

SUPPORT LOCAL RESOURCES BY ALLOWING THE COLLECTION OF EXISTING SALES TAXES ON OUT-OF-STATE CATALOG AND ONLINE SALES

ACTION NEEDED: Contact your House and Senate members and urge them to support legislation which would allow counties to enforce their existing sales tax laws regardless of whether a purchase is made in a store, online or through a catalog retailer.

BACKGROUND: The 1967 Supreme Court case *National Bellas Hess v. Illinois Department of Revenue* set the stage for the current debate on taxing Internet sales when the Court ruled it would be too much of a burden on out-of-state retailers to collect sales taxes in all the jurisdictions they conducted businesses. In 1992, the issue resurfaced in *Quill v. North Dakota* when the Court reaffirmed *Bellas Hess*, but elaborated that Congress ultimately has the power to resolve the question of taxation on interstate commerce.

Since those earlier decisions, the Internet's use and utility has developed tremendously. Consequently, online sales have also grown exponentially in the last fifteen years and are projected to continue to increase. Since state and local governments are still unable to enforce their existing sales tax laws on many of those purchases, billions of local tax dollars are lost each year.

For counties, that increasing level of lost revenue means less money for basic services, such as roads and law enforcement officers. With local economies just now showing signs of improvement, additional revenue will bolster any recovery efforts and capturing these revenues is crucial to counties, especially for mandated yet underfunded services.

For the first time on this issue, a bipartisan, bicameral bill was introduced in the last Congress. The Marketplace Fairness Act of 2013 (S. 336 and H.R. 684) sought to grant state and local governments the authority to collect taxes on remote sales, which generally are sales that are conducted through any means other than in a physical store. On May 7, 2013, the U.S. Senate passed S.336 with bipartisan support (69-27). The efforts were led by Sen. Michael Enzi (R-Wyo.), Sen. Richard Durbin (D-Ill.), Sen. Lamar Alexander (R-Tenn.) and Sen. Heidi Heitkamp (D-N.D.).

Reps. Steve Womack (R-Ark.) and Jackie Speier (D-Calif.) led efforts in the House where the measure was referred to the House Judiciary Committee. In September of 2013, Judiciary Chair Bob Goodlatte (R-Va.) announced the release of seven principles on Internet sales tax to guide the discussion around the issue. The principles signaled the Chairman's intent to address the issue and potentially move legislation through the committee. Additionally, the Judiciary Committee conducted a hearing in March of 2014 to explore alternatives to the Senate-passed version of the Marketplace Fairness Act. Unfortunately, the 113th Congress ended with no action from the House on the Senate-passed bill.

The Senate-passed legislation, if it were enacted, would have created two systems to facilitate multistate sales tax collection: the Streamlined Sales and Use Tax Agreement and an alternative where states would collect after adopting minimum simplification requirements for their sales tax laws and administration. The Streamlined Sales and Use Tax Agreement, supported by NACo and other state and local government organizations, is a multistate compact that seeks to reduce the complexity of state and local sales and use tax laws and would permit the collection of sales and use taxes from remote sellers. Although currently only 24 states are official members of the Agreement, many other states, as well as the District of Columbia, local

governments and the business community, were involved in the cooperative efforts to simplify sales and use tax collection that led to the establishment of the Agreement.

The Agreement minimizes costs and administrative burdens on retailers that collect sales tax, particularly retailers operating in multiple states. It encourages remote sellers using the Internet and mail order to collect tax on sales to customers living in the 24 member states. It levels the playing field so that local stores and remote sellers operate under the same rules. This Agreement ensures that all retailers can conduct their business in a fair, competitive environment.

In July 2014, with the intent to compel Congress to address the issue, the Senate sponsors of the Marketplace Fairness Act introduced a new bill, the Marketplace and Internet Tax Fairness Act of 2014 (S. 2609). The bill combined what the Senate passed in 2013 with a temporary 10 year extension of the Internet Tax Freedom Act (ITFA), a law that was enacted in 1998 and was scheduled to expire on December 11, 2014.

Aside from the Marketplace Fairness Act, a temporary extension of ITFA is also important for counties because the law currently prohibits counties from collecting a tax on Internet access. While a 10-year extension is not the best case scenario for counties, it is better than the House-passed bill (H.R. 3086) that sought to permanently extend the prohibition. Additionally, S. 2609 would have preserved the status of grandfathered states created in the original ITFA, i.e. states that were collecting Internet access taxes when the law was first enacted (grandfathered states include: Hawaii, N.M., N.D., Ohio, S.D., Texas, Wis., N.H., Wash., Tenn.). Unfortunately, this measure also failed to advance before the end of the 113th Congress.

For the 114th Congress, the previously passed version of the Marketplace Fairness Act has been reintroduced in the Senate, S. 698, and currently awaits committee action.

In the House of Representatives, Chairman Goodlatte circulated a discussion draft for his approach to resolving the remote sales tax issue. He was joined by Rep. Anna Eshoo (D-Calif.) in promoting the draft. Their concept takes a slightly different approach than legislation introduced in the past by adopting a hybrid version of origin sourcing. Under this method, the tax on a remote sale would be based on where an item is sold and not where the customer who bought the item lives. Thus, the method is in contrast to prior legislative proposals and the Streamline Agreement in that the tax collected by the customer's home jurisdiction would be based on the rate of the remote seller's jurisdiction. NACo currently does not have a position on the draft and the timeline for bill introduction and any potential committee hearings remains uncertain.

In an interesting and positive development, Judiciary Committee member Rep. Jason Chaffetz (R-Utah) introduced H.R. 2775, the Remote Transactions Parity Act of 2015 (RTPA). The bill essentially mirrors the Marketplace Fairness Act in many aspects, such as utilizing destination based sourcing for taxing sales and adopting the two simplification options for states that wish to exercise collection authority. There are some differences between RTPA and MFA and it is currently undetermined how the sponsors would resolve them.

Here are a few notable differences within the RTPA:

- The small seller exception (the threshold of gross annual sales under which a remote seller would not be required to collect) starts at \$10 million in the first year, it goes to \$5 million in the second year and it finishes at \$1 million in the third year after enactment. In the fourth and subsequent years, there is no small seller exception. The MFA establishes a permanent exception at \$1 million.

- Additional protections for remote sellers are included: states would need to certify multiple software providers so that remote sellers would be able to use the software of their choice, states would need to provide centralized registration so that remote sellers would not have to repeat the process, and states would not be allowed to audit remote sellers with gross annual sales below \$5 million unless there is suspected fraud.
- The most significant difference is the inclusion of language for the definition of a remote seller that comes from legislation NACo opposes, the Business Activity Tax Simplification Act. Specifically, the RTPA establishes an exception for any seller that has an in-state physical presence for less than 15 days to conduct limited or transient business activity. This would run contrary to many state established nexus standards.

NACo supports the legislative effort being led by Rep. Chaffetz in introducing RTPA and will continue to work with the Congressman to address local government concerns. The bill enjoys bipartisan support.

KEY ISSUES:

- **Support legislative initiatives that would allow states and local governments to enforce existing laws and stop the loss of billions of dollars in uncollected tax revenue on sales in e-commerce every year.** This lost revenue will continue growing as e-commerce sales continue to experience significant growth. For example, total online sales for Black Friday 2013 reached over \$1.2 billion, a 20 percent increase over the same period in 2012.
- **The argument requiring remote sellers to collect sales tax creates too much of a burden on business are not as strong today.** The retail world is much different today than when the U.S. Supreme Court made its rulings in 1967 and again in 1992. Certified providers with the necessary software to keep track of the various state and local tax rates already exist. Keeping track of the tax rates is no more complicated than calculating real-time-shipping, a feature that already exists on most web sites and online sales marketplaces.
- **Passing federal legislation would not add to the federal deficit and does not create a new tax.** Federal legislation would also level the playing field for local retailers who are at a competitive disadvantage to online retailers who do not have to collect taxes.

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U.S. House Judiciary Committee		U.S. Senate Finance Committee	
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