



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

Statement of

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On Behalf of the National Conference of State Legislatures

Hearing on

Nexus Issues

Before

The Committee on the Judiciary
Subcommittee on Regulatory Reform, Commercial and Antitrust Law

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“Today buyers have almost instant access to most retailers via cell phones, tablets, and laptops. As a result, a **business may be present in a State in a meaningful way without that presence being physical in the traditional sense of the term.**

Given these changes in technology and consumer sophistication, it is unwise to delay any longer a reconsideration of the Court’s holding in *Quill*. A case questionable even when decided, *Quill* now harms States to a degree far greater than could have been anticipated earlier.”

– Justice Anthony Kennedy, *Direct Marketing Association v. Brohl*

Chairman Marino, Ranking Member Johnson, and distinguished members of the Subcommittee on Regulatory Reform, Commercial and Antitrust Law, we submit this statement on behalf of the National Conference of State Legislatures and respectfully request that it be added to the record. The National Conference of State Legislatures is the bipartisan national organization that represents the state legislatures of all fifty states and our nation’s commonwealths, territories, possessions, and the District of Columbia.

As today’s hearing is focused on the issues regarding state taxation and nexus, we are confused and disappointed as to why the subcommittee is not discussing remote sales tax collection legislation, which is the most pressing issue for the business community and states in this policy arena. It has been 23 years since the Supreme Court of the United States urged Congress to address this issue. Enacting a sound, destination based solution, is more important now than ever. The growth of internet commerce and the inherent price advantage afforded to out-of-state businesses is regrettably transforming Main Street retailers into showrooms. Today’s consumers now visit stores, compare products in person, ask questions and obtain help from the store’s employees, and then shop online to avoid paying tax, sometimes even while in that store. Failing to fix this issue indicates that congress thinks that this is OK.

Why is the same exact product, being sold for the same exact price, to the same individual, who will consume/use it in the same place, being taxed differently depending on how or where it was bought? It simply doesn’t make sense. Failure to level the playing field for all retailers is signaling to the retailers in your communities that you care more about



remote businesses, and their employees, than you do about your main street sellers. The time to solve this parity issue is now. Every business should be afforded the right to compete but should do so by playing by the same rules. Nothing more, nothing less.

When taxable items are purchased from an out-of-state seller, sales and use tax is owed at the tax rate of where that item is ultimately shipped, or its destination. When businesses do not have physical presence in the destination state, they are currently not required to collect and remit the tax and it most always goes uncollected. Therefore, as the Supreme Court suggested in 1992, congress needs to pass legislation that allows states to collect taxes they are already owed.

Ironically, by opposing congressional efforts to create a uniform national framework for state sales tax collection, opponents of sales tax parity, who enjoy a 5-10% price advantage over their competitors, have forced states to enact and employ various methods aimed at tax collection, which has created a patchwork of state laws that have made it harder for online retailers to conduct business. And, as the amount of uncollected revenue continues to climb, states will have no choice but to continue to pass laws that will make it even more cumbersome for online retailers, unless a solution is reached.

The Remote Transactions Parity Act (RTPA) is a legislative discussion draft that would solve this problem and would do so by not imposing undue costs or burdens on sellers; would require participating states to provide software, free of charge, to all sellers and provide them liability relief should the software malfunction; would immediately achieve the goal of retail parity; would prevent states from auditing small out-of-state businesses as well as businesses that use the state provided software; has a small seller exception, to exempt casual and small retailers; and, perhaps most importantly, would not raise taxes. This approach and draft legislation is the overwhelming preferred and supported solution for sales tax collection by the states, retail community, and business groups. Through this framework, nothing will be different when shopping online except that the state will be saving the law abiding consumers that pay their use taxes the time of having to determine how to remit what they owe. This is the formula that congress should follow. Free software, plus free integration, plus audit protection, plus liability relief for remote sellers, equals retail parity and owed taxes being collected.



Other draft legislation, entitled “The Online Sales Simplification Act” (OSSA), which is premised on hybrid-origin sourcing and not destination sourcing, is unnecessarily complicated; preempts state sovereignty; is vague; is not realistically workable; and would raise taxes on millions of American consumers. The fact that it has taken over two years to draft, has very little if any business support as is evidenced by the recent letter from United States Chamber of Commerce, is strongly opposed by state and local government, and is far from a finished product, underscores the fact that a hybrid-origin sourcing approach will never work.

Therefore, we urge the committee to hold a hearing on remote sales tax collection and vet the approaches of the “Remote Transactions Parity Act” and the “Online Sales Simplification Act” as soon as possible. One of the proposals has overwhelming support and is ready for consideration, the other is the OSSA.

Thank you.

