



FACT SHEET

Marketplace Fairness Act

Background

On Monday, May 6, 2013, the United States Senate passed S. 743, [*Marketplace Fairness Act of 2013*](#), by a vote of 69-27 (with four Senators not voting). The legislation addresses the 1992 Supreme Court ruling, *Quill Corp v. North Dakota*.

In *Quill v. North Dakota*, the Court ruled Internet and catalog retailers were not required to collect nor charge state or local sales tax so long as they didn't have a "physical presence" in the state in which the customer resided. The responsibility for paying state and local sales taxes was placed on the purchaser of the goods. The National Conference of State Legislators (NCSL) estimates that in 2012, states lost an estimated \$23.3 billion in sales tax receipts.

Marketplace Fairness Act Legislation

Senator Mike Enzi (R-WY) has championed efforts in the Senate on this legislation. In the House, Rep. Steve Womack (R-AR) has introduced identical legislation, H.R. 684, [*Marketplace Fairness Act of 2013*](#), which currently has the support of 65 co-sponsors.

The legislation passed by the Senate and the companion language in the House, would allow for States to collect and remit sales taxes from internet sales. The legislation exempts those companies whose revenue does not exceed \$1 million in internet sales.

Additionally, the bill outlines the following provisions for the collection of the sales tax:

- implements minimum simplification requirements, including providing a single entity within the state responsible for all state and local sales and use tax administration, a single audit and tax return for all state and local jurisdictions, and a uniform sales and use tax base for all state and local taxing jurisdictions;
- adopts a uniform rule for sourcing all remote sales;
- provides information indicating the taxability of products and services and exemptions from tax;
- provides free software for remote sellers that calculates sales and use taxes, files tax returns, and updates tax rate changes;
- provides remote sellers and certified software providers with 90 days' notice of tax rate changes.



PRO

The ability for states to collect the sales tax would not only provide a much needed stream of revenue, but in essence would bring parity to those businesses operating currently with a physical presence in those states. Supporters of the legislation argue that a disparity exists that harms brick and mortar businesses since they are required to charge and collect state and local taxes, ranging anywhere from 5%-10%.

Additionally, some states have taken steps to address the situation, commonly known as the “Amazon Rule”- requiring big online retailers to collect and pay sales tax. Currently 10 states (AR, CA, CT, IL, NY, NC, RI, TN, TX, VT) require, Amazon specifically, to collect and pay sales tax even if they do not have a physical presence in the state. However, this causes a mismatch of state laws that are confusing and inconsistent.

CON

Those against the legislation argue that the complexity of the regulatory burden placed on small businesses would be enormous. While the law requires free software for businesses to utilize, the sheer number of sales tax jurisdictions (9,600) would be challenging for any business, especially micro-business, to manage.

Opponents of the bill, also argue that the \$1 million exemption level is significantly lower than federal definitions of a small business based on revenue (not employee size) and the exemption should be increased to either the Small Business Administration revenue definition (\$20 million) or the Internal Revenue Service revenue definition (\$30 million) of a small business.

NASE Position

Previously the NASE has opposed similar legislation; however, one significant difference, previous versions of the legislation set the exemption level at \$500,000. To that end, the NASE has requested its members to complete a survey so that we might evaluate the merits of the Senate passed legislation and move forward in a matter that best represents our membership.

You can participate in the [Marketplace Fairness Survey](#) and share your thoughts with the NASE Advocacy team as to how we should move forward.