

House Judiciary Committee Proposal for Origin Rules & Revenue Return

NCSL Meeting, 9-Jan-2015
New Orleans

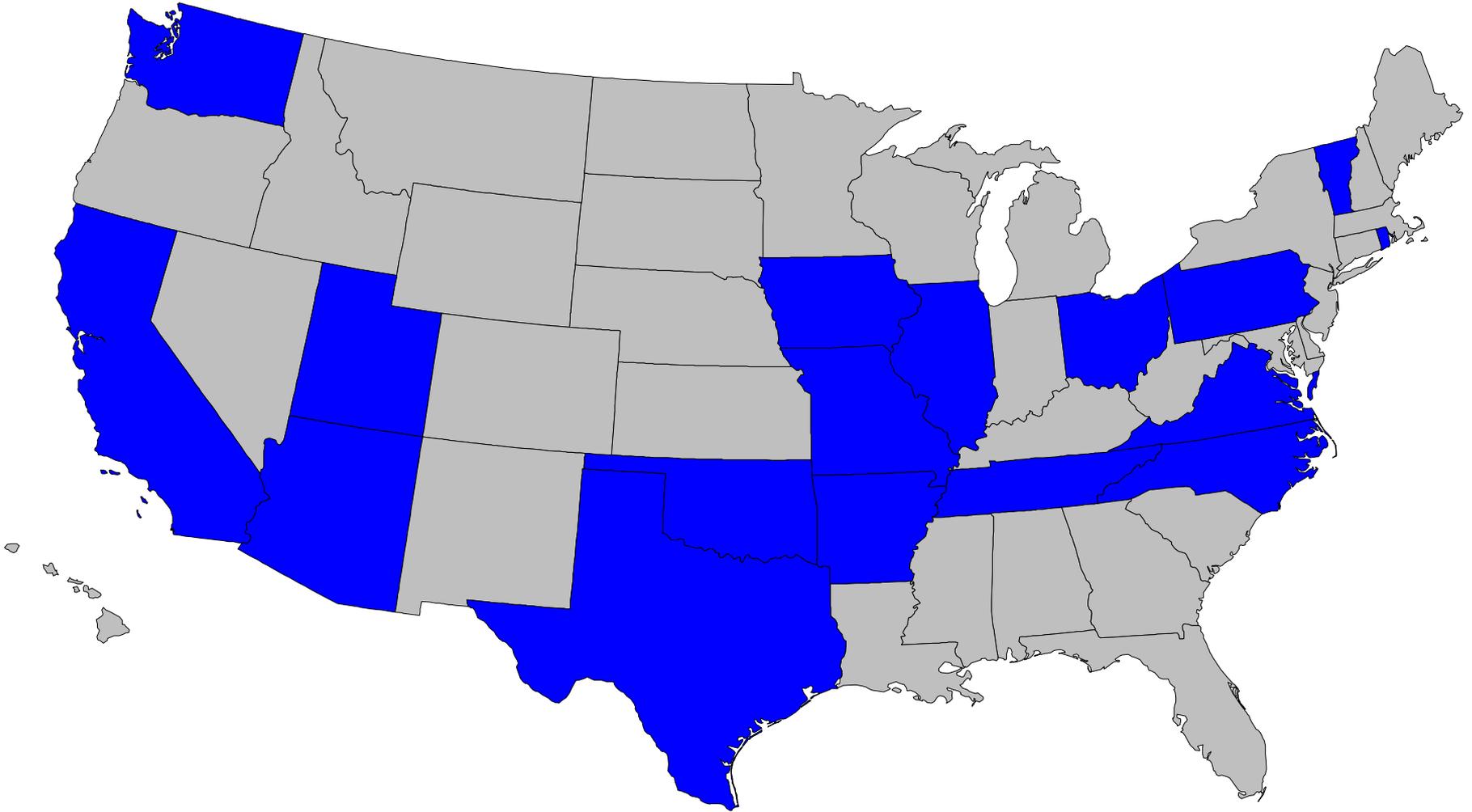
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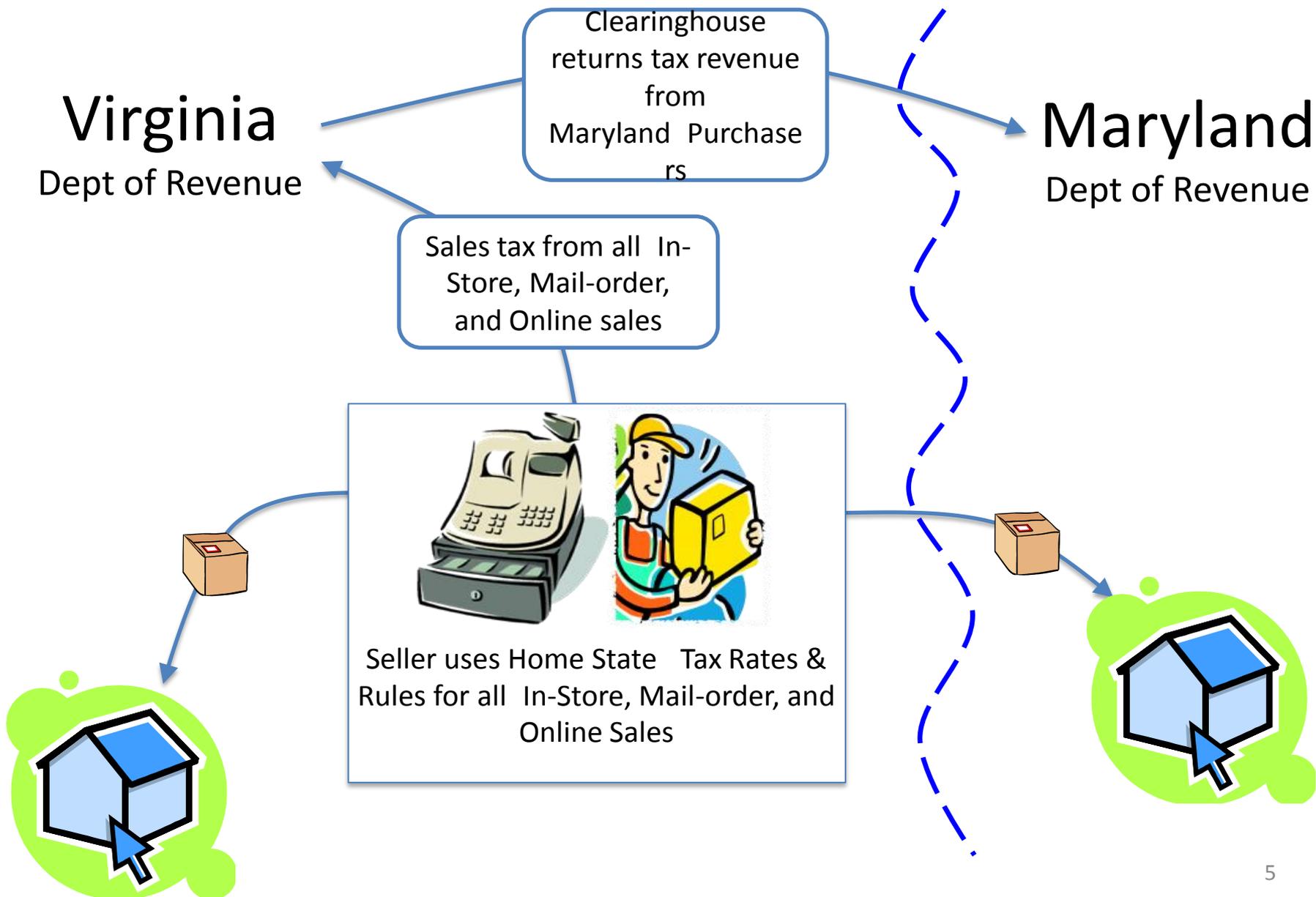
Judiciary Committee Principles (Sep-2013)

<p>1. Tax Relief – Using the Internet should not create new or discriminatory taxes not faced in the offline world. No fresh precedent for other areas of interstate taxation by States.</p>	<p>4. Simplicity – So simple and compliance so inexpensive and reliable as to render a small business exemption unnecessary.</p>
<p>2. Tech Neutrality – The tax compliance burden on online sellers should not be less, but neither should it be greater than for similarly situated offline businesses.</p>	<p>5. Tax Competition – Governments should be encouraged to compete to keep tax rates low and American businesses should not be disadvantaged <i>vis-a-vis</i> foreign competitors.</p>
<p>3. No Regulation Without Representation – Those who would bear state taxation, regulation and compliance burdens should have direct recourse to protest unfair, unwise or discriminatory rates and enforcement.</p>	<p>6. States' Rights – States should be sovereign within their physical boundaries. Congress should not mandate that States impose any sales tax compliance burdens.</p>
	<p>7. Privacy Rights – Sensitive customer data must be protected.</p>

States Already Using Origin Sourcing for in-state Online & Mail Order Sales



Origin Rules & Revenue Return



How it works: a multistate compact

- Congress authorizes a multistate compact that deals with interstate commerce
- States joining the Compact require in-state sellers to apply home state tax rates & rules on their interstate sales, no matter where the customer lives or how the sale is made
- States' incentive to join the Compact: to **receive taxes paid by their state residents** on their remote purchases, via revenue returned by the Clearinghouse

How it works: single source of audits, rules, rates, and procedures

- **Transaction Parity**: all sellers – whether brick-and-mortar or online – apply home state rates and rules on their sales.
- **Compliance Parity**: each business in the state follows the same rules and deals with the tax authorities where they are located
- **Audit Parity**: The thorny problem of multiple audits disappears

How it works: *physical presence*

- Sellers still use destination rates & rules for sales into states where they have physical presence
- Bill codifies physical presence:
 - employee assigned to the state;
 - services of exclusive agent necessary to maintain market;
 - lease/own tangible or real property
- Prevents states from expanding physical presence
- For states where a seller has no physical presence, the seller applies tax rates & rules for their *Home Jurisdiction*: where most employees are working (per payroll tax records)

How it works: 5 states without sales tax

- Non-tax states may join the Compact:
 - would receive taxes collected by sellers in other states
 - State residents would still pay no tax on in-state purchases
- Federal law requires Sellers in non-tax states to:
 - Report all remote sales to the Clearinghouse, which may share that data with states to assist them in Use Tax compliance, or
 - Collect sales tax on remote transactions, using flat rate & definitions set by Clearinghouse
- States seeking to audit sellers in non-tax, non-Compact states offer to pay seller's state to audit. Otherwise, the Clearinghouse does the audit

Advantages over MFA

- Don't need CSPs, so no need to pay CSPs up to 8% of taxes collected
- Don't need an SSTP Governing Board
- Sellers face audits only by home state, or by states where they have physical presence
- When filing with their home state, sellers report sales tax transactions from out-of-state purchasers, showing date, sale, tax, and zip code of shipping (or billing) address

Advantages over MFA (cont'd)

- Don't need a small seller exemption
- Works for catalog customers doing mail orders
- Federal Courts hear disputes about Home Jurisdiction, taxation of sellers in non-tax states, and interpretation of federal law and Compact
- Consumers are protected from double taxation: no liability for use tax greater than sales tax paid
- Congress would require Clearinghouse and states to adopt privacy and data security safeguards

Advantages over MFA (cont'd)

- Avoids Due Process problems with MFA
- No basis for concern about Equal Protection
- Neither MFA nor Judiciary bill can make *foreign sellers* collect your sales tax
- Easy new report for sellers: tax collected by zip
- No “Taxation Without Representation”; sellers follow the rates & rules where they live
- Maintains state sovereignty over rates & rules on sales and businesses within that state’s borders

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