Tax Governing Board. Between February and October 2017, we monitored tax industry publications to identify state actions to increase tax collections on remote sales, like bills debated in state legislatures or administrative rules promulgated by state revenue agencies. As state legislatures debated, and in some cases, enacted these proposals, we reviewed revenue and cost estimates developed by legislative budget offices or state revenue agencies to help us identify the types of potential costs and challenges associated with these new actions. For additional data and insights, we interviewed

officials from five state revenue agencies including three states that had recent experience with changing their laws or regulations related to remote sales tax collection.

We subjected our work to third-party review by noted specialists in the field of tax policy. These experts agreed with the general approach that we followed in making our estimates. The experts confirmed that uncertainty surrounds many of these factors incorporated into the model.

We conducted this performance audit from September 2016 to November 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Forty-five states and the District of Columbia levy sales taxes on the sale of goods and services.³ Of these, thirty-seven states also have local sales taxes at the county or municipal level. Five states do not have statewide sales taxes: Alaska, Delaware, Montana, New Hampshire, and Oregon.⁴ Tax policy specialists have cited figures as high as 12,000 and as low as 10,000 for the number of tax jurisdictions in the United States—each with potentially different tax rates, different rules governing tax-exempt goods and services, different product category definitions, and different standards for determining whether an out-of-state seller has a substantial presence (referred to as nexus) in a state.

On average, states receive about one-third of their total tax collections from general sales taxes. However, reliance on sales taxes varies considerably across states. Five states that do not have a broad-based individual income tax—Florida, Nevada, South Dakota, Tennessee, and Texas—collect more than half their tax revenue from general sales

³For this report, we are referring to general taxes on the sale of goods and services.

⁴Alaska and Montana do not have statewide sales taxes but do have local sales taxes.

taxes.⁵ As of January 1, 2017, most state sales tax rates were about 6 percent, although analysis prepared by the Tax Foundation shows that five states—Alabama, Arkansas, Louisiana, Tennessee, and Washington—had average combined state and local tax rates close to or above 9 percent.⁶

Generally, businesses are required to collect sales taxes on goods and services sold to in-state consumers at the time of the purchase, and remit those taxes to the state, and sometimes local government, revenue office.⁷ The growth of e-commerce has greatly increased the likelihood of businesses selling to out-of-state customers. In 1992, the U.S. Supreme Court ruled in *Quill v. North Dakota* that a state can only require a business to collect and remit sales tax if the business has substantial presence, referred to as nexus, in that state.⁸ However, the decision

⁵On the basis of U.S. Census Bureau data, Washington State also collects more than half its tax revenue from general sales taxes. However, Census data includes gross receipts taxes that are closer to business taxes than to general sales taxes. There are additional reasons why the Census data for general sales tax revenues are not strictly comparable across states. See, John L. Mikesell, “Disparities in State Retail Sales Taxes in Fiscal 2016,” *State Tax Notes Magazine*, July 24, 2017.

⁶The Tax Foundation publishes data on combined state and local sales tax rates by state using U.S. Census population data to calculate weighted average local rates. See Jared Walczak and Scott Drenkard, “State and Local Sales Tax Rates in 2017,” *Tax Foundation Fiscal Fact*, No. 539, January 2017.

⁷Generally, states require that in-state sellers collect sales tax on goods and services at the point of sale. States can require that out-of-state sellers collect an equivalent “use tax” on the sale of goods and services if the sellers have substantial presence (nexus) in the state. The use tax, which complements the sales tax, is imposed on the purchaser for the privilege of use, ownership, or possession of tangible goods or services. For this report, and in keeping with common usage, we generally use the term “sales tax,” when technically the correct term would be “use tax,” when referring to the tax remote sellers could be required to collect on sales to out-of-state customers. We use the term “use tax” when referring to the taxes that consumers self-remit on their purchases.

⁸504 U.S. 298 (1992). Out-of-state sellers generally meet nexus standards if they have an office or place of business, agent, or significant property in the taxing state.

stated that Congress could pass legislation to overrule the *Quill* decision.⁹ Legislation has been proposed to expand states' tax collection authority to all remote sales, but no bill has received enough support to pass both the Senate and the House of Representatives.¹⁰ Some of the legislation has included provisions for small seller exemptions, free software, liability protection, and transition periods.

In general, under present law in states with sales taxes, if the seller does not have nexus in a state, and is therefore not required to collect tax, then the consumer is required to pay a use tax in the same amount. Although functionally similar to a sales tax, the use tax is a tax levied on the consumer for the privilege of use, ownership, or possession of taxable goods and services. However, consumer compliance rates for use tax remittance are estimated to be very low.¹¹

State Activity

With the growth in e-commerce, states have increased their enforcement activities to collect sales tax from residents who make purchases from out-of-state businesses. A few states have passed laws or changed regulations that directly challenge or test the limits of the 1992 *Quill v. North Dakota* decision—most notably, Alabama, Colorado, and South Dakota—to increase tax collections on remote sales. In reviewing testimony and tax industry publications, we found that states have also sought additional revenue through more indirect approaches, such as

⁹The court explained: “This aspect of our decision is made easier by the fact that the underlying issue is not only one that Congress may be better qualified to resolve, but also one that Congress has the ultimate power to resolve. No matter how we evaluate the burdens that use taxes impose on interstate commerce, Congress remains free to disagree with our conclusions.” 504 U.S. at 318. The Court also considered in *Quill* whether North Dakota’s statute violated the Due Process Clause and held that *Quill* purposely availed itself of the benefits of the economic market in North Dakota and those contacts were more than sufficient for due process purposes. While Congress could overturn the Commerce Clause holding in *Quill*, Congress cannot authorize violations of the Due Process Clause. 504 U.S. at 305–308.

¹⁰See Marketplace Fairness Act of 2017, S. 976, 115th Cong.; Remote Transactions Parity Act of 2017, H.R. 2193 115th Cong. The Senate passed a version of the Marketplace Fairness Act in 2013, but the House of Representative did not take action on an equivalent or similar bill.

¹¹A 2015 study prepared for the Minnesota legislature observed that in the 27 states that allow taxpayers to pay use taxes on their state income tax returns, only about 1 to 2 percent of returns included use taxes. See, Minnesota House of Representatives, “Use Tax Collection on Income Tax Returns in Other States,” updated 2015, www.house.leg.state.mn.us/hrd/pubs/usetax.pdf, accessed March 20, 2017.

asserting jurisdiction on the basis of nexus to include “affiliate nexus” and “click-through nexus.”¹²

Colorado for instance enacted a law requiring retailers who do not collect taxes on sales to Colorado customers to notify those customers of their use tax obligations and send an annual report on customers’ purchases to the state revenue agency.¹³ The revenue agency could then use this information to identify which purchasers have a use tax obligation.

South Dakota took a different approach aimed at overturning the *Quill* decision. In 2016, the legislature passed a law requiring out-of-state businesses meeting certain criteria to collect and remit sales tax on purchases made by South Dakota residents.¹⁴ The state supreme court ruled on September 13, 2017, that the law violated *Quill*.¹⁵ On October 2, 2017, South Dakota filed a petition for a writ of certiorari with the U.S. Supreme Court.

Alabama promulgated a regulation in September 2015 requiring out-of-state retailers who made \$250,000 or more in sales to Alabama residents annually, or who conducted one or more statutorily defined activities, to

¹²Affiliate and click-through nexus laws apply a collection obligation to a remote business on the basis of affiliated third parties within a state acting to promote that business’s products. For example, some online retailers pay independent online affiliates (bloggers or small website owners) a commission for each customer who makes an online purchase after clicking a link on the affiliate’s webpage.

¹³Colo. Rev. Stat. § 39-21-112(3.5)(d). The law includes exemptions for smaller sellers with less than \$100,000 in annual sales to Colorado residents. The Direct Marketing Association challenged the statute on the grounds that the state law discriminated against out-of-state businesses because it only required them to make these notifications. The Tenth Circuit disagreed and ruled for the state, holding that the statute did not discriminate between in- and out-of-state businesses, but between businesses who collected the tax and those that did not. *Direct Mktg. Ass’n v. Brohl*, 814 F.3d 1129, 1133 (10th Cir. 2016). Several out-of-state businesses collected the tax and so were not subject to the notification requirement. Since the Colorado case was decided, Louisiana, Vermont, and Washington have enacted similar laws.

¹⁴S.B. 106, 2016 Legis. Assemb., 91st Sess. (S.D. 2016). The law requires out-of-state businesses with more than \$100,000 in annual sales, or 200 or more transactions, to South Dakota residents to collect and remit sales taxes. The law was passed in response to a statement by U.S. Supreme Court Justice Anthony Kennedy expressing interest in overturning *Quill*. The state passed the law to serve as the vehicle for the U.S. Supreme Court to take up the case.

¹⁵*South Dakota v. Wayfair Inc.*, 2017 S.D. 56.

collect and remit sales tax.¹⁶ A suit was filed with the Alabama Tax Tribunal, but no decision has been made.

New York took a different route passing a “click-through” nexus law in 2008.¹⁷ Some out-of-state retailers enter into agreements with local online retailers to advertise the local retailer’s merchandise on the out-of-state retailer’s website. Because the agreement was with an in-state vendor, the law defined that to be a sufficient nexus to impose sales tax on the out-of-state-vendor. Several companies unsuccessfully challenged the statute.¹⁸

A few state governments have taken action to increase tax collection from e-marketplace sellers. As of October 2017, two states (Minnesota and Washington) had passed laws imposing new requirements on e-marketplace companies to collect sales taxes on behalf of the sellers using their e-marketplace platforms.¹⁹ Some states have asserted that the warehousing of goods and fulfillment of orders from within a state is enough to create nexus, and therefore a requirement to collect taxes on sales to customers in that state.²⁰ To enforce compliance, we found that at least three state revenue agencies have been seeking sales, shipping or location data about goods sold through e-marketplaces.

¹⁶Ala. Admin Code r. 810-6-2-.90.03 (2015).

¹⁷N.Y. Tax Law § 1101(b)(8)(vi).

¹⁸*Overstock.com, Inc. v. New York State Dep’t of Taxation & Fin.*, 987 N.E.2d 621, 624 (N.Y. 2013). The New York Court found that because the local retailer was present in the state, the physical presence requirement was met. A petition for writ of certiorari to the U.S. Supreme Court was denied.

¹⁹The Washington law is scheduled to go into effect on January 1, 2018. 2017 Wash. Sess. Laws 2588–2614. The Minnesota law will not go into effect until 2019, or sooner if the U.S. Supreme Court reverses its *Quill* decision. 2017 Minn. Sess. Laws ch. 1, art. 3, §§ 9-12, 44.

²⁰An e-marketplace company can provide fulfillment services to its sellers whereby a seller’s goods can be stored in the e-marketplace company’s regional warehousing and sorting centers.

Taxes are Collected on Most Remote Sales, but States Could Gain Additional Revenue with the Authority to Require All Businesses to Collect Taxes

State and Local Governments Are Able to Collect Taxes on More Than Half of Sales

We estimate that state and local governments can, under current law, require remote sellers to collect about 75 to 80 percent of the taxes that would be owed if all remote sellers were required to collect tax on all remote sales at current rates.²¹ We found that the extent to which state and local governments can, under current law, require businesses to collect taxes on remote sales varies with the type of remote seller (as shown in table 1). For business-to-consumer (B2C) remote sales, we found that the percentage of taxes already being collected by sellers (which we call the “seller collection rate”) was generally higher for Internet retailers than for other types of remote sellers like catalog retailers or e-marketplaces.²²

²¹In 1992, the U.S. Supreme Court ruled in *Quill v. North Dakota* that a state can only require a business to collect and remit sales tax if the business has substantial presence, referred to as nexus, in that state.

²²For our revenue estimates, we defined e-marketplaces as companies that, via the Internet, arrange for the purchase or sale of goods owned by other individual sellers, but do not take title to those goods.

Table 1: GAO Low and High Scenario Estimates of 2017 E-commerce and Other Remote Sales, and Percent of Taxes State and Local Governments Can Collect from Remote Sellers under Current Law

	2017 estimated sales (dollars in billions)		Percent of sales taxes collectible	
	Low scenario estimate	High scenario estimate	Low scenario estimate	High scenario estimate
Business-to-consumer (B2C)				
Internet retailers	339	318	86%	78%
E-marketplace sellers	85	106	33%	14%
Other remote retailers ^a	58	61	64%	58%
Business-to-business (B2B)				
Merchant wholesale e-commerce ^b	714	729	n/a	n/a
(less exempt intermediate goods)	(428)	(364)	n/a	n/a
Adjusted B2B sales	285	364	94%	85%

Legend:
n/a = not applicable

Source: GAO analysis of Forrester Research, Internet Retailer, U.S. Census Bureau, and company financial data. | GAO-18-114

Note: Percentage of sales taxes collectible is: (1) the estimated taxes state and local governments can currently collect from remote sellers due to remote sellers having a substantial presence (nexus) in, or collection agreements with, a state, divided by; (2) the estimated potential taxes state and local governments could collect from having authority to require all remote sellers to collect taxes regardless of nexus.

^aIncludes catalog, mail-order, call center, and television shopping channel retail companies.

^bMerchant wholesale e-commerce sales includes manufacturers' sales branches and offices, but excludes agents and brokers, and excludes sales made via electronic data interchange networks.

Based on our analysis of nearly 1,000 Internet retail companies, we estimate that about 80 percent of the potential revenue from requiring all Internet retailers to collect is already collectible.²³ Many of the largest Internet sellers are established retail chains or consumer brands with a physical presence, such as retail stores, in all, or nearly all, of the 45 states (plus the District of Columbia) that have a statewide sales tax. As noted earlier, under current law, if a remote seller has a substantial presence (referred to as nexus) in a state, the seller is required to collect

²³We analyzed data from Internet Retailer on the top 1,000 companies in 2017. Appendix I provides more information on the data sources we used and our methodology for estimating state and local government revenue gains. For the purpose of this report, collectible tax revenue is what states have the authority under current law to require sellers to collect. Our analysis did not examine actual seller compliance rates.

taxes on remote sales into that state.²⁴ In addition, even without being required to, some large Internet retailers have entered into agreements with states to collect applicable taxes on all their Internet sales, regardless of physical presence.

The rise of e-marketplaces, such as eBay, Etsy, and Amazon Marketplace, has complicated nexus determinations. At these marketplaces, sellers can access large customer bases and utilize the marketing and distribution services of the marketplace platform, often for a fee. Certain states can rely on inventory stored within their borders as sufficient nexus to impose taxes. This has included sellers using a large marketplace's fulfillment services. As a result, to properly collect and remit taxes, sellers using marketplace fulfillment services need information on where their inventory is stored.

While we estimated the seller collection rate to be relatively high for the category of Internet retailers (about 80 percent), we found it to be lower for other types of B2C remote sellers. For example, we estimate that e-marketplace sellers are currently collecting 14 percent of the taxes on their sales, in our highest potential revenue gain estimate, to up to 33 percent, in our lowest potential revenue gain estimate. For other types of remote retailers, such as mail-order companies, we estimate that they are currently collecting tax on 58 percent of their sales in our highest potential revenue gain estimate and up to 64 percent of their sales in our lowest potential revenue gain estimate (as shown in table 1).

Although business-to-business (B2B) sales account for a larger share of total e-commerce than B2C sales, potential state and local government revenue gains from taxing all of these sales is less because fewer B2B sales are taxable, and seller collection rates are higher (as shown in table 1). We estimate that about half of all wholesale e-commerce purchases involve businesses purchasing raw materials or other intermediate goods that are then manufactured or incorporated into a final product. These purchases of intermediate goods are generally exempt from state and local government taxes because only the final sale to the end consumer

²⁴Some states in recent years have asserted that affiliated businesses of out-of-state sellers, and marketing relationships between out-of-state sellers and in-state websites or blogs, create nexus sufficient to impose sales tax collection requirements.

would be taxable.²⁵ For the remaining taxable B2B purchases, we estimate that the seller collection rates are between 85 percent for those sales in our highest potential revenue gain estimate and 94 percent in our lowest potential revenue gain estimate.

Potential Revenue Gain across All States for 2017 is about \$8 billion to \$13 billion Based on our Low and High Scenario Estimates

Based on the seller collection rates we estimated using high and low scenarios to illustrate the effect of underlying uncertainties, we determined that state and local governments could potentially gain about \$8 billion based on our low scenario to about \$13 billion, based on our high scenario, in 2017 if they were given expanded authority to require sales tax collection from all remote sellers. Table 2 presents our range of estimates. Appendix II presents our range of estimates for each of the 45 states plus the District of Columbia that have a statewide sales tax. Our estimates range from more than \$1 billion for more populated states like California and Texas to about \$20 million for less populated states like Vermont and Wyoming. The average gain is about \$200 million.

²⁵If a business pays sales taxes on intermediate goods and raw materials, then the tax becomes part of the price of that business's final goods. Taxing both the sale of intermediate goods and final products results in what economists call tax pyramiding. Some states like Hawaii, New Mexico and South Dakota tax the sale of many business-to-business intermediate goods and services.

Table 2: GAO Low and High Scenario Estimates of State and Local Government 2017 Potential Revenue Gains from Expanded Tax Collection Authority on Remote Sales

Dollars in billions		
	Low scenario estimate	High scenario estimate
Business-to-consumer (B2C)		
Internet retailers	3.2	4.8
E-marketplace sellers	3.9	6.2
Other remote retailers ^a	1.5	1.8
(less consumer use tax compliance)	(0.2)	(0.2)
B2C total	8.4	12.5
Business-to-business (B2B)		
Merchant wholesale e-commerce ^b	1.0	2.9
(less business use tax compliance)	(0.9)	(2.0)
B2B total	0.1	0.9
Grand total (B2B + B2C)	8.5	13.4

Source: GAO analysis of Forrester Research, Internet Retailer, U.S. Census Bureau, and company financial data. | GAO-18-114

Note: Totals may not sum due to rounding. These estimates are the potential revenue state and local governments could gain in calendar year 2017 if granted the legal authority to require all remote sellers to collect taxes on all remote sales.

^aIncludes catalog, mail-order, call center, and television shopping channel retail companies.

^bMerchant wholesale e-commerce sales includes manufacturers' sales branches and offices, but excludes agents and brokers, and excludes sales made via electronic data interchange networks.

In aggregate, our national estimate of about \$8 billion (low scenario) to about \$13 billion (high scenario) represents about 2 to 4 percent of total state and local government general sales tax revenues. According to data from the U.S. Census Bureau, state and local governments in 2016 collected about \$377 billion in general sales and gross receipts taxes.²⁶

Larger States Collect Taxes on a Greater Share of Remote Sales than Smaller States

We found that the extent to which state and local governments can require remote sellers to collect taxes varies by state. Based on analyses of remote sellers' nexus locations, we estimate that some of the largest states (in terms of population) can currently require sellers to collect about 80 to 90 percent of the taxes these states could collect with

²⁶U.S. Census Bureau, *Quarterly Summary of State and Local Government Tax Revenue for 2017: Q1*, released June 20, 2017, available at: <https://www.census.gov/programs-surveys/qtax.html>. Census data includes gross receipts taxes that are closer to business taxes than to general sales taxes.

expanded authority on all remote sales. In contrast, we estimate that some smaller states can only require sellers to collect and remit about 60 to 70 percent of the taxes they could collect on all remote sales. The difference is based on the greater likelihood of Internet retailers having a physical presence in larger states.

We researched store locations and sales tax policies for the largest 100 Internet retailers identified by researchers at Internet Retailer.²⁷ We found that about 85 percent of these Internet retailers had store locations in, or stated on their websites that they were collecting sales taxes for, California and New York. By contrast, about 55 percent of these large Internet retailers had stores or were collecting in less populated states like North Dakota and Wyoming.

For smaller Internet retailers with only one location, we also found that a disproportionate share of them were located in larger states. Based on our analysis of more than 400 Internet retailers with only one location, we found that 19 percent were located in California and 12 percent in New York. With Internet retailers and other remote sellers less likely to have a physical presence in less populated states, smaller states are at a disadvantage compared to larger states in their ability to require remote sellers to collect taxes on all sales into their states.

About Half of Potential Revenue Gains Could Come from Tax Collections on E-Marketplace Sales

We estimate that nearly half of potential revenue gains to state and local governments would result from collecting sales taxes on all e-marketplace sales. To date, e-marketplaces have not been obligated to collect state sales taxes on behalf of sellers. Instead, like with all remote sellers, individual sellers who have title to the goods being sold through an e-marketplace are required to collect tax on sales to states in which they have nexus. However, we identified two states that have recently taken action to attribute a collection obligation to the e-marketplace.

Through our review of tax industry publications and interviews with tax practitioners, we learned that some individual sellers have difficulty

²⁷Internet Retailer—a product of market research company Digital Commerce 360—provides annual rankings and other statistics on e-commerce companies. We excluded five companies from the first 100 on Internet Retailer's 2017 Top 1000 list: three of the companies were coin and bullion sellers whose sales are generally tax-exempt; one company had been acquired in 2015 by another retailer on the list; and one company was an e-marketplace whose sales we analyzed separately. Our analysis is based on 95 of the top 100 plus all remaining 900 companies. See appendix I for more information on our methodology.

Compliance with Use Tax on Most Remote Purchases is Low for Individual Taxpayers, but High for Businesses

obtaining information from the e-marketplace companies on where their goods might be stored. While the three large e-marketplaces that we interviewed offer their sellers additional services that help sellers calculate and collect sales taxes, not all sellers take advantage of this service. None of the e-marketplaces that we interviewed could provide us data on the extent to which their sellers currently collect sales tax. Given the lack of available data, we made a conservative estimate of potential revenue gains to states if given the authority to require all e-marketplace sellers to taxes on all their sales. If e-marketplace sellers are currently collecting less tax than we assume in our model, the actual potential revenue gain to states would be higher than the estimate we provide in this report.

Because state and local governments currently do not have the authority to require businesses to collect tax on all remote sales, states generally require taxpayers who were not charged a tax on their purchases from out-of-state vendors to pay a use tax on those purchases.²⁸ However, with the exception of purchases that are required to be registered with the state, such as vehicles, voluntary compliance is generally thought to be extremely low. For those states that permit taxpayers to report use taxes on their income tax returns, it is estimated that only about 1 to 2 percent of returns include use tax payments.²⁹ Unlike estimates for individual compliance with use tax, estimates for business compliance are high, ranging from 70 to 90 percent.³⁰ Some tax practitioners we interviewed told us that businesses routinely retain records of their taxable and tax-exempt purchases, including remote purchases, and are more likely to be compliant with any use taxes.

²⁸Some states with statewide income taxes permit taxpayers to pay use taxes when filing income tax returns, whereas other states require taxpayers to file a separate use tax form. A few states also have de minimis exemptions for low dollar amount out-of-state purchases, and some states allow taxpayers who have not kept complete records of out-of-state purchases to estimate the use tax owed.

²⁹Minnesota House of Representatives, "Use Tax Collection on Income Tax Returns in Other States," updated 2015, www.house.leg.state.mn.us/hrd/pubs/usetax.pdf, accessed March 20, 2017.

³⁰Washington State Department of Revenue, "2016 Compliance Study," June 1, 2016. California Board of Equalization, "Electronic Commerce and Mail Order Sales," April 4, 2017. Mississippi Public Universities Research Center, "Projections of Mississippi Use Tax Revenue Lost from Remote Sales," January 2017. Vermont Legislative Joint Fiscal Office, "Remote Sales Tax Presentation" before the House of Representatives Committee on Ways and Means, January 12, 2017.

We identified at least four states that have begun implementing new laws intended to increase consumer use tax compliance. Under these “notice and reporting” laws, remote sellers not collecting taxes on out-of-state sales are required to notify customers that they may be liable for use taxes to their home state. The states are also requiring remote sellers to send their out-of-state customers an annual summary of all purchases for which sales tax was not collected. Data from these annual summaries are shared with state revenue agencies that can use this information for enforcement purposes. Data were not yet available to estimate the revenue effects of these new programs. As we have previously reported, tax compliance is generally much higher when there is third-party reporting of information to the revenue agency.³¹ We expect that state collection of third-party information will achieve similar results.

Some Businesses Would Likely Incur Several Types of Costs If Required to Collect Taxes on All Remote Sales

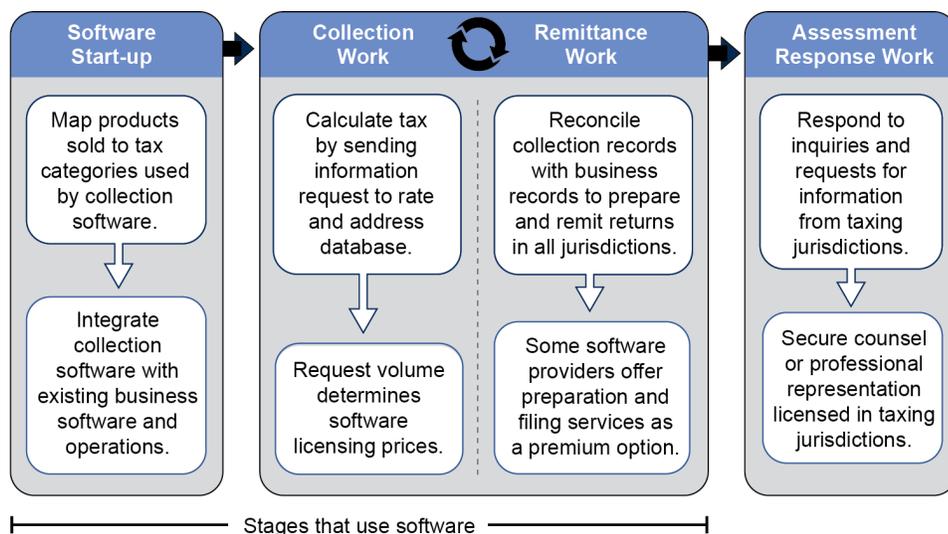
We identified various costs associated with typical steps involved in multistate sales tax collection. We group these costs into three broad categories: software related costs, audit and assessment compliance costs, and costs associated with research and liability. We found that businesses with limited experience in multistate tax collection and those that lack software systems designed to facilitate multistate tax collection would incur the highest costs under such a scenario.

Representatives from a large national chain and a trade group representing retailers told us that, generally speaking, larger retailers and those that primarily engage in brick-and-mortar retailing believe that expanded state authority would end the unfair advantage that remote retailers gain by not collecting sales tax on their out-of-state sales. Those familiar with multistate collection explained that because the software used for multistate collection is easily scaled up, retailers already using such systems, would incur few challenges to adapt to this expanded authority. Further, larger retailers that already collect in many states would already have the systems in place for collection under expanded authority. We also identified state and national efforts for simplifying tax collection for businesses. These efforts show potential for mitigating the expected costs, but much depends on the specifics of any legal changes.

³¹GAO, *Tax Gap: Sources of Noncompliance and Strategies to Reduce It*, [GAO-12-651T](#) (Washington, D.C.: Apr. 19, 2012).

Our research found that a number of commercial software offerings are available to assist businesses with collecting sales taxes in multiple states. Two people familiar with the use of tax software told us that although many standard business software products generally include some sales tax functionality, these systems do not always fully support businesses selling in multiple tax jurisdictions. As a result, sellers with more widespread collection obligations typically use specialized multistate sales tax software. A representative from a Certified Public Accounting (CPA) firm explained that costs are incurred both when businesses collect sales tax from customers, and when they remit the tax to the appropriate state revenue department. In some instances, there are also start-up costs that businesses incur prior to tax collection, as well as audit or assessment costs that occur after tax collection. Figure 1 summarizes these steps and can help inform the discussion of the specific costs.

Figure 1: Start-up, Collection, Remittance, and Response Activities for Software Assisted Multistate Tax Collection



Source: GAO analysis. | GAO-18-114

Businesses Selling Remotely May Incur High Upfront Costs to Establish Software for Multistate Tax Collection

The cost of both collecting and remitting sales tax rises with increased exposure to tax jurisdictions. As the number of jurisdictions for which a business collects taxes increases, the amount of administrative work also increases. Businesses will have to prepare and file a greater number of returns, license more functionality from the collection software they use, and collect tax on a greater number of sales. All of these actions add additional costs to a business's operations.

While all sellers would incur these additional costs, costs will be highest for those that do not already use software for multistate tax collection. This is especially true for those selling goods treated differently by different states and those that do not use easily-integrated software. Costs for collection software include, start-up costs, licensing fees, administrative costs, and options for premium services, such as preparing or automatically filing sales tax returns. Start-up costs are the costs associated with setting up the software for first use.

Tax practitioners told us that software is necessary for multistate collection because of the complexity created by unstandardized requirements across jurisdictions. As we note above, tax policy specialists have cited figures as high as 12,000 and as low as 10,000 for the number of tax jurisdictions in the United States. In addition to differences that exist among the tax codes of the 45 states and the District of Columbia with statewide sales taxes, many local bodies have the power to impose additional sales taxes on purchases within their jurisdictions.

Some tax practitioners that we interviewed said that mapping and system integration related to the necessary software for multistate collection are the most costly of the start-up activities. Mapping requires coding all of a business's product offerings to the taxation categories used by the software. One software provider told us that generally, these software products do not require businesses to research the legal categorization in each state's laws; however, it does require businesses to categorize products with sufficient precision for the software to assign its tax status based on state laws. For example, apparel is treated differently across states. Pennsylvania exempts clothing, except for formal apparel; items made of real, imitation, or synthetic fur; and athletic apparel. Across the border, New York State exempts clothing sold for less than \$110; however, some jurisdictions do not apply these exemptions and charge a local sales tax on these items.

The initial product mapping required before using multistate tax software can be labor intensive. As such, we expect that businesses setting up software for the first time, and selling goods which states treat differently will have more labor-intensive product-mapping work. Some software providers offer consulting services to assist businesses with mapping their offerings. Software providers, however, treat these services as a premium option so businesses will generally incur extra costs for using these services.

Several people familiar with the use of sales tax software said that errors in mapping products can expose businesses to liability in the form of uncollected taxes.³² Recognizing the wide variations in sales tax laws, a group of states launched the Streamlined Sales Tax Initiative in 1999. The initiative was designed to standardize these variations and provide software assistance to make it easier for businesses to comply with state and local sales and use tax laws. This initiative sought to shield businesses from liability by directing software providers participating in the effort to complete mapping for businesses and assume liability for errors. However, more recent changes allow software providers to negotiate these issues directly with their business clients. According to a representative of the Streamlined Sales Tax Governing Board, 24 states have passed legislation to conform to the Streamlined Sales and Use Tax Agreement.³³ These states account for a third of the United States population, but many of the largest states (in terms of population) are not fully participating.

Software integration, or establishing a connection between existing business software and the new multistate tax software, will be required for businesses that begin to use multistate tax software. Two software providers we spoke with said that they have already created integration modules for the most common business software packages in use today. One explained that integration with these common business systems is generally the least expensive and may come at no cost to the business. However, businesses using customized software or software that is not in common use may see higher costs to integrate these systems. Some businesses may need to integrate several systems with the collection software. This integration may be required for transactions such as processing sales through different retail channels or ensuring that merchandise returns are removed from existing collections.

Businesses will also face additional costs to license the necessary software functionality from the provider. A public accounting firm told us that these on-going licensing fees are generally lower in the first year,

³²A trade group representative also told us that in some states, over-collection of taxes may expose businesses to liability from class-action lawsuits brought by over-charged customers.

³³Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

than the one-time costs associated with mapping and integration.³⁴ Licensing costs generally are a function of the volume of information requests sent to the tax database maintained by the software provider.

In estimating costs to license multistate collection software, online businesses must consider both the number of completed transactions they anticipate as well as the browsing behavior of those using their websites. A CPA firm we interviewed explained how these software packages work. Whenever a business website calculates a sales tax amount, it does so by sending an information request to a rate and address database maintained by the software provider. Importantly, this process is often an automated function of the “shopping cart” system, which may calculate a sales tax amount whenever a customer changes the goods in the shopping cart, even in the absence of a completed sale. As such, businesses must account for both completed transactions as well as how often customers change the bundle of goods in the online shopping cart. For example, customers may use shopping carts while comparison shopping on different websites. Our market research found licensing costs as low as \$12 per month for up to 30 information requests each month, and as high as \$200,000 per year for unlimited information requests.

Businesses and others familiar with sales tax software told us that licensing fees are only one of multiple costs required to collect sales taxes in multiple states. As such, simplification proposals that include provisions for states to pay these licensing fees may not mitigate significant costs to businesses transitioning to software assisted multistate collection. Businesses will still incur start-up costs and additional administrative costs, even when states pay the licensing fees on the use of the software. Even under such proposals when software comes with no licensing fees, mapping can be labor intensive for businesses selling products that state tax laws treat differently, and integration can create costs for businesses using custom software or software that is not widely used. Further, for software to reduce administrative costs, it must be integrated with more than just a business’s shopping cart system. However, simplification proposals that only cover software licensing costs and integration with the shopping cart system may leave businesses with the costs of a more extensive integration. Businesses would either have to incur additional costs to

³⁴Businesses may experience additional mapping and integration costs after start-up if they expand their product line or make changes to their software, among other reasons.

better integrate sales tax software with existing business information systems (such as a general ledger accounting system), or regularly reconcile receipts and records manually to prepare sales tax returns for all states where it makes sales.³⁵

Additional costs for software include administrative costs associated with use of the software. These costs are incurred because even automated software requires some administrative work by staff. The use of optional premium services offered by software providers may further reduce these administrative costs, but increase software costs in the process. Administrative costs tend to be highest, as a proportion of taxes collected, for the smallest sellers. Some businesses told us that collecting sales tax in all jurisdictions where they have customers would increase staffing costs, even when collection is facilitated by software. Premium services commonly offered by software providers assist businesses with preparing and filing tax returns. While electing to use these services may save businesses labor costs, they incur additional fees to use these premium services.

We interviewed several businesses based in states that do not collect a sales tax. They told us that they are already researching software options should the need to collect sales tax on all remote sales arise. These businesses told us that they have little experience with collecting sales tax. As reported above, in the first year, start-up costs for the software are much higher than the on-going licensing fees. Businesses that do not need to collect sales tax in their own state may be less likely to already have multistate tax collection software or in-house expertise.

Businesses May Incur Increased Audit and Assessment Costs as Exposure to Collecting Jurisdictions Grows

If states are allowed to require businesses to collect tax on all remote sales, businesses we spoke with expect audit and assessment related costs to rise because of increased exposure to more tax jurisdictions. Attorneys told us that state revenue departments also employ other low-cost enforcement tools that create compliance costs. Officials from three state revenue departments that we spoke with said that they primarily focus their audits on large businesses because audits are resource

³⁵States require businesses to file sales tax returns regularly. Monthly or quarterly filings are common. For instance, North Carolina allows businesses with consistent tax liabilities of less than \$100 per month to file quarterly, with the approval of the Secretary of Revenue.

intensive. Officials from one agency acknowledged that other enforcement tools, such as a letter audit, require fewer resources to use.

Some businesses told us that they already expend significant resources responding to audits on sales tax collection and remittance. These costs include making staff available, developing justification for tax claims, and complying with document or information requests. A representative from the tax department of one company with nexus in most states said that auditors return every few years to audit the company and that they are currently contending with 8 to 10 audits from different tax authorities. They expect audit related costs to grow with exposure to more jurisdictions and that will require hiring additional staff. Another business we spoke with said they had just dealt with an expensive audit that lasted 3 years. They reported that they do not have the resources to comply with similar audits from other jurisdictions.

We interviewed 11 businesses, attorneys, or representatives from the business community who said that fear of increased audits, should states gain expanded authority to tax remote sales, is a legitimate concern for businesses. Attorneys we spoke with offered several reasons that small- and medium-sized businesses will be audited should states gain the authority to tax remote sales. One explained that sales tax audits of small businesses often identify non-compliance and produce revenue. Another said that assessments prepared by revenue offices generally carry a presumption of accuracy. In practice, this places the burden of proof on the retailer to rebut claims made by revenue offices. However, some state revenue departments we spoke with said that they do not expect their audit resources to increase and therefore would be spread more thinly if states are allowed to require businesses to collect tax on remote sales. Two state revenue offices explained that this change would mean they have a much larger universe of businesses from which to select. As such, it is unknown how frequently businesses might have to contend with concurrent audits in different states.

Travel to, and securing counsel in, remote jurisdictions would create additional costs for audited businesses that would not occur in the current environment. A business representative explained that the CPAs and attorneys they employ, or have on retainer, may not be able to represent the business in an out-of-state venue. As such, businesses would need to retain counsel qualified to practice in the assessing jurisdiction.

Two business representatives also told us that businesses may be less successful at challenging tax assessments in out-of-state courts. This

may prompt them to settle claims in an out-of-state court that they might litigate in their home state. Further, the federal Tax Injunction Act restricts businesses' ability to seek relief in federal court for matters related to state taxes.³⁶

In addition to audits, state revenue departments have many low-cost enforcement tools at their disposal. One example is the letter audit. An attorney we spoke with explained that in this process, a revenue office sends a letter to a business stating that the office suspects they owe sales taxes. The business incurs costs to prove the state wrong to avoid the assessment. In some cases, states bypass the assessment process and sue the business—arguing that the business has nexus in the state and owes tax. In conducting interviews, we found that states also send information requests and questionnaires to businesses designed to uncover whether they have nexus obligations. One representative from a trade group we spoke with said that a business will normally be responsive in order to remain in compliance with the law, despite potential uncertainty about the state's authority to collect.

Businesses we spoke with in states that do not collect a sales tax generally were not collecting sales taxes for other states, so they had little experience with a sales tax audit. Further, some businesses in these states were not tracking the legal requirements on businesses imposed by out-of-state jurisdictions. Businesses located in states without a sales tax also may incur costs to alter business practices after initial exposure to sales tax audits. This might happen because the procedures they currently use may not withstand the taxing states' scrutiny.

Businesses Incur Costs to Stay Current with Legal Requirements in Multiple Jurisdictions, but are Still Exposed to Risk

If states gain the authority to require businesses to collect tax on remote sales, businesses will have to incur costs to understand their new compliance obligations, which can differ by state or tax jurisdiction. The related liability cost increases along with an increase in exposure to more tax jurisdictions. These costs will likely increase the most for businesses that do not have established legal teams, software systems, or outside counsel to assist with compliance related questions. We identified three areas, based on interviews with businesses, where these costs are most likely to occur. First, businesses expressed concern that changes in legal precedent could expose businesses to liability for past sales. Second,

³⁶28 U.S.C. § 1341.

some businesses reported paying assessments based on contestable laws. Third, some businesses reported instances where businesses' actions created nexus that led to an unforeseen liability.

Retroactive Enforcement

The U.S. Supreme Court's 1992 decision in *Quill Corp. v. North Dakota* constrained states' ability to tax sales originating from outside the state. We identified four states that recently changed their laws in an attempt to re-litigate this decision. A representative from the business community told us that the effect of the U.S. Supreme Court potentially overturning the *Quill* decision may allow laws that are on the books in many states to be enforced. For example, Alabama's Department of Revenue told us that they have asserted jurisdiction over remote sellers under a previously unenforced law to further litigation challenging the *Quill* decision. They acknowledged that this action has the potential to allow retroactive enforcement, should the challenge succeed. However, they said the state was most interested in prospective compliance. Some businesses worry that, if legal arguments like these prevail, states will not confine themselves to prospective enforcement efforts. They fear that states could decide that businesses owe taxes from years when enforcement of the law did not impose collection obligations on out-of-state businesses.

Risk of Overpayment Due to Compliance Culture

State revenue departments mail assessments, questionnaires, and other correspondence to out-of-state businesses. These may direct businesses to provide information, pay taxes, or register to collect sales taxes. In some cases, the *Quill* decision protects businesses from obligations to comply with these directives. Nevertheless, some businesses have complied. One representative from a trade organization representing remote businesses said that the natural tendency for a business is toward compliance. This may lead them to pay or comply without thoroughly examining the strength of their legal position. He cited a state that mailed around two hundred demand notices to out-of-state businesses for unremitted sales tax. Even though he said that these businesses did not have nexus in the state, more than half of businesses remitted payment. Another business told us that they registered to collect in a state that was attempting to challenge the *Quill* decision because they judged that the cost of challenging the state's new law was likely to exceed any increased compliance costs. This business said that collecting the tax, but waiting to remit it pending the results of a legal challenge, would expose the business to penalties and interest.

Risk of Unknown Nexus Obligations

Because state tax laws are complex and subject to change, businesses may not always be aware of their obligations under state law. Our research revealed cases where businesses incurred collection obligations

unknowingly. One lawyer, whose practice represents several businesses in sales tax related issues, described a business that was contacted by a nearby state's revenue office and asked to provide information on its use of fulfillment services from a popular marketplace provider. The business downloaded a report from the marketplace provider and sent it to the revenue office. The business said that the marketplace provider had formatted the information in a way that made it uninterpretable without knowledge of the location codes it contained. The state revenue office was able to use the report to show that the marketplace's fulfillment services stored the business's property in the state. Stored property suffices to create a nexus obligation and the business received an assessment for back taxes, interest, and penalties dating back to when the property was first stored in the state. The lawyer we spoke with has seen six similar cases since that one and said that the addition of interest and penalties often doubles the amount of taxes owed.

Active monitoring of sales tax laws across the country can help businesses ensure they are compliant with all of their legal obligations. Businesses we spoke with differed in the way they conducted this research. Some undertook the research in-house. Others used software that provides updates when laws change. Some said that they require outside legal counsel to resolve difficult questions. In all cases, this research imposed additional costs on businesses.

Four businesses in states without sales taxes told us that they have incomplete research or a lack of familiarity with recent changes to state laws that impose obligations on out-of-state businesses. Businesses like these may encounter additional costs in the form of unforeseen liabilities or costs to conduct research.

Strategies Show Some Potential for Containing Risks

In the course of our research, we identified strategies with the potential to mitigate the concerns laid out above. However, much would depend on the specifics of any legal changes. These strategies include: simplification rules for collection and remittance in multiple states, small business exemptions for businesses under a certain size, transition periods for businesses to come into compliance, and limitations on lookback periods.

Simplification Rules May Help Businesses Understand Collection Obligations

Simplification rules for remote sellers could provide businesses with a single compliance requirement instead of varied requirements from the jurisdictions with the authority to assess sales tax. These rules could

lower research and compliance costs, and leave businesses less exposed to hidden liabilities. One multistate effort has created a set of simplified rules for collection and remittance. However, one attorney we spoke with said that the rationale for including and excluding certain items in the classification is unclear, and this leaves room for states to interpret the taxability in different ways. Further, some of the simplifications proposals we analyzed do not apply to state definitions of nexus. As such, it is possible that businesses might be aware of and compliant with the simplification rules, but unclear on how to structure their operations to avoid the less simple rules that come from acquiring nexus. These cases might require additional research costs and legal services to resolve and may expose a business to unforeseen liability.

Small Business Exemptions May Help Small Businesses Avoid Additional Costs

Small business exemptions would ensure that businesses with sales below a specified threshold would not be liable for taxes to remote jurisdictions. This could reduce research and liability costs for small businesses because these businesses would only have to verify that their sales were below the threshold that requires collection. However, some business representatives we spoke with said that the thresholds contained in many proposals were too low.

The Small Business Administration defines a small business as one with \$32.5 million in annual sales for electronic shopping retailers, and \$38.5 million for mail-order houses.³⁷ Federal legislation allowing states to tax remote sales have included a variety of small business exemptions. For example, one proposal would initially exempt small business with annual sales below \$10 million, but that exemption would decline and eventually expire after 3 years. Another proposal would set a permanent exemption of \$1 million in annual sales.³⁸ New state laws and administrative regulations require out-of-state sellers to collect taxes. We identified small seller exemptions in some of these laws and regulations as low as

³⁷The North American Industry Classification System (NAICS) codes for these two classes of retailers are 454111 and 454113. See U.S. Small Business Administration, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes*, effective February 26, 2016, available at https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

³⁸See, Remote Transactions Parity Act of 2017, H.R. 2193 115th Cong.; and Marketplace Fairness Act of 2017, S. 976, 115th Cong.

\$10,000 and as high as \$500,000 in annual sales into the state.³⁹ However, one business owner said that \$25 million in annual sales is still a small business. The owner explained that such businesses can quickly go bankrupt and have little capital to survive downturns in the business cycle. Business representatives said that business models which emphasize low margins and high sales volume are common in remote sales. These businesses may have limited resources for additional compliance obligations.

Transition Periods Can Help Businesses Prepare for Collection Obligations

Transition periods may give businesses time to examine their legal obligations and secure tools, such as software or legal counsel, to facilitate compliance but can prompt increased demand for assistance and services. Our work has shown that sometimes tax system transition deadlines are likely to prompt a large volume of requests from taxpayers for compliance assistance from taxing authorities.⁴⁰ Because businesses reported that additional software or legal services would be required to transition to new collection obligations, we expect demand for such services to increase before transition deadlines.

Limits to Lookback Periods May Protect Newly Registered Businesses

Limited lookback periods restrict how far back a state revenue agency can examine a business's records after that business registers to collect taxes. Attorneys that we interviewed said that registering to collect with a state can trigger an examination of that business's records with an eye to discovering if the business owes taxes for sales prior to the registration. They explained that if businesses are not protected by limitations to lookback periods upon registration, this may inhibit registering to collect in

³⁹Based on each state's relative share of national gross domestic product or disposable personal income, the \$10,000 state exemption equates to a national exemption of about \$400,000, and the \$500,000 state exemption equates to a national exemption of about \$18 million. In other words, a business would need to have total nationwide sales of those amounts before likely exceeding those states' exemptions. At the time of our report, new state laws and administrative rules like these were the subject of legal action in state and federal courts.

⁴⁰GAO, *Value-Added Taxes: Lessons Learned from Other Countries on Compliance Risks, Administrative Costs, Compliance Burden, and Transition*, [GAO-08-566](#) (Washington, D.C.: April 4, 2008).

new states. One business owner told us that the risks of additional scrutiny and unforeseen liability have prevented him from registering to collect in a nearby state where he would like to do more business. Limitations to lookback periods would give businesses more confidence in registering to collect because they would be less likely to incur additional scrutiny or an unforeseen liability as a result of the registration.

States Generally Do Not Anticipate Major Administrative Costs or Challenges If Given the Authority to Require Businesses to Collect Tax on All Remote Sales

Actions by state and local governments to increase tax collections on remote sales could require additional government resources to administer sales taxes. State revenue agency officials, as well as representatives from the Federation of Tax Administrators and other state government organizations we interviewed, did not identify any major increases in administrative costs or significant administrative challenges if states were given the authority to require businesses to collect taxes on all remote sales.

In the absence of congressional action to grant states expanded tax collection authority on all remote sales, state legislatures have recently considered, and in some cases enacted, new laws designed to increase tax collections on remote sales. As these proposals were being considered, we identified five revenue agencies or legislative budget offices that had estimated the costs to implement and administer these new programs.⁴¹ For example, one state's analysis concluded that current state revenue agency resources were sufficient to implement and administer the new program, and another state's analysis determined that the program would have only a moderate effect on the state revenue agency.

Other state analyses that estimated additional annual costs varied widely, from a few hundred dollars to up to \$4 million. While these estimates varied widely, we found that this information helped to illustrate potential challenges and costs state and local governments could face in trying to collect taxes from all remote sellers. Interviews with three state revenue agency officials who had already implemented, or were beginning to implement, new programs also provided us further information on potential administrative costs and challenges.

⁴¹Fiscal analyses of proposed or enacted state legislation that we reviewed sometimes included estimates of additional revenues but did not include estimates of additional costs. It was unclear whether the legislative fiscal office or state revenue agency had estimated zero additional costs or omitted costs entirely from their analyses.

Sales Tax Administration Activities

Registration of vendors. States need to process registration forms from new vendors, including out-of-state vendors. States also need information to help identify unregistered vendors.

Returns processing. States require resources to process sales tax returns, including returns from out-of-state vendors. States typically capture data in information systems, and identify and process over- or underpayments.

Enforcement efforts. Audit resources are needed to verify vendors' total taxable sales. When auditing out-of-state vendors, state revenue departments may face higher travel costs.

Collections. States send delinquency notices to vendors for late, miscalculated, or underpaid collections.

Taxpayer services. States provide education efforts and taxpayer assistance to improve voluntary compliance.

Source: GAO, *Tax Administration: Potential Impact of Alternative Taxes on Taxpayers and Administrators*, GAO/GGD-98-37 (Washington, D.C.: Jan. 14, 1998). | GAO-18-114

We previously reported that the following state functions are typically associated with administering sales taxes: identifying and registering vendors; returns processing; enforcement; collections; and taxpayer services (see sidebar titled "Sales Tax Administration Activities").⁴²

If remote sellers were required to collect state taxes regardless of nexus, states may need to process an influx of new registration forms from out-of-state vendors. State revenue agency officials as well as representatives from the Federation of Tax Administrators told us, however, that they did not anticipate that registering new out-of-state vendors and processing additional returns would pose major challenges to state agencies. They explained that state revenue agencies already process a large volume of registration changes annually as new businesses are created or existing businesses fail. As a result, they expected that new registrations from out-of-state sellers would not represent a significant strain on current resources.

Potential increases in new out-of-state vendor registrations could be lessened by states' small seller exemptions. Some state proposals for increasing tax collections on remote sales have exempted smaller out-of-state sellers with annual sales less than a certain dollar amount, or annual transactions less than a certain number, into a state. Recent small seller exemptions have set annual sales exemption thresholds ranging from \$10,000 in Washington State to \$500,000 in Massachusetts.⁴³ One revenue agency official from Alabama, which began enforcing a new remote-seller regulation in 2016 that has a \$250,000 small seller exemption, told us that the approximately 100 newly registered out-of-state sellers is an extremely small share of the state's total 40,000 registered sellers.⁴⁴

⁴²GAO, *Tax Administration: Potential Impact of Alternative Taxes on Taxpayers and Administrators*, GAO/GGD-98-37 (Washington, D.C.: Jan. 14, 1998).

⁴³Some federal legislative proposals to grant the states expanded tax collection authority on all remote sales also have included generally larger nationwide small seller exemptions.

⁴⁴Alabama's new administrative rule promulgated by the state revenue agency applies to out-of-state vendors with sales greater than \$250,000 annually to Alabama customers. Given Alabama's relative share of U.S. disposable personal income (1.2 percent) or gross domestic product (1.1 percent), a remote seller would need to have about \$20 million in nationwide annual sales before likely exceeding Alabama's small seller exemption. The estimated effect is to limit application of Alabama's new rule to about the top 650 companies on Internet Retailer's 2017 Top 1000 list.

States may need additional resources to process new tax returns from out-of-state vendors and to verify out-of-state vendors' total taxable remote sales into a state. However, as tax administrators noted above with regard to new vendor registrations, any increase in out-of-state returns processing may be minimal when compared to the volume of routine in-state returns. When processing new out-of-state returns, states may need to decide whether to capture the same amount of data from out-of-state filers as they currently do for in-state filers in order to limit errors and required resources for follow-up.

Depending on whether and how some states choose to centralize registration and reporting for out-of-state vendors, some administrative costs and burdens associated with these functions might be reduced or mitigated. For example, a revenue agency official from Alabama told us that implementation of its new administrative rule (requiring out-of-state vendors to collect taxes on sales to Alabama customers) has been facilitated by having its state revenue department serve as a centralized collection point on behalf of local tax authorities.

Thirty-seven states, like Alabama, have local sales taxes in addition to statewide sales taxes. Some of these local taxes are already centrally collected by a state revenue agency, but in some states, local authorities collect them. States that are members of the Streamlined Sales and Use Tax Agreement have agreed to allow centralized state registration and reporting for out-of-state vendors.⁴⁵ Louisiana, another state with many local sales tax jurisdictions, recently enacted a new law creating a sales tax board for promoting "uniformity and efficiency" of local sales and use tax administration.⁴⁶ The law also created an independent agency within the state's Department of Revenue for administering and collecting state and local taxes related to remote sales.

When allocating enforcement and collections resources, state administrators may need to weigh trade-offs between pursuing incidences of noncompliance (typically higher among small filers) against potential revenue effects (greatest among large filers). Representatives from the Federation of Tax Administrators did not anticipate significant increases in

⁴⁵Some federal proposals giving states expanded tax collection authority on remote sales would require states to comply with the Streamlined Sales and Use Tax Agreement's requirement that states centralize their registration and reporting for remote sellers.

⁴⁶2017 La. Acts 274.

enforcement costs because they said most sales tax noncompliance is detected not through intensive audits but through less costly automated matching of electronic data such as credit card sales receipts with business-reported sales. They also said that most noncompliance issues are resolved via automatically-generated correspondence with taxpayers. That is, most taxpayers resolve additional amounts owed or other noncompliance matters after receiving notification letters from state revenue agencies.

One state revenue agency official told us that his agency may experience higher travel costs associated with audits of out-of-state vendors. The same official believed, however, that this might merely require re-allocating current travel expenses from in-state audits to out-of-state audits rather than requiring an increase in travel budgets. The Oklahoma legislature recently authorized the state revenue agency to create an out-of-state sales tax enforcement division. While the final bill provided the state agency with flexibility to staff this division using existing resources, the original proposal would have mandated opening a new office outside the state and staffing it with a minimum of five employees at an estimated annual cost of \$450,000.

Finally, state revenue agency officials and representatives from the Federation of Tax Administrators told us that they anticipated some additional resources may be needed for taxpayer assistance such as providing increased telephone assistance or publishing guidance for new out-of-state vendors. Demand for taxpayer assistance is likely to be higher from smaller out-of-state vendors with less experience in collecting and remitting taxes to other states. The complexity of a state's sales tax laws, such as rules for when to exempt a certain type of product based on how it is used, are also likely to affect levels of taxpayer service requested by new out-of-state vendors.

States Implementing Notice and Reporting Requirements May Experience Difficulties Matching Sales Data to Taxpayer Information

We identified at least four states that have enacted new "notice and reporting" laws in attempts to increase tax collections from remote sales. Under these laws, if an out-of-state seller chooses not to collect taxes on sales into a state, then the seller is required to notify its customers of state use tax obligations, send customers annual summaries of their purchases, and share that information with state revenue agencies. One state's fiscal analysis of its new notice and reporting law estimated that out-of-state retailers will decide to collect the tax rather than comply with notice and reporting requirements. The handful of new notice and

reporting laws that we identified have only recently become effective, so it is unclear to what extent this has or will occur.⁴⁷

We found two recent estimates of costs to implement and administer these new notice and reporting laws. The Louisiana Legislative Fiscal Office estimated that the state revenue agency would incur costs of \$90,000 annually to administer a new notice and reporting law. By contrast, the Washington Department of Revenue estimated that it would cost about \$4 million annually to administer the state's new notice and reporting law. Washington revenue officials told us that most of these costs come from hiring new staff. They explained that increased costs are common when they must enforce new provisions of the tax code because it is not easy to reassign tax staff.

State revenue agencies implementing new notice and reporting laws may experience difficulty matching sales information from out-of-state retailers with taxpayer data. Revenue officials from Colorado told us that the annual sales reports remote sellers are required to send to their customers and share with state revenue agencies, will not contain unique taxpayer identification data like Social Security numbers. Without these data, these officials explained that revenue agencies will need to use customers' names and addresses to match with taxpayer returns. If buyers with similar names make use of the same delivery address, this may complicate efforts to identify a taxpayer's use tax obligation.⁴⁸

Colorado and Washington officials also told us that once their revenue agencies begin sending letters to taxpayers with estimated use tax obligations, they anticipate significant increases in phone calls and other requests for taxpayer assistance. In order to manage expected increases in call volumes and control costs, Colorado officials said they plan to be selective about sending notices in the first years.

⁴⁷New notice and reporting laws went into effect on July 1, 2017 in Colorado, Louisiana, and Vermont. A new Washington law goes into effect on January 1, 2018. The laws generally contain exemptions for small sellers with less than a certain dollar amount of annual sales into each state. The amounts range from \$10,000 in Washington, to \$50,000 in Louisiana, and \$100,000 in both Colorado and Vermont.

⁴⁸The Louisiana Legislative Fiscal Office noted similar challenges in its estimates of state administrative costs and said that final costs may vary depending on how much effort is required to match purchasers' names with specific taxpayers.

Officials from Washington’s Department of Revenue told us that one part of their new notice and reporting law applied to e-marketplaces rather than sellers. Officials told us that it is easier for states to enforce compliance against one large entity (the e-marketplace company) instead of the thousands of smaller sellers that sell through the e-marketplace’s platform. Washington’s notice and reporting law requires e-marketplace companies to comply with the notice and reporting requirements if the e-marketplaces choose not to collect and remit taxes on behalf of their individual sellers.⁴⁹

In August 2017, the Multistate Tax Commission began offering a general sales tax amnesty program for e-marketplace sellers. During the amnesty period, the commission would accept applications from qualifying remote sellers. The sellers would affirm in their applications that their only connection with the participating state or states is through inventory housed in an e-marketplace’s warehouse or fulfillment center. In exchange, one group of participating states would agree to waive back tax liabilities for sales and use taxes, as well as for income and franchise taxes, including penalties and interest, without regard to any lookback period. At the time of our report, 24 states and the District of Columbia were participating. The program was set to end in November 2017.

⁴⁹2017 Wash. Sess. Laws 2588–2614. The Washington notice and reporting law applies to both out-of-state retailers and e-marketplaces with annual sales of \$10,000 or more to Washington customers.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate Senate and House committees. We will also send copies of the report to the Secretary of the Treasury and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-9110 or mctiguej@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made contributions to this report are listed in appendix III.



James R. McTigue, Jr.
Director, Tax Issues
Strategic Issues

Appendix I: Methodology for Revenue Gain Estimates

To address our objective on estimating how much revenue state and local governments could gain by being able to collect taxes on sales made by all remote sellers, we updated a model we used to prepare similar estimates in 2000.¹ The sidebar titled “Steps Involved in Estimating Potential Revenue Gains” summarizes the steps in our methodology.

Steps Involved in Estimating Potential Revenue Gains

Total e-commerce or other remote sales
(from Internet retailers, e-marketplace
sellers, other remote sellers such as
mail-order catalogs, and merchant e-
commerce wholesalers)

– Sales of exempt products

= Taxable sales (regardless of nexus)

x Tax rate

= Potential tax revenues

– Taxes paid by sellers (due to nexus)

– Taxes paid by purchasers

= Potential revenue gains

Source: GAO methodology. | GAO-18-114

Compared to when we did similar analysis in 2000, there are some areas where we have better data, but a single point estimate is still not possible because of uncertainty surrounding estimates of several key inputs to our model. In our 2000 report, there were few reliable data sources on which to base our calculations and adjustments. We noted then that projections of sales were particularly difficult to make given the rapidly changing e-commerce environment. Today, there are more data sources available on current and future e-commerce sales.

In addition to the past uncertainty regarding the magnitude of remote sales, we reported in 2000 that there was considerable uncertainty about the amount of tax that state and local governments were already collecting from these remote sales. Today, data are more easily available on where e-commerce companies have a substantial presence (referred to as nexus) in states. Some research companies track this information, and more companies are explicitly stating on their websites in which states they collect sales tax. Still, we had to make several broad assumptions about the volume of e-marketplace sales, including the extent to which e-marketplace sellers were already collecting sales taxes.

As states continue to research tax losses associated with e-marketplace sales and pursue increased enforcement actions, we believe that more data could help improve the accuracy of our estimates. Additional data from e-marketplace companies about the extent to which their sellers are collecting sales taxes through the e-marketplace optional tax services would also help improve further analysis in this area.

The Volume and Composition of Internet and Other Remote Sales

To obtain sales estimates, we reviewed academic, government, and private-sector studies. We also contacted these authors and other specialists in this field to identify other potential sources of sales estimates. Some state revenue agencies and other researchers who have

¹GAO, *Sales Taxes: Electronic Commerce Growth Presents Challenges; Revenue Losses are Uncertain* [GAO/GGD/OCE-00-165](#) (Washington, D.C.: June 30, 2000).

estimated tax revenue losses from remote sales have used data from the U.S. Census Bureau to derive their base estimates of total Internet and other remote sales.² While we did use some Census data in our analyses, we primarily relied upon data from Forrester Research (a research company whose data we had used in our 2000 report) to arrive at low and high scenario estimates for total sales volumes for different types of remote sales as shown in table 3. We chose not to provide a single point estimate, because the low and high scenarios illustrate how the numbers can vary—sometimes non-trivially—depending on reasonable assumptions about the underlying uncertainties.

Table 3: GAO Low and High Scenario Estimates of 2017 E-commerce and Other Remote Sales

Dollars in billions		
	Low scenario estimate	High scenario estimate
Business-to-consumer (B2C)		
Internet retailers	339	318
E-marketplace sellers	85	106
Other remote retailers ^a	58	61
Business-to-business (B2B)		
Merchant wholesale e-commerce ^b	714	729
(less exempt intermediate goods)	(428)	(364)
Adjusted B2B sales	285	364

Source: GAO analysis of Forrester Research, Internet Retailer, U.S. Census Bureau, and company financial data. | GAO-18-114

^aIncludes catalog, mail-order, call center, and television shopping channel retail companies.

^bMerchant wholesale e-commerce sales includes manufacturers' sales branches and offices, but excludes agents and brokers, and excludes sales made via electronic data interchange networks.

Business-to-Consumer Internet Sales

Forrester Research's estimates of business-to-consumer (B2C) e-commerce sales for the years 2016 to 2021 presented data on 31 different product categories to which we could then apply specific state sales tax rates and exemptions.³ By contrast, similar Census data were more limited in that: the data contained fewer categories (13 merchandise

²Census issues estimates of e-commerce activity derived from four separate surveys of manufacturing, wholesale, service, and retail businesses. See, for example, U.S. Census Bureau, "E-Stats 2015: Measuring the Electronic Economy," released May 24, 2017.

³Forrester Research, "Online Retail Forecast, 2016 to 2021 (US), Q4 2016 Update," published December 2016.

Business-to-Consumer
E-Marketplace Sales

lines plus non-merchandise receipts); the most recent data were for the year 2015; and the data did not include e-marketplace sales.⁴ Forrester Research's total online retail forecast for 2016 was about \$400 billion and nearly \$450 billion for 2017. We reduced this total by about \$20 billion by removing sales for two product categories (movie tickets and event tickets) that were more akin to services industry (rather than retail) activities.⁵

Unlike Census data, Forrester Research included sales from e-marketplaces in its e-commerce forecasts.⁶ Sales tax losses associated with e-marketplace sales have become an increasing area of focus for state revenue agencies, and so it was important to include in our analysis. To separate e-marketplace sales from the sales of other Internet retailers, we analyzed data from the annual reports of three leading e-marketplace companies and data we obtained from Internet Retailer.⁷ We estimated the value of merchandise being sold on these three leading e-marketplaces to be about \$110 billion in 2016.⁸ However, some of these are sales by other Internet retailers using the e-marketplaces to sell their goods. That is, some retailers operate stores and their own websites but also sell their goods through "storefronts" on the e-marketplaces.⁹ We adjusted our total e-marketplace sales estimate to avoid double-counting retailers' Internet sales in our analysis. In the end, we estimated that e-marketplace sales (excluding the sales of Internet retailers using

⁴U.S. Census Bureau, "2015 E-commerce Multi-sector Data Tables, Table 5. U.S. Electronic Shopping and Mail-Order Houses (NAICS 4541) - Total and E-commerce Sales by Merchandise Line," released May 24, 2017.

⁵The Census classifies movie and event tickets as services. State tax rates and exemptions for services like movies and events vary, and even vary by locality.

⁶Census explanations of its e-commerce data state that it only includes sales from e-marketplaces that take title to the goods they sell. U.S. Census Bureau, "E-Commerce Statistics (E-STATS): FAQs," updated May 18, 2017.

⁷Internet Retailer, "2017 U.S. Top 1000 Report," publish date April 2017.

⁸Two of the three e-marketplaces we analyzed publicly report the gross merchandise value of sales made via their e-marketplaces. The third, and estimated largest, e-marketplace reports data on only the number of sales by third-party sellers using its e-marketplace, but not the dollar value of those sales.

⁹Based on a random sample of 100 companies on Internet Retailer's 2017 Top 1000 list, we estimated that about 40 percent of Internet retail companies also sell their goods on one or both of the two largest e-marketplaces.

e-marketplaces) accounted for 20-25 percent of total 2017 online retail sales (\$85 billion to \$106 billion).

Business-to-Consumer
Other Remote Sales

Data sources on other remote sales like mail-order catalogs or television shopping channels are more limited, compared to available data on e-commerce sales. A representative of catalog companies we interviewed told us that it is becoming increasingly difficult to attribute retail sales to particular sales channels. For example, many catalog retailers also have websites or sell their goods in retail stores or via e-marketplaces. We decided the best available estimates could be derived by separating out aggregate Census data on Electronic Shopping and Mail-Order Houses into separate e-commerce and mail-order components.¹⁰ We first estimated that the mail-order portion of the top-line Census category to be about \$150 billion in 2016, but then removed about \$95 billion in estimated mail-order prescription drug sales because nearly all states exempt prescription drugs from sales taxes. Using data on historical growth rates for the mail-order catalog industry, we then estimated the range of other remote sales for 2017 to be from \$58 billion to \$61 billion.

Business-to-Business
Internet Sales

Forrester Research's estimates of business-to-business (B2B) e-commerce wholesale trade for the years 2016 to 2021 presented data on 11 different product categories to which we could then apply specific state sales tax rates and exemptions.¹¹ While similar Census data included 19 different product categories, the most recent Census data was only for year 2015.¹² Forrester's estimates exclude sales via electronic data interchange networks which accounts for some of the difference with Census' larger e-commerce estimate.¹³ Forrester Research's total B2B forecast was about \$825 billion for 2016 and about \$885 billion for 2017. We removed about \$125 billion in petroleum and petroleum products sales because these sales would generally be subject

¹⁰Researchers from the International Council of Shopping Centers performed analysis similar to ours to estimate mail-order catalog sales. See International Council of Shopping Centers, "Deconstructing the Census Bureau's Retail Trade E-Commerce Figures," *Retail Property Insights*, Vol. 23, No. 1, 2016.

¹¹Forrester Research, "B2B Ecommerce Forecast, 2016 to 2021 (US)," published November 2016.

¹²U.S. Census Bureau, "2015 E-commerce Multi-sector Data Tables, Table 2. U.S. Merchant Wholesale Trade Sales, Including Manufacturers' Sales Branches and Offices - Total and E-commerce Sales: 2015 and 2014," released May 24, 2017.

¹³Electronic data interchange is a non-Internet based proprietary network for transferring electronic documents, such as purchase orders, between companies.

to excise (not sales) taxes and, furthermore, these sales would be taxed on volume (not dollar value) and we lacked volume data, such as gallons sold.¹⁴ We also lowered the value of the motor vehicles and parts category by 40 to 60 percent under the assumption that most vehicles are taxed when registered with state motor vehicle agencies and sales and use tax compliance is considered generally high.¹⁵

The Taxability of Remote Sales

To estimate the amount of tax due on remote sales, we apportioned a share of total e-commerce and other remote sales to each state (and the District of Columbia) and then applied each state's tax exemptions and rates to those sales. We allocated sales across states by assuming that each state's share of sales to individual consumers is proportionate to the state's share of U.S. disposable personal income, and that each state's share of sales to businesses is proportionate to the state's share of U.S. gross domestic product.¹⁶ We made this allocation for each of the B2C and B2B product categories. We then determined which categories of products and services are taxed by state and local governments and at what rates.

Our main sources for state and local rates and exemptions were CCH's *State Tax Guides* and *Multistate Quick Answer Charts*, Federation of Tax Administrators' summary tables, and the Tax Foundation's *2017 State Business Tax Climate Index*.¹⁷ Eight states plus the District of Columbia do not have additional local sales tax rates levied by cities, counties, or

¹⁴If we had included B2B petroleum sales in our model, it would be unlikely to significantly affect our revenue gain estimates because these sales are generally tax exempt. According to data from the Tax Foundation, only 14 states tax sales of business fuels and utilities. Furthermore, based on additional research, we estimated that most of these sales would be made by large petroleum companies with physical presence in all, or nearly all, states through their network of retail gas stations and distribution facilities.

¹⁵Two state revenue agencies that prepared estimates of tax losses on remote sales made similar adjustments to an equivalent category of motor vehicles and automotive equipment when using Census wholesale e-commerce data to prepare their estimates.

¹⁶The distribution across states of disposable personal income and gross domestic product is so highly correlated that our aggregate results would be the same regardless of which of these factors we used to apportion sales.

¹⁷CCH, *State Tax Guides* and *Multistate Quick Answer Charts*. Federation of Tax Administrators, "State Sales Tax Rates and Food & Drug Exemptions (as of January 1, 2017)," available at <http://www.taxadmin.org/assets/docs/Research/Rates/sales.pdf>, accessed March 24, 2017. Jared Walczak, Scott Drenkard, and Joseph Henchman, *2017 State Business Tax Climate Index*, Tax Foundation, September 28, 2016.

other special taxing districts. For the other 37 states with both statewide and local tax rates, we used weighted average local rates as estimated by the Tax Foundation after first comparing and testing these rates with similar data published by the Washington State Department of Revenue.¹⁸

For B2B e-commerce wholesales, we made additional adjustments to reflect the fact that many B2B sales are exempt from tax based on the type of purchaser or the type of use. These purchaser and use exemptions are important for estimating the proportion of B2B sales that are exempted as raw materials or as inputs incorporated into a final product. Our sources of sales estimates did not disaggregate them by type of purchaser or types of use. In order to estimate the percentage of business-to-business sales that would be exempt, we used input-output account tables prepared by the Department of Commerce's Bureau of Economic Affairs.¹⁹ These tables show the inter-industry transactions of the U.S. economy for 2015 and provide detailed information on the composition of inputs and the distribution of outputs of all major U.S. industries. On the basis of our analysis of the input-output data, we excluded a range from 50 to 60 percent of all B2B e-commerce wholesales from our model (see row titled "less exempt intermediate goods" in table 3).²⁰

The Extent to Which Remote Sellers Already Collect Taxes

Seller collection rates represent the share of taxes on remote sales that state and local governments can currently require remote sellers to collect due to remote sellers' substantial presence (referred to as nexus) in a state. To estimate seller collection rates for selected categories of e-commerce and other remote sales, we followed an approach similar to that in our 2000 study. We made separate estimates for Internet retailers, e-marketplaces, other remote retailers, and merchant wholesale e-commerce sales because a different population of firms dominates in each group. Again, we chose not to use a single point estimate, because

¹⁸Jared Walczak and Scott Drenkard, "State and Local Sales Tax Rates in 2017," *Tax Foundation Fiscal Fact*, No. 539, January 2017.

¹⁹U.S. Bureau of Economic Analysis, "The Use of Commodities by Industries, After Redefinitions (Producers' Prices)," https://www.bea.gov/iTable/index_industry_io.cfm, accessed July 11, 2017.

²⁰State revenue agencies that have prepared similar analyses of revenue losses from remote sales exempted from 60 to 75 percent of B2B sales as intermediate goods.

the low and high alternatives illustrate how assumptions made about collection rates can vary our model output—sometimes non-trivially. The ranges of our estimates are shown in table 4.

Table 4: GAO High and Low Scenario Estimates of the Percent of Taxes State and Local Governments Can Collect from Remote Sellers under Current Law

	Percent of sales taxes collectible	
	Low scenario estimate	High scenario estimate
Business-to-consumer (B2C)		
Internet retailers	86	78
E-marketplace sellers	33	14
Other remote retailers ^a	64	58
Business-to-business (B2B)		
Merchant wholesale e-commerce ^b	94	85

Source: GAO analysis of Forrester Research, Internet Retailer, U.S. Census Bureau, and company financial data. | GAO-18-114

Note: Percentage of sales taxes collectible is: (1) the estimated taxes state and local governments can currently collect from remote sellers due to remote sellers having a substantial presence (nexus) in, or collection agreements with, a state, divided by; (2) the estimated potential taxes state and local governments could collect from having authority to require all remote sellers to collect taxes regardless of nexus.

^aIncludes catalog, mail-order, call center, and television shopping channel retail companies.

^bMerchant wholesale e-commerce sales includes manufacturers' sales branches and offices, but excludes agents and brokers, and excludes sales made via electronic data interchange networks.

Internet Retailers Collection Rates

To make our estimate for Internet retailers, we analyzed data from Internet Retailer's 2017 list of the leading 1,000 U.S. companies to determine the states in which they collect sales taxes. We first used data from company financial reports to adjust Internet Retailer's 2016 global sales figures for the top 100 companies to reflect only U.S. Internet sales.²¹ We also used company annual reports and a smaller list of leading Internet retailers from eMarketer to test the accuracy and

²¹For 98 percent of the companies in Internet Retailer's "2017 U.S. Top 1000 Report," the 2016 web sales figures were identified as global sales and only 2 percent were U.S. sales. For the top 100 companies, we found data from 61 companies with which we could adjust Internet Retailer's global sales figure to U.S.-only sales. Our average adjustment (for those companies we had data) was to lower the original global sales figure by 25 percent (meaning that on average 75 percent of the companies' global sales were from U.S. customers). We also removed 5 companies from the top 100 list because: (1) all, or nearly all, of the company's sales were tax-exempt (e.g., Internet retailers of coins and bullion like the U.S. Mint); (2) the company had been sold to another retailer; or (3) it was an e-marketplace company for which we did a separate analysis. Collectively, we estimated that the remaining top 95 companies had about \$224 billion in 2016 U.S. Internet sales.

reliability of Internet Retailer's data, which we found to be sufficiently reliable for our purposes.

We then verified Internet Retailer's data on the states where each of the top 100 companies were collecting sales taxes by comparing it to sales tax collection policies published on companies' websites or lists of companies' physical locations (such as retail stores, warehouses, or company headquarters). We performed our research on companies' collection policies and nexus from May to June 2017. During this period some companies' collection policies or nexus changed from the date when Internet Retailer published its Top 1000 list in April. For example, the largest Internet retailer completed agreements with the remaining few states where it was not previously collecting sales tax. As of September 2017, the company stated on its website that it collects taxes on sales of all its products sold to customers in the 45 states (plus the District of Columbia) with statewide sales taxes.

For 27 of the top 100 companies, Internet Retailer did not report any data on states where the companies were collecting sales taxes, so we used the results of our own nexus research. For the remaining states where we could do comparisons, we found Internet Retailer's data on companies' nexus to be sufficiently reliable for our purposes. On the basis of our nexus research, we found that about 40 percent of the top 100 companies were collecting in all 45 states (plus the District of Columbia) with statewide sales taxes, and three-quarters were collecting in at least half the states. Only 2 of the top 100 companies were only collecting in, or only had nexus, in one state.

To estimate the percent of sales on which Internet retailers were currently collecting taxes, we first allocated each company's total sales to states based on each state's share of national disposable personal income. We then multiplied each state's share of sales by the combined state and local government weighted average tax rate to estimate the total tax dollars that could be collected on all sales regardless of nexus. We then used our nexus data for each company to estimate the tax dollars companies were already collecting. The ratio of these two estimates (total taxes collectible under current law, divided by total taxes that could be collected if states had expanded authority) is our estimated "seller collection rate." For the top 100 companies on Internet Retailer's list, we estimated this seller collection rate to be from 87 to 96 percent.

We then extended our research of companies' nexus to the remaining 900 companies on Internet Retailer's top 1000 list. These remaining 900

companies accounted for about 20 percent of the total dollar sales volume for all 1,000 companies on Internet Retailer's list (after we had adjusted global sales to U.S.-only sales for the top 100). For about one-third of these 900 companies, Internet Retailer did not report any nexus data so we did our own research. For the other two-thirds, we relied on Internet Retailer's nexus data because we found it sufficiently reliable based on our analysis of first 100 companies listed. Compared to the top 100 companies, these remaining 900 companies were far less likely to have nexus (or said they were collecting) in all or most states. About half the remaining 900 companies only had nexus (or said they were collecting) in one state. In terms of tax dollars, we estimated that these 900 Internet retailers were already collecting from 44 to 49 percent of the potential taxes that states and local governments could require to be collected if given expanded authority on all remote sales. For all 1000 Internet retailers, we adjusted our estimates of dollars currently being collected by plus (+) and minus (-) 5 percent, which gave us a range of overall estimated collection rates from 78 to 86 percent for the category.

E-Marketplace Sellers Collection Rates

The wider range of our estimates on seller collection rates for e-marketplace sales is because less data were available on the extent to which these types of sellers already collect sales taxes. We could not find sufficiently reliable data on the physical locations of sellers who use e-marketplaces. The three major e-marketplaces (that we analyzed to estimate total e-marketplace sales) offer their sellers additional services that help sellers calculate and collect sales taxes, but not all sellers take advantage of this service. None of the e-marketplaces that we interviewed were able to provide us data on the extent to which their sellers currently collect sales tax. We found limited data on the extent to which e-marketplace sales include sales taxes. Two studies estimated that sales taxes were more likely to be collected by larger sellers like other retailers using e-marketplaces to sell some of their products. As we noted above when describing our methods for estimating total e-marketplace sales, we estimated that about 40 percent of Internet retailers sell their products not only via their own stores and websites, but also offer their products for sale on e-marketplace sites.

In our calculations, we assumed that from 10 to 30 percent of e-marketplace sales were made by large sellers that collected taxes in most states (either due to nexus or collection agreements with states). After allocating those sales to states based on share of disposable personal income, we assumed that these large sellers collected taxes at the same rates we had estimated for the top 100 Internet retail companies. We assumed that the remaining e-marketplace sales (from

70 to 90 percent) were made by smaller sellers with only one nexus, and that these small sellers were geographically located similar to other Internet retailers with only one nexus. After allocating those sales to states, we assumed that these small sellers collected taxes only in their home state. Our resulting seller collection rates for all e-marketplace sellers ranged from 14 to 33 percent.

Due to a lack of sufficiently reliable data, we did not consider what percentage of e-marketplace sales are used items. According to one e-marketplace company, about 20 percent of items listed on their site are used. According to information from one tax software company, the taxability of used items for sale varies by state.

Other Remote Retailers Collection Rates

We could not find data that listed the leading mail-order catalog companies, and in which states they have nexus and are collecting taxes. However, 116 of the companies in Internet Retailer's 2017 Top 1000 list were classified by Internet Retailer as "Catalog/Call Center" companies. These companies had from \$5 million to \$5 billion in 2016 Internet sales to U.S. customers and were distributed similarly to the full population of all 1000 companies. Since we had already estimated their collection rates as part of our analysis on Internet retailers, we re-calculated an aggregate collection rate for these 116 companies. We adjusted our estimates of dollars currently being collected by plus (+) and minus (-) 5 percent, which gave us a range of overall estimated collection rates from 58 to 64 percent.

B2B E-Commerce Wholesalers Collection Rates

We followed a similar approach for estimating seller collection rates for business-to-business e-commerce wholesalers. We identified 106 companies on the Internet Retailer's 2017 Top 1000 list with significant B2B sales. Some of the companies appeared to sell exclusively to businesses whereas others had both significant consumer and business sales. These companies had 2016 Internet sales to U.S. customers ranging from \$5 million to \$10 billion, and the subpopulation was distributed similar to the overall Top 1000 population. The 106 companies were more likely to come from Internet Retailer's categories of: automobile parts, computers/electronics, hardware/home improvement, and office supplies. Comparatively fewer were in Internet Retailer's categories of apparel/accessories, food/drug, health/beauty, or housewares/home furnishings. Because we had already estimated their collection rates as part of our analysis on Internet retailers, we re-calculated an aggregate collection rate for these 106 companies. We adjusted our estimates of dollars currently being collected by plus (+) and

minus (-) 5 percent, which gave us a range of overall estimated collection rates from 85 to 94 percent.

The Extent to Which Purchasers Already Pay Tax

According to data we found, consumer and business use tax compliance rates have not changed significantly since we did similar analyses in 2000. As we reported then, consumer use tax rates are estimated to be very low whereas business use tax compliance rates are estimated to be very high. The most widely-cited study we found on consumer use tax compliance was prepared by the Minnesota legislature in 2015.²² The study reported that for those states that allowed taxpayers to report use taxes on their state income tax returns, the percentage of returns including use taxes ranged from a low of 0.2 percent in Rhode Island to a high of 10.2 percent in Maine. We used the various rates from the study in our calculations. For those states not listed in the Minnesota legislature study, we used a default median rate of 1.2 percent. We had more up-to-date data for California, Mississippi, and Vermont, which we used in our calculations. We then adjusted the total dollar amount of use taxes paid by consumers from 0 to 10 percent to provide us a range of inputs for our model. Making these adjustments had little to no effect on the final results. For business use tax compliance rates, we found data from five states that estimated business use tax compliance to be from 70 percent to 90 percent. In our model, we applied both these figures to give us a range of estimated use tax dollars paid by businesses.

Ranges of Potential Revenue Gains

Table 5 shows the potential revenue gains for 2017 that we calculated using various combinations of low and high estimates for sales and sellers collections rates described above. Here too, we chose to not provide a single point estimate because the low and high scenarios for potential revenue gains illustrate how the many underlying uncertainties affect potential revenue gains.

²²Minnesota House of Representatives, "Use Tax Collection on Income Tax Returns in Other States," updated 2015, www.house.leg.state.mn.us/hrd/pubs/usetax.pdf, accessed March 20, 2017.

Table 5: GAO Low and High Scenario Estimates of State and Local Government 2017 Potential Revenue Gains from Expanded Tax Collection Authority on Remote Sales

Dollars in billions		
	Low scenario estimate	High scenario estimate
Business-to-consumer (B2C)		
Internet retailers	3.2	4.8
E-marketplace sellers	3.9	6.2
Other remote retailers ^a	1.5	1.8
(less consumer use tax compliance)	(0.2)	(0.2)
B2C subtotal	8.4	12.5
Business-to-business (B2B)		
Merchant wholesale e-commerce ^b	1.0	2.9
(less business use tax compliance)	(0.9)	(2.0)
B2B subtotal	0.1	0.9
Total B2B + B2C	8.5	13.4

Source: GAO analysis of Forrester Research, Internet Retailer, U.S. Census Bureau, and company financial data. | GAO-18-114

Note: Totals may not sum due to rounding. These estimates are the potential revenue state and local governments could gain in calendar year 2017 if granted the legal authority to require all remote sellers to collect taxes on all remote sales.

^aIncludes catalog, mail-order, call center, and television shopping channel retail companies.

^bMerchant wholesale e-commerce sales includes manufacturers' sales branches and offices, but excludes agents and brokers, and excludes sales made via electronic data interchange networks.

By adjusting various model inputs we produced some lower estimates resulting from the following assumptions and adjustments: (1) decreasing our estimated e-marketplace and other remote retailer sales; (2) increasing our estimated seller collection rate for all types of remote sellers; (3) increasing our estimated consumer and business use tax compliance; and (4) increasing our estimates of tax-exempt business inputs (intermediate goods). The higher estimate results from: (1) increasing our estimated e-marketplace and other remote retailer sales; (2) decreasing our estimated seller collection rates for all types of remote sellers; (3) decreasing our estimated consumer and business use tax compliance rates; and (4) decreasing our estimates of tax-exempt business purchases (intermediate goods).

Including Additional Factors in Our Model Would Likely Lower Our Overall Estimates of Potential Revenue Gains

We lacked sufficient data on four additional factors that, if we had included in our model, would likely reduce our estimates of state and local government revenue gains.

Consumer Behavior Response

We lacked sufficient data on the extent to which requiring all remote sellers to collect sales taxes on all sales (regardless of a sellers' nexus) would raise final prices to consumers and thus lower demand for goods sold remotely. Facing higher final prices, some online or other remote shoppers might shop instead at traditional brick and mortar retailers, or place orders with non-U.S. remote sellers. A representative from one major Internet retailer we interviewed believed that its customers placed higher value on the convenience of shopping online and were less likely to change their shopping behavior if previously untaxed sales now included sales taxes. Some economists have concluded that consumers alter buying decisions when remote retailers begin to collect sales taxes.²³ However, one of the tax policy specialists who reviewed our report noted a lack of consensus on this topic.

Digital Downloads of Products

We lacked sufficient data on what portion of e-commerce sales included in our model might be tax exempt digital downloads of software, music, books, and games. Some states consider digital downloads to be a service (not a physical good) and therefore exempt from sales taxes. The variations in state laws governing the taxability of digital downloads were too numerous for us to reliably include in our model. Assuming that states do not change their laws to make these purchases taxable, it is likely that our estimates of potential revenue gains would be lower.

Small Seller Exemptions

We were unable to factor in the extent to which some small remote sellers might be exempt from sales tax collection requirements even if states had expanded authority over all remote sales. Recent state laws and

²³Brian Baugh, Itzhak Ben-David, and Hoonsuk Park, "Can Taxes Shape an Industry? Evidence from the Implementation of the 'Amazon Tax,'" *Ohio State University Fisher College of Business Working Paper Series*, September 2016. Liran Einav, Dan Knoepfle, Jonathan Levin, and Neel Sundaresan, "Sales Taxes and Internet Commerce," *American Economic Review*, 2014, 104(1): 1-26.

regulations regarding taxes on remote sales have included small seller provisions that exempt sellers who make less than a specified dollar amount of sales or a number of transactions annually into a state. Proposed federal legislation granting states expanded taxing authority on all remote sales also includes different nationwide dollar amount exemptions for small sellers.²⁴ We could not find sufficiently reliable data to estimate how many businesses or what dollar volume of sales might be exempt either at the state or federal level. As a result, our final estimates most likely overstate the total potential revenue gains for some, or all, states depending on what types of small seller exemptions might be enacted at either the state or federal level, or both.

Sales to Tax Exempt Entities

We lacked sufficient data on what share of remote sales are made to tax exempt entities. In our 2000 report, we were also unable to identify any estimates of sales by taxable versus tax-exempt purchaser. Officials from one state revenue agency we interviewed estimated that the percent of purchases made by tax-exempt entities or persons to be extremely low. Our final estimates of potential tax gains would be lower for states if we had included an estimate in our model.

²⁴The Marketplace Fairness Act of 2017 (S. 976) includes a nationwide \$1 million small seller exemption. The Remote Transactions Parity Act of 2017 (H.R. 2193) includes a small seller exemption that starts at \$10 million and phases out over 3 years, but the exemption does not apply to small sellers who utilize an online marketplace.

Appendix II: State and Local Government Potential Revenue Gains

Table 6: Estimates of State and Local Government 2017 Potential Revenue Gains from Expanded Tax Collection Authority on Remote Sales

Dollars in millions

	Low scenario estimate	High scenario estimate
Alabama	156	238
Alaska	n/a	n/a
Arizona	190	293
Arkansas	123	169
California	1,000	1,735
Colorado	168	262
Connecticut	128	194
Delaware	n/a	n/a
District of Columbia	30	44
Florida	486	758
Georgia	232	367
Hawaii	36	51
Idaho	42	60
Illinois	383	626
Indiana	168	261
Iowa	104	146
Kansas	113	170
Kentucky	93	140
Louisiana	195	288
Maine	28	41
Maryland	165	252
Massachusetts	169	279
Michigan	221	336
Minnesota	132	206
Mississippi	90	123
Missouri	180	275
Montana	n/a	n/a
Nebraska	67	95
Nevada	87	134
New Hampshire	n/a	n/a
New Jersey	216	351
New Mexico	60	88
New York	510	880
North Carolina	223	358

**Appendix II: State and Local Government
Potential Revenue Gains**

Dollars in millions		
	Low scenario estimate	High scenario estimate
North Dakota	34	49
Ohio	288	456
Oklahoma	157	228
Oregon	n/a	n/a
Pennsylvania	219	373
Rhode Island	34	48
South Carolina	132	193
South Dakota	33	47
Tennessee	237	363
Texas	763	1,232
Utah	73	113
Vermont	16	23
Virginia	188	298
Washington	298	453
West Virginia	53	74
Wisconsin	123	187
Wyoming	22	31
Total	8,466	13,387
Average	184	291

Legend:

n/a = not applicable

Source: GAO analysis of Forrester Research, Internet Retailer, U.S. Census Bureau, and company financial data. | GAO-18-114

Note: Totals may not sum due to rounding. These estimates are the potential revenue state and local governments could gain in calendar year 2017 if granted the legal authority to require all remote sellers to collect taxes on all remote sales. Alaska, Delaware, Montana, New Hampshire, and Oregon do not have statewide sales taxes. Some local sales taxes exist in Alaska and Montana but we did not have sufficiently reliable data with which to estimate these local government revenue gains.

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

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Staff Acknowledgments

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