



Senate Majority Leader Reid Fast Tracks the Internet Sales Tax Vote

Senate Majority Leader Harry Reid [decided last week](#) to push through Wyoming Senator Mike Enzi's bill, the Marketplace Fairness Act, so that it bypasses any committee debates and thus can be brought to the floor for a vote immediately. A vote on Enzi's bill, S. 743, is expected this week. The *Wall Street Journal* noted that in his haste to get the bill to the floor for a vote, Reid wasn't able even to get the text of the bill onto the website of the Library of Congress until this past weekend.



The bill was introduced by Enzi late last year but wasn't voted on before the 112th Congress adjourned. He re-introduced his bill in February, but it languished until Reid decided to fast-track it. The language [from the bill](#) expresses the "Sense of Congress:"

It is the sense of Congress that States should have the ability to enforce their existing sales and use tax laws ... without regard to the manner in which the sale is transacted ... and the right to collect ... taxes that are ... owed.

This language addresses the Supreme Court's decision in 1992 in [Quill Corp. v. North Dakota](#) that disallowed North Dakota from forcing Quill to collect sales taxes from its customers in North Dakota even though Quill is incorporated in Delaware. The court ruled that since Quill had no physical presence in North Dakota, the state couldn't force Quill to enforce a North Dakota law and remit those taxes to the state.

But in that case, the court added that Congress could change the rules if it disagreed with its decision:

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....

Accordingly, Congress is now free to decide whether, when, and to what extent the States may burden interstate mail-order concerns with a duty to collect use taxes.

Back in 1992, Quill and others were able to market their products and services via catalogs, direct mail, and telephone solicitations. The Internet wasn't commercialized for another three years, when eBay [completed its first online transaction in September of 1995](#). With e-commerce sales [now approaching a quarter of a trillion dollars annually](#) and many states searching for additional revenues, the invitation by the Supreme Court in Quill has now proved a temptation too hard to resist. The *Journal* called Enzi's plan "flawed," as online merchants would, for the first time since Quill, "be forced to collect sales taxes for all of America's estimated 9,600 state and local taxing authorities."

The Enzi plan reduces the complexity somewhat, along with advances in software programming, so that merchants won't have to deal with all 9,600 jurisdictions, but only with a centralized tax collector for



Written by [Bob Adelman](#) on April 22, 2013

each state. And merchants with less than \$1 million in gross e-commerce sales would be exempt.

The bill delights Tennessee Governor Bill Haslam, [who claimed](#) that Tennessee's coffers are missing out on between \$300 and \$500 million on untaxed Internet sales taking place outside his state. He said that action must be taken on the national level or else "we're going to keep playing these kinds of move-around games."

Resistance to such a measure is increasing rapidly because of the innate unfairness, as David Addington of the Heritage Foundation [noted](#), of the bill that would authorize every state "to force out-of-state businesses to serve as the state's tax collector." Picture an online merchant in New Hampshire, one of five states without a sales tax, dealing with the new law:

Take, for example, a company whose workforce and warehouses are in New Hampshire, and which has no contacts with Illinois other than taking remote sales orders over the Internet. If, and only if, S. 743 were enacted, the Illinois politicians could order the New Hampshire company to collect sales tax on those remote sales and send the taxes to the Illinois state government.

[Glenn Jacobs says](#) the bill would further undermine "our already moribund system of federalism," while noting further than Governor Haslam and others already anticipating an Internet sales tax windfall with passage of the bill, might just be greatly disappointed. Price-conscious consumers may wind up doing less business on the Internet, while merchants may find it expedient to move their sites offshore to avoid the new rule.

But the biggest objection is that the Internet sales tax is a tax, another tax piled on top of a growing list of taxes being foisted upon consumers who will then have less to spend. It will, as Jacobs said,

transfer resources from the productive sector of the economy to the parasitic sector, thereby inhibiting capital formation and investment. It will put shackles on one of the economy's fastest growing sectors, Internet commerce.

Another objection is that politicians will be able to remove themselves from any blame for the increased taxes if the bill passes. The senators can claim that they are not responsible for any increases in sales taxes because they didn't impose them, the states did. And state politicians can claim that the state always had a sales tax, that the bill just allows them to collect them from merchants who weren't paying them before.

Following the language of the bill being published on the website of the Library of Congress this weekend, eBay CEO John Donahoe sent an e-mail to 40 million of his eBay users asking each of them to let their senators know how they feel about it. Wrote Donahoe,

This legislation treats you and big multi-billion dollar online retailers — such as Amazon [which supports the legislation] — exactly the same. Those fighting for this change refuse to acknowledge that the burden on businesses like yours is far greater than for a big national retailer.

It will be interesting to see how effective the Internet might prove to be in protecting itself against further incursions by politicians looking for more revenues and more control. The ultimate solution is not to hammer every merchant into paying equal taxes but lowering the tax burden all across the country on every customer and merchant. That would then be truly fair.

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