

THE TRUTH ABOUT THE MARKETPLACE FAIRNESS ACT

As the House Judiciary Committee considers legislation that would give state and local governments the option to collect taxes on remote sales, it has become clear that there are a number of misconceptions about the legislation, including how it would be implemented and questions about collection and remittance of remote sales taxes. Many of these same issues help illustrate why this important legislation is necessary. This document is intended to clear up these misunderstandings and set the record straight.

Background

Two U.S. Supreme Court decisions of the previous century (before the internet existed) established federal law with respect to remote sales tax collection as we know it today – the 1967 National Bellas Hess v. Department of Revenue of Illinois case and the 1992 Quill Corp. v. North Dakota. In the first case, the Illinois Department of Revenue attempted to force catalog retailer Bellas Hess, which was based in Kansas City, to collect Illinois sales tax. Bellas Hess refused. In its ruling on the case, the Supreme Court said that only businesses with nexus in a state have to collect sales tax for that state. Nexus is created by a physical presence. The Bellas Hess decision was reaffirmed in 1992 when North Dakota tried to require Quill Corporation, a mail-order office supply company incorporated in Delaware, to collect tax on its sales into the state. Quill refused on the grounds that it had no physical operations or employees in North Dakota. However, in the Quill ruling, the Supreme Court specifically invited Congress to exercise its authority to overrule the Supreme Court by enacting legislation:

“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 . . . In this situation, it may be that the better part of both wisdom and valor is to respect the judgment of the other branches of the Government.”

However, remote sales have changed dramatically since that time through the advent of Ecommerce, and federal law has not kept pace. The absence of an update has left brick and mortar retailers (local businesses) at a 6-10 percent price disadvantage to online retailers and state and local governments at a \$23 billion per year loss in unpaid taxes on remote sales.

Responding to the Supreme Court’s invitation for Congress to utilize its authority to regulate interstate commerce and modernize our tax laws, the Marketplace Fairness Act would allow those states interested in collecting taxes from online retailers to either: (1) join the Streamlined Sales and Use Tax Agreement (SSUTA), a compact between 24 states to use simplified state-level administration of sales and use taxes and uniformity in state and local tax bases and definitions, or (2) agree to implement minimum tax simplification requirements as outlined in the bill.

DISPELLING THE MYTHS

Myth - Marketplace Fairness Act Would Impose a New Tax

The argument that the Marketplace Fairness Act would permit new taxing authority to state and local governments distorts the facts with respect to current state laws and federal law as established under the Supreme Court's decision in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992). That decision holds that a state may not require a seller that does not have a physical presence in the state to collect tax on sales into the state. ***However in states that impose a sales tax (45 states and the District of Columbia), online buyers are already required to pay a use tax for items upon which no sales tax has been paid;*** though sellers do not always apply this tax and most buyers are not aware of their obligation to remit it. This negligent tax compliance has imposed increasingly negative fiscal consequences on state and local governments as a greater number of consumers have begun to shop online. According to the Department of Commerce Ecommerce sales in 2005 were \$87 billion, and grew by nearly 40 percent to \$225.5 billion in 2012. The National Conference of State Legislatures revealed last year that these sales produced approximately \$23 billion in unpaid sales and use taxes in 2012. The time for congressional action to repair this broken tax system and redress these losses is now.

Myth - Small Businesses Will Be Negatively Impacted

Opponents of the Marketplace Fairness Act also argue that even if technology can resolve the technical concerns of keeping track of rates, jurisdictions, and filing complexities, such software would be prohibitively costly, particularly for small businesses. However the legislation actually requires states to provide the necessary software to retailers free of charge. And business has been very involved in simplifying the sales tax systems across the country to make it easier to comply. These improvements include standard definitions, taxability tables and other improvements which the software can interpret at the time of sale. It has already gotten easier for small businesses to comply with their sales tax responsibilities.

Myth - Collecting the Tax is Too Complex

Technology has advanced considerably since the 1967 and 1992 Supreme Court rulings that created the current sales tax situation. Today, keeping track of a few thousand local tax rates and filing requirements is not an insurmountable technical, administrative, or financial burden. The technologies necessary to create such a system are well-established. In fact, they are currently being used throughout Ecommerce, with existing technology available from at least six companies that allows for the easy collection of due sales tax. Again, the necessary software is free of charge.