



Marketplace
Fairness
Act

WHAT IS THE MARKETPLACE FAIRNESS ACT?

Summary

The Marketplace Fairness Act grants states the authority to compel online and catalog retailers ("remote sellers"), no matter where they are located, to collect sales tax at the time of a transaction - exactly like local retailers are already required to do. However, there is a caveat: States are only granted this authority after they have simplified their sales tax laws.

Simplification is required because of two Supreme Court rulings (*Bellas Hess* and *Quill*, described below) cite concern that collecting sales tax for multiple states would be too difficult.

The Marketplace Fairness Act requires that states must simplify their sales tax laws in order to ease those concerns and make multistate sales tax collection easy. Specifically, states seeking collection authority have two options for simplifying their sales tax laws.

Option 1: A state can join the twenty-four states that have already voluntarily adopted the simplification measures of the Streamlined Sales and Use Tax Agreement (SSUTA), which has been developed over the last eleven years by forty-four states and more than eighty-five businesses with the goal of making sales tax collection easy. Any state which is in compliance with the SSUTA and has achieved Full Member status as a SSUTA implementing state will have collection authority on the first day of the calendar quarter that is at least 180 days after enactment.

Option 2: Alternatively, states can meet essentially five simplification mandates listed in the bill. States that choose this option must agree to:

- Notify retailers in advance of any rate changes within the state
- Designate a single state organization to handle sales tax registrations, filings, and audits
- Establish a uniform sales tax base for use throughout the state
- Use destination sourcing to determine sales tax rates for out-of-state purchases (a purchase made by a consumer in California from a retailer in Ohio is taxed at the California rate, and the sales tax collected is remitted to California to fund projects and services there)
- Provide software and/or services for managing sales tax compliance, and hold retailers harmless for any errors that result from relying on state-provided systems and data

With states adhering to these provisions or the similar measures in SSUTA, retailers across the country will find collecting sales tax for multiple states much easier than it has ever been in the past.



How did we get here?

The 1967 Supreme Court case *National Bellas Hess v. Illinois Department of Revenue* set the stage for the debate on taxing internet sales when, in its majority (5 to 4) opinion, the court ruled that:

*“the many variations in **rates of tax**, in allowable **exemptions**, and in administrative and **record-keeping requirements** could entangle [the company]’s interstate business in a virtual welter of complicated obligations to local jurisdictions” (emphasis added).*

This quote demonstrates the ruling’s basis in complexity and burden, which has rippled forward to create today a tidal wave of unanticipated consequences. Since *Bellas Hess*, out-of-state retailers have been shielded from the obligation to collect sales tax, based purely on the notion that it would place too much of a burden on their businesses. To provide a sense of perspective, keep in mind that the year this ruling was issued was the same year the floppy disk was invented at IBM. It was also one year before the first plans were developed at MIT to create ARPANET, which laid the foundation for the internet we know today.

In 1992, the matter of sales tax on remote sales came before the high court again in *Quill v. North Dakota*. This time, the court reaffirmed the earlier *Bellas Hess* decision (8 to 1), primarily on the basis of stare decisis (“to stand by decision,” a doctrine that requires the court to respect the precedent set by prior rulings). The ruling went on to state,

*“[O]ur 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**. No matter how we evaluate the burdens that use taxes impose on interstate commerce, **Congress remains free to disagree with our conclusions**” (emphasis added).*

Conclusion

The retail world is a very different place today, forty-eight years after *Bellas Hess*, and twenty-three years after *Quill*. Today, keeping track of a few thousand local tax rates is no longer an insurmountable technical, administrative, or financial burden - certainly no more difficult than calculating real-time-shipping, a common feature on most web sites and online sales marketplaces. Thus, the basis for the *Bellas Hess* ruling no longer applies and the Marketplace Fairness Act will help the many states now facing significant budget shortfalls. Although some suggest these States have a "spending problem" rather than a "revenue problem," it is important to recognize that these States have already been reducing their spending levels year-over-year and increasing collection and enforcement efforts based upon their existing sales and use tax laws. However, a State can only enforce these laws within its own borders unless (or until) Congress recognizes the significant advances made by "man and his ingenuity with machines" over the last 48 years. Simply put, without the Marketplace Fairness Act, our States are unable to require remote retailers to collect the existing sales or use tax already approved by that state's residents.

Proposed Bill Requires Online Retailers To Collect Sales Tax

Times Record Staff

June 16, 2015 - 4:06am

WASHINGTON — Rep. Steve Womack, long an advocate for the Marketplace Fairness Act, on Monday joined Rep. Jason Chaffetz in introducing the Remote Transaction Parity Act to address the issue of sales tax collection on online purchases.

Womack, R-Rogers, said in a written statement that RTPA takes the Marketplace Fairness Act's framework and adds protections and exemptions for small businesses.

"The existing remote sales tax loophole has created the perception of the Internet as a duty-free marketplace and skewed the free market," Womack said. "Without Congressional action, it will stay that way, forcing more Main Street businesses to close their doors, further harming state and local services, and burdening consumers with the responsibility of filing their remote sales taxes."

Chaffetz, R-Utah, stated, "A broad coalition of large and small businesses, online and brick-and-mortar retailers, as well as state and local governmental leaders asked Congress to modernize our nation's outdated sales tax collection systems."

At the heart of the matter is the collection of state sales tax. In transactions in brick-and-mortar stores, the merchant collects sales tax and remits it to the state. In most online transactions, the merchant is not responsible for collecting the tax. In Arkansas and other states, the tax is still due, but the responsibility to pay it falls upon the purchasers. Because there is no practical way to enforce that responsibility, much of that tax revenue goes uncollected.

Under legislation proposed in the last congressional session, the Marketplace Fairness Act, states could require out-of-state retailers to collect sales tax when they sell products over the Internet, in catalogs and through radio and TV ads. The tax would be sent to the state in which the purchaser lives.

The National Retail Federation on Monday released a statement in support of the Remote Transaction Parity Act.

"The bill will eliminate the online sales tax collection loophole, which distorts competition, the free market and unfairly favors online sellers at the disadvantage and expense of local communities, merchants and small business owners and their employees," NRF Vice President for Government Relations David French said. "Retailers should be free to compete for customers and sales without the federal government picking winners and losers in the marketplace."

Late last year, U.S. Sen. Ted Cruz, R-Texas, assailed the Marketplace Fairness Act and called it a "\$340 billion tax increase on online retailers," according to a Nov. 18 Washington Bureau story. He argued the legislation helped retail giants and not mom-and-pop startups, and that it placed unfair accounting burdens on small retailers.

French noted in his statement that the new bill “adds significant simplification to the sales tax collection process, removing both the compliance and audit burdens for remote sellers that choose to use certified software providers.”

The RTPA legislation will be referred to the House Judiciary Committee because it concerns interstate commerce, according to a news release from Womack’s office.

Other lead cosponsors of this bill include Reps. John Conyers, D-Mich, Kristi Noem, R-S.D., Steve Stivers, R-Ohio, Peter Welch, D-Vt., Jackie Speier, D-Calif., and Suzan DelBene, D-Wash.

The full text of the bill and a full list of supporters can be found at Womack.house.gov.

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