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E-Sales Tax Fairness Marketplace Fairness Act, S. 1832 Marketplace Equity Act, HR 3179 Main Street Fairness Act, H.R. 2701 and S. 1452

AVMA Position: Support

- AVMA supports a fair and level playing field for small businesses whether they sell online or on Main Street. At present, online retailers have an unfair price advantage over bricks-and-mortar businesses.
- Congress should give states the authority to manage their sales tax laws while closing the loophole which prohibits states from requiring remote sellers to collect sales and use taxes owed on purchases from out-of-state vendors.

Background:

- Congressional action is necessary to fix the problem of online sales tax collection.
- For the past 20 years, States have been unable to enforce their own sales and use tax laws on sales by out-of-state, catalog, and online sellers due to the 1992 Supreme Court decision *Quill Corp v. North Dakota*.
- Because this is a matter of interstate commerce, Congress MUST grant the authority needed for states enforce sales tax collection and remittance from out-of-state sellers.

Justification:

- The Internet marketplace is rapidly expanding – It does not make sense to treat one channel of sales differently than another. Online sales are growing 4 times faster than sales made at brick-and-mortar businesses.
- According to the Department of Commerce, in 2010 e-commerce represented more than 15% of retail sales.
- In 2012 states are expected to lose as much as \$23 billion in uncollected revenue as a result of online-only sellers not collecting sales taxes.
- Legislation WILL restore states' rights. It will empower the States and allow them to collect sales and use taxes two ways: States can collect under the Streamlined Sales and Use Tax Agreement (SSUTA) or they can adopt minimum simplification requirements. States would have the option to choose the best solution for them, and not be required to conform to a one-size-fits-all model.
- Legislation WILL NOT raise taxes but WILL remove the tax burden being placed on consumers.
- Consumers are currently required under state laws to pay sales and use taxes on the goods they purchase, but if the retailer does not collect it, it becomes the consumer's responsibility to remit it to the state.
- Online sellers are not required to collect the tax in the same way that local businesses do – which puts local businesses at a disadvantage.
- Consumers can be audited and charged with penalties for failing to pay sales and use taxes, but it is a tax that is difficult for states to enforce.

Summary of E-Tax Fairness Legislation:

H.R. 2701/S. 1452, Main Street Fairness Act

Sponsors: Rep. John Conyers (D-MI-14)/Sen. Richard Durbin (D-IL)

- Grants consent of Congress to the Streamlined Sales & Use Tax Agreement (Agreement), the multistate agreement on sales and use tax collection and administration adopted on 11/12/02; authorizes each state that is a party to Agreement (member state), after 10 states (comprising at least 20% of the total population of all states imposing a sales tax) have petitioned for and have become member states, to require all remote sellers not qualifying for the small seller exception to collect and remit sales and use taxes on remote sales owed to each such member state under the terms of the Agreement. Sets forth minimum requirements for simplifying the administration of multistate sales and use taxation under the Agreement; provides for judicial review of civil action challenging the constitutionality of this Act by a panel of three judges of a U.S. District Court.

Status: H.R. 2701 introduced 7/25/11 and referred on 8/25/11 to the House Committee on the Judiciary Subcommittee on Courts, Commercial and Administrative Law. S. 1452 introduced on 7/29/11 and referred to the Senate Finance Committee.

S. 1832, Marketplace Fairness Act

Sponsors: Sen. Mike Enzi (R-WY)

- Gives states the right to decide to collect (or not) taxes that owed; closes tax loophole and provides states with the clear authority to require all retailers to collect sales taxes; does not create a new tax; releases consumers from tax remittance obligations; exempts businesses with less than \$500,000 in online or out-of-state sales from collection – requirements which will protect small merchants and give new businesses time to get started.

Status: Introduced 11/9/11, referred to the Senate Finance Committee.

H.R. 3179, Marketplace Equity Act

Sponsors: Rep. Steve Womack (R-AR-3)

- Authorizes states to require all sellers making remote sales to collect and remit sales and use taxes with respect to such sales into the state, without regard to the location of the seller, if such states implement a simplified system for administration of sales and use tax collection for remote sellers. Requires such a system to include, at a minimum: (1) an exception for remote sellers with gross annual receipts in the preceding calendar year from remote sales not exceeding \$1-M in the U.S. or not exceeding \$100,000 in the state, (2) a single sales and use tax return for use by remote sellers and a single revenue authority within the state with which remote sellers are required to file a tax return, and (3) a uniform tax base throughout the state. Defines "remote sale" as a sale of goods or services attributed to a state with respect to which a seller does not have adequate physical presence to establish a nexus so as to allow such state to require such seller to collect and remit taxes.

Status: H.R. 3179 introduced 10/24/11, referred to the House Committee on the Judiciary Subcommittee on Courts, Commercial and Administrative Law.

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