Written by Bob Adelmann on March 26, 2013

# Proposal to Allow States to Tax Internet Sales Passes Senate

On March 22, a proposal to allow states to tax internet sales passed the Senate overwhelmingly, 75-24. Twenty-six Republicans joined Democrats in passing the non-binding resolution. The proposal was designed to measure the sense of the Senate regarding the Marketplace Fairness Act of 2013 sponsored by Senators Michael Enzi (R-Wy.) and Dick Durbin (D-Ill.) which they, along with Senator Lamar Alexander (R-Tenn.) presented back in February. Enzi and Durbin were behind the proposal which now gives traction and momentum to allowing states to tax internet sales taking place outside their borders.

This has been a sticking point for the last 20 years. In 1992, North Dakota sued Quill Corporation to force them to pay use taxes on products shipped into North Dakota from Quill, whose headquarters were in Delaware and who otherwise had no physical presence in North Dakota. The North Dakota Supreme Court upheld the lower court, which ruled in favor of the state. Quill appealed, and the case went to the Supreme Court.

Associate Justice John Paul Stevens rendered the opinion for the court's unanimous decision to reverse North Dakota's Supreme Court decision, holding that under the Commerce Clause collecting such sales and use taxes put an excessive and unconstitutional burden on commerce between the states. But then Justice Stevens added,

> Our 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.

On November 9, 2011, Congress finally got around to disagreeing with the court's decision when Senator Enzi, along with 16 Democrats and four Republicans, offered the Marketplace Fairness Act. Despite promises to bring the bill to the floor before the end of the year, the bill died when the 112th Congressional session ended.

On February 14, Senator Enzi teamed up with Senators Durbin and Alexander to sponsor the Marketplace Fairness Act of 2013 with the same purpose: to allow states to collect taxes from internet sellers no matter where they were located, thus overriding *Quill v. North Dakota*. If passed, the law would allow states to require out-of-state retailers to collect sales and use taxes even if they didn't have a physical presence in the state. It would "correct" *Quill v. North Dakota* as Justice Stevens inferred, and as promoted by its supporters: "Collecting sales tax is — or rather should be — simply part of selling online, just as it's part of selling on Main Street. It's just part of doing business." It would level the playing field, say the lobbyists in favor of the bill, which currently give online sellers "in some states a 5 to 10% price advantage."

Those opposed to the bill such as Senator Ron Wyden (D-Ore.), argue it would encourage internet sellers to move overseas where it would be much tougher for states to enforce such a law. John Tait, president of Campaign for Liberty, claimed that passage of the act "would require every business in the country to know the details of each state and locality's sales tax laws…. Companies would then have to figure out how much tax they owe each state and locality and send the corresponding payments. While this may be a boon for tax accountants, the reality is [that] compliance with this new National Internet Tax Mandate [as he calls it] will be quite costly, with those costs being passed on to the consumer in the form of higher prices."

It would also force internet sellers to become tax collectors for each state in which they have customers, according to Tait.

Libertarian economics professor Thomas DiLorenzo said the bill will enable the federal government to allow the states to become a cartel with itself as the chief enforcer:

> This proposed Act would have the federal government become the price-fixing cartel enforcer for the state governments that would then tax all internet sales from any source.
>
> As is the case with most federal intervention, such a law would likely be enforced in such a way that there would be little or no tax competition between the states — the federal government will strive to enforce one single (high) rate of state sales tax for internet purchases.

There is one bright spot. With 26 Republicans siding with Democrats in voting from the resolution, this is "a gift for the liberty movement" according to Tim Shoemaker of Campaign for Liberty:

> Before Friday, it wasn't clear where the Senate stood on what really ought to be called the National Internet Tax Mandate.
>
> Thanks to their vote, now we know…. and it wasn't pretty for Senate Republicans.
>
> Twenty-six Senate R's sided with Senators Alexander, Durbin, and Enzi to embrace the tax-and-spend status quo, flip the original intent of the Commerce Clause on its head, and "deputize" small online retailers as states' "tax collectors."

Shoemaker then provided the phone numbers and e-mail addresses for the offending 26, asking supporters to "reach out to them and let them know you do not appreciate them supporting higher taxes, particularly pernicious ones that target the last free market environment we have — the internet."

*A graduate of Cornell University and a former investment advisor, Bob is a regular contributor to* The New American *and blogs frequently at www.LightFromTheRight.com, primarily on economics and politics. He can be reached at badelmann@thenewamerican.com.*