

In June 2018 the United States Supreme Court granted states the ability to collect taxes from out-of-state internet retailers - via *South Dakota vs. Wayfair* – by eliminating the requirement that businesses must be physically present in a state before their sales can be taxed. House Bill 259 - which is now before the Idaho House - would respond to this new authority to collect this tax directly from retailers.

This bill would funnel revenue from online sales tax to a Tax Relief Fund, making it unavailable for other budget priorities, such as schools, roads, and law enforcement. The bill would restrict the use of not only new revenues generated by the legislation, but also revenue Idaho is currently receiving from some retailers that already remit the tax and from residents who have been remitting the use tax directly to the state.<sup>1</sup>

**House Bill 259 would:**

- a) clarify that retailers without a physical presence in Idaho but making at least \$100,000<sup>2</sup> in annual sales in Idaho must charge sales and use tax and remit those dollars to the state;
- b) clarify that marketplace facilitators – entities that broker third-party transactions in Idaho (for example, eBay) - are also subject to Idaho sales and use tax.
- c) require that an existing Tax Relief Fund capture Idaho sales and use tax revenue from marketplace facilitators *and* retailers without a physical presence in Idaho who may or may not have been collecting sales and use tax already to “fund future tax relief statutes.”

Some retailers without a physical presence in Idaho who were selling directly to Idahoans might have considered themselves to have been subject to this tax already, and an unknown number of these retailers are already remitting sales and use tax to the state.<sup>3</sup> Thus, HB 259 would redirect an unknown amount of revenue from the General Fund to the Tax Relief Fund.

**House Bill 259 Will Likely Claim a Growing Share of General Fund Over Time**

One goal for collection of sales tax on internet purchases is to prevent erosion of the sales tax base. As consumers shift more of their purchases from brick-and-mortar shops to online vendors, revenue that funds public services is lost (this trend is what prompted the South Dakota legislation that led to the

**Is Idaho already receiving the type of revenue that retailers will be required to remit under HB 259?**

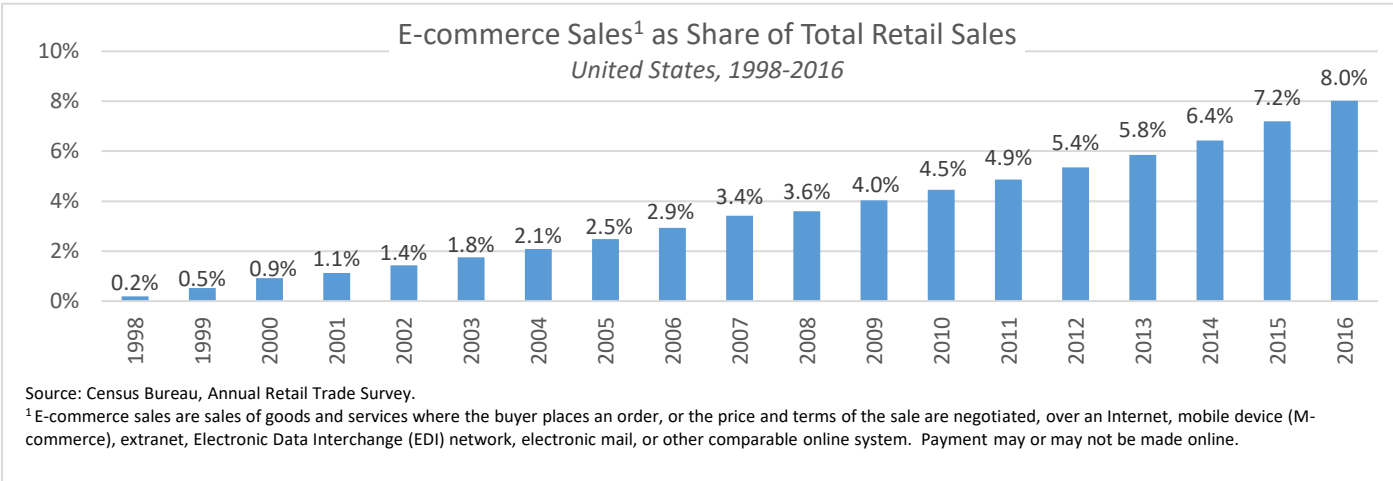
To the extent that retailers were previously remitting the sales tax for products coming from out of state on internet purchases, House Bill 259 will not generate new revenue to the state, but will simply redirect revenue that currently flows to the General Fund to a Tax Relief Fund instead. For example, under this bill if Walmart sells a product online to a customer in Idaho that is identified in Indiana and shipped to the consumer, the sales tax would flow to the Tax Relief Fund. Retailers like Walmart may already be remitting sales tax for these types of transactions. It is unknown what portion of online sales tax Idaho is already receiving and what new sales tax revenue could be generated by HB 259.

<sup>1</sup> Since retailers and marketplace facilitators would report and remit some volume of the use tax transactions that residents would have been reporting and remitting, revenue would change hands from the General Fund to the Tax Relief Fund.

<sup>2</sup> The same threshold present in South Dakota’s law.

<sup>3</sup> The Idaho Tax Commission is unable to estimate the current volume of sales and use tax paid by retailers without a physical presence in Idaho.

Wayfair decision). E-commerce sales as a share of all retail sales have been climbing steadily over the past two decades, from two-tenths of one percent in 1998 to 8 percent in 2016. Revenue collected from internet sales can be expected to continue to climb in a similar fashion—thus, an increasing share of sales tax will be diverted to the Tax Relief Fund over time. The rate of the increase will depend on consumer behavior and will be outside the control of the Legislature.



### HB 259 Would Restrict Options on Future Internet Sales Tax Revenue

Sales tax receipts fund close to half of Idaho’s General Fund. By collecting revenue from online sales, and diverting it to the Tax Relief Fund, this legislation reduces the General Fund dollars available for schools, roads, and other public services and ties the hands of future Legislatures. The bill’s fiscal note estimates that sales tax revenue from retailers without a physical presence in Idaho and marketplace facilitators would add up to \$30 million in 2020, and \$34.5 million in 2021. The United States Government Accountability Office estimated uncollected sales tax for online sales in Idaho in 2017 to be between \$42 and \$60 million.<sup>4</sup>

The cost of this legislation in future years will likely grow as internet sales continue to replace brick-and-mortar sales and the revenue that goes along with it is diverted away from the General Fund.

### Idaho’s Fiscal Outlook

Internet sales tax revenue placed in the General Fund could fund many of the policy priorities identified by policymakers and stakeholders. Attracting and retaining teachers in Idaho schools continues to be a challenge even as the teacher career ladder this year receives its last planned round of funding. Postsecondary attainment among young Idahoans has remained at 35 percent<sup>5</sup> while the goal is 60 percent. A backlog of road repairs and rising prison populations await long-term solutions.

The tax package enacted in Idaho last year may deplete revenue beyond expectations. In February, revenue estimates were \$74.7 million, or 3.3 percent behind forecasts for the year. The economy is due for a recession and the ability of the state’s Rainy Day Fund to mitigate budget reductions cannot be evaluated in advance of such an event.

<sup>4</sup> United States Government Accountability Office, “States Could Gain Revenue from Expanded Authority, but Businesses Are Likely to Experience Compliance Costs,” November 2017. Estimates are for all remote sellers to collect taxes on all remote sales in Idaho.

<sup>5</sup> Estimate excludes professional certificates, of which six percent of Idahoans aged 25 to 34 years possess.