



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

January 26, 2015

The Honorable John Boehner
Speaker of the House of Representatives
Washington, D.C. 20515

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Dear Mr. Speaker:

William T. Pound
Executive Director

On behalf of the National Conference of State Legislatures (NCSL), we write to again express our continued disappointment and frustration with the House Judiciary Committee regarding the consideration of legislation to collect state sales taxes on remote transactions. Earlier this month, the Chairman of the Committee met with "stakeholders" to release his discussion draft entitled, "Online Sales Simplification Act of 2015," and then two days later professed to the Christian Science Monitor that, "I have already re-started work with all affected stakeholders this Congress and hope that we can achieve consensus on how to move forward quickly." However, the Chairman never included the representatives of elected state policymakers like NCSL and the National Governors Association (NGA).

Adding insult to injury, the Chairman's discussion draft adopts Hybrid-Origin Sourcing (HOS), which not only imposes new taxes on consumers in non-sales tax states, it raises taxes on consumers who purchase products from higher sales tax states. We also believe it tramples upon the 10th Amendment as it preempts state sovereignty to levy taxes on its own residents, establishes a new sub-national entity to govern the collection of remote sales taxes, and codifies for the first time, "taxation without representation." We also believe that this new sub-national entity violates the Compact Clause of the Constitution. We find this disingenuous proposal offensive and believe that it validates the unwillingness of the Chairman to work in good faith with states to solve an ever-growing problem.

After eventually receiving the Online Sales Tax Simplification Act proposal through a third party source, we found it to be unclear, unconstitutional, riddled with loopholes, and would allow the federal government to dictate state tax policy. Our concerns include, but are not limited to:

- **New Taxes and Tax Increases** – Residents in states with no sales taxes will now pay sales taxes when making purchases from businesses located in states that do. Additionally, residents in states with lower sales tax rates will see a tax increase for every purchase they make from businesses in higher sales tax states.
- **Federal Preemption** – Immediately after enactment, the legislation would prohibit every state from levying the use taxes that are already codified in state statute. The legislation would also impose new costs and burdens on consumers and sellers in states that do not even decide to join the proposed distribution agreement. According to the legislative language, "These preemptions are not restricted to States joining the distribution agreement: they apply to all States."

Additionally, even if the majority of states did vote to join the proposed distribution agreement, which is extremely unlikely given the unconstitutionality and preemptive nature of the proposal,

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it would then require approval by the Comptroller General of the United States/Assistant Attorney General for the Tax Division of the Department of Justice and afford Congress 60 days to disapprove of the agreement. This is yet another example of how the legislation would force states to ask the federal government for permission to govern themselves.

- **Taxation Without Representation** – Consumers will be forced to pay the sales tax rates decided by lawmakers in other states and jurisdictions. No longer would citizens have a say in the taxes they pay.
- **Tax Avoidance/Manipulation** – While Judiciary Committee staff have argued that there will be rules to prevent companies from manipulating business operations to avoid having to collect or remit owed sales taxes, the efficacy of the rules are highly questionable. So far there have been no legitimate suggestions for a rule that could avoid manipulation.
- **Unconstitutional** - The proposal clearly violates the Equal Protection Clause as sellers that have nexus in a state are treated differently than those that do not as they would be collecting two different tax rates. The Equal Protection Clause prohibits the government from treating two individuals differently under the law. There is no way that when consumers in the same jurisdiction pay different tax rates on identical purchases is equal treatment under the law.

We also find that the proposed sub-national entity violates the Compact Clause. Ironically, in his March 12 Judiciary Committee testimony in support of hybrid-origin sourcing, Christopher Cox even mentioned that such compacts would give a state "... the power to impose tax collection burdens and audit sellers in every other state." As the entity in the Chairman's proposal would set tax rates on interstate purchases in non-sales tax states and impose burdens on states that do not join the compact, it would clearly be found to be unconstitutional.

According to the "Constitutional Principles & Limited Government" portion of the Judiciary Committee Chairman's website, he wrote that "Unfortunately, in recent years we have witnessed an unprecedented expansion of the federal government that has expanded the finite authority granted to it in the Constitution into seemingly infinite authority, trampling on state and individual rights...". Therefore, we are confused as to why the Chairman would draft and propose legislation that would expand federal government authority and trample states' rights. As a former state legislator and as a supporter of state sovereignty, we ask that you please allow the consideration of a remote sales tax collection legislative proposal that will not increase taxes, infringe state sovereignty, or violate the Constitution.

Sincerely,



Senator Debbie Smith
Assistant Minority Leader, Nevada Senate
NCSL President



Senator Curt Bramble
President Pro Tem, Utah Senate
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