



**AMERICAN CATALOG  
MAILERS ASSOCIATION**

**Written Testimony of the American Catalog Mailers Association  
Regarding the Committee on Finance of the U.S. House Committee On The  
Judiciary  
Hearing on Marketplace Equity Act of 2011  
July 24, 2012**

HAMILTON DAVISON  
PRESIDENT & EXECUTIVE DIRECTOR  
AMERICAN CATALOG MAILERS ASSOCIATION  
WASHINGTON, DC  
1-800-509-9514  
[www.catalogmailers.org](http://www.catalogmailers.org)

The American Catalog Mailers Association (ACMA) thanks Chairman Smith, Ranking Member Conyers, and the House Judiciary Committee for this opportunity to present its views on the efforts of states to impose tax and tax collection obligations on retailers located outside of their states and who have no physical presence in those states, all per the Marketplace Equity Act of 2011, H.R. 3179. The bill would give states the authority to require out-of-state businesses to collect sales or use taxes. Such efforts represent neither federal nor state tax reform, but merely states seeking to impose a 1930s tax regime on 21<sup>st</sup> Century commerce rather than reforming their tax regimes and seeking Congressional help. Effectively, states impose business activity taxes on companies with no physical presence, no employees, and no political voice in the state. Such a move is bad for the economy, hurtful to the affected companies, moves the marketplace toward less equity, and fails to solve acute revenue issues for states and municipalities.

Founded in 2007, ACMA is the only industry association that advocates specifically for catalog marketers. As the primary voice of the Catalog Industry, ACMA represents its members on issues that directly concern their immediate and long term commercial interests such as tax issues, postal rates, regulations and technical matters; environmental issues; and regulatory and government relations

ACMA is also a member of TruST, the coalition for True Simplification of Taxation, a recently-formed group whose association members are all filing written testimony that

ACMA has read and concurs with. More information on TruST can be found at [www.TrueSimplification.org](http://www.TrueSimplification.org).

As part of this written testimony and our presence at the hearing, ACMA would like to respond to a the charge that “real companies do not care about this issue.” To illustrate how erroneous a claim this is, ACMA has gathered nearly six dozen letters from remote marketers — primarily companies that sell via catalogs — all of whom explain in specific detail the harm this bill would cause their companies, growth, and most notably their employment. It is notable that this quantity of letters was assembled in only a few business workdays between the notice of this hearing and the deadline to submit testimony. This underscores the veracity of opposition to H.R. 3179 and clearly addresses concerns that no real opposition to this change exists.

## 1. BACKGROUND

ACMA would like to address the current movement rallying behind the so-called Marketplace Fairness Act. The bill is hardly fair and would do much harm to the marketplace. It presents a serious threat to catalog, online, and other direct marketers because it would require the collection of sales taxes in more than 9,600 state and local tax jurisdictions, with differing rates, taxable product categories, definitions, sales tax holidays, and reporting and audit requirements. If enacted, it would result in lost sales, confused customers, daunting administrative burdens, repetitive audits, and expensive assessments without impartial recourse. The market value of direct marketing businesses would be similarly affected.<sup>1</sup>

The argument that current nexus standards result in an “uneven playing field” is patently false. National retail chains receive many state and local tax benefits and other incentives to locate stores in particular areas. These include rebates of property and sales tax (TIFs), subsidies for utility lines, training allowances and tax deductions for new hires, etc. Employees of business located within a jurisdiction use education and public services. Remote sellers get none of these government benefits, yet would be burdened with collection of the tax to fund these subsidies. In fact, remote sellers are obliged to pay these taxes whether or not they collect them from customers, effectively making this a new tax on remote marketers.

The U.S. Supreme Court in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), ruled that without specific authorization from Congress, states could not impose tax collection burdens upon remote sellers that have no “physical presence” as this would interfere with interstate commerce. Moreover, if allowed by Congress, the myriad of state tax jurisdictions with resulting variance in rates, definitions, and audits would create a complex and administratively costly nationwide sales tax collection system. The costs of that collection are a tax on the out-of-state business.

---

<sup>1</sup> Abe Garver, Focus Investment Bankers as originally published on Seeking Alpha on October 9, 2011 and also found at [http://www.focusbankers.com/publications/articles/Valuations/articles\\_webonlyretailers.asp](http://www.focusbankers.com/publications/articles/Valuations/articles_webonlyretailers.asp)

## 2. HARDSHIPS ON BUSINESSES

Consider the potential situation of one ACMA member, National Wholesale, which is based in Lexington, N.C. This 60-year-old, family-owned and operated company is very much the catalog mail order equivalent of a main street store. National Wholesale provides a full line of clothing, undergarments and shoes tailored to meet the special needs of mature female customers from across the country. A sizable number of National Wholesale's customers are in their 70s, 80s and even their 90s. More than one-third of the company's orders still come in an envelope with check enclosed. Many of their customers rely on mail order purchases of products from National Wholesale that are simply not available locally, and a large majority of their customers do not have access or are not comfortable using a computer or the internet to order.

Like many catalog marketers that operate out of a single state, on the order form of all National Wholesale catalogs is a note indicating "North Carolina residents please add 6.75% sales tax." (See Appendix I for a picture of a National Wholesale order form.) Despite this simple directive, many of National Wholesale's customers still get this wrong either by paying the wrong rate or not paying the tax at all. Imagine if the company's catalog order form had to have a list with the tax rates from more than 9,600 taxing jurisdictions for customers to decipher. It would be impossible for National Wholesale to explain the taxing across all the different jurisdictions in the limited space available on a printed order form. And if the older consumers the company serves are confused on how to calculate the tax, or which rate should apply, there's a very good chance they just won't order at all.

For the elderly ladies who are confused with what's going on with sales tax, National Wholesale would end up absorbing the unpaid tax rather than chasing after customers for the unpaid or under-paid tax. The significant harm to their business in chasing after customers over unpaid or incorrectly remitted sales tax would be twofold: the cost burden of collecting from their customers would be substantial and unsustainable, and the confusion, irritation and negative feelings their customers would have toward the company over their shipments being held up pending payment of sales taxes would cost the company many of its customers.

As a small company, National Wholesale would also face the tremendous burdens of trying to figure out whether the tax is correct or not, remitting it to all these jurisdictions, and being subject to sales tax audits from all those different taxing jurisdictions.

Also consider the hardship another ACMA member, the Miles Kimball Company catalog, based in Oshkosh, WI, would face. Nearly two-thirds of this company's customers are 65 years of age or older; in fact, almost half its customers are 70 or older. Among all its customers, one-third of them still make their catalog purchases by mailed-in orders using personal checks. Needless to say, Miles Kimball faces the same impossible task of having to explain the assorted taxing jurisdictions as National Wholesale does.

Although a majority of catalog customers pay by credit card and another majority of such customers order online, the education and conversion processes for collecting from so many taxing jurisdictions around the country are almost as difficult as the two ACMA members referenced here.

Some seeking to overturn the *Quill* precedent legislatively claim that this matter can be handled quickly and efficiently with free look up software, or that concerns of complexity and cost are overstated. This simply is not the case. Each remote marketer has invested substantial resources to build enterprise software systems that run their businesses. Everything that touches or relates to the order flow or the revenue flow of the business is affected including those modules that track inventory, take orders and maintain order history, and bill customers to collect revenues. All company legacy systems need to be modified to account for this change, imposing a significant conversion burden on remote marketers. Also required are ongoing maintenance costs to keep descriptions and tax requirements up to date, ongoing training of customer service personnel, and additional financial reporting and compliance.

If the benefit were significant for the states and municipalities involved, then perhaps this extra cost might be justifiable. The reality is that forcing remote marketers to collect and remit sales and use taxes will add less than 1% to the total current tax collections for states and municipalities nationwide.

H.R. 3179 puts tens of thousands of remote marketing companies at risk of failure. A perusal of the letters assembled in short order and submitted to the House Judiciary Committee bear this out as owners and executives document the specific harm the collection of sales and use taxes represents to their businesses.

Remote marketing also supports a large supply chain of “mom & pop” businesses, inventors, artists and artisans, manufacturers, distributors and importers who often lack the scale necessary to distribute via large national retail chains. Moreover, remote marketers necessarily draw on a large variety of vendors and supply chain partners in the creating of catalogs, design of websites, and operation of businesses that would also be adversely affected by H.R. 3179.

Should H.R. 3179 be put into law, many smaller catalogers will find it almost impossible to compete as already thin profit margins erode further. Putting an entire sector of the economy and the many jobs they represent at risk for such a small change in tax collections simply is not cost justifiable.

### **3. HARDSHIP ON CONSUMERS**

In addition to their positive impact on the national economy, it should be noted that remote marketers play an important role in meeting distinct consumer needs and requirements, needs that are not generally met by large, sophisticated retail chains.

Catalog and internet sales allow consumers to efficiently select goods that may not be readily available in their local market. They allow convenient shopping for single parent households or dual income families where the adults have precious little free time during typical store hours. They bring a variety of hard to get or unique products to the market that do not have large enough demand to be carried in traditional “brick and mortar” retail store locations. They provide privacy to purchase merchandise that is embarrassing or uncomfortable to purchase in a retail shopping environment. Remote sellers cater to the needs of rural Americans, disabled consumers and older shoppers who may have difficulty driving or walking.

In fact, remote marketing and catalogs specifically bring a wide variety of social, cultural and economic benefits to Americans that are not otherwise available. See ACMA’s white paper “*The American Catalog Experience: Catalog Marketing’s Social Importance to American Consumers & Culture*,” attached herein as Appendix II. We ask that this be incorporated into the hearing record.

#### **4. CONCLUSION**

The physical presence requirement from the *Quill* law must remain for the collection of sales and use taxes. If that law is to be changed, it must not be done so without significant simplification reform of state sales tax regimes and the establishment of a fair and impartial dispute resolution mechanism. Our national economy is in no position to afford such a burden absent statutorily-mandated simplification and dispute resolution provisions also being included in the law.

ACMA urges Congress to uphold both the current *status quo* of the twice-tested *Quill* precedent and to take the time to investigate the implications on all remote marketers prior to making any change to the existing laws.





AMERICAN CATALOG  
MAILERS ASSOCIATION

## APPENDIX II:

### **The American Catalog Experience:**

*Catalog Marketing's Social  
Importance to American  
Consumers & Culture*

## **Catalogs Bring A Variety of Good to Americans**

### **Overview**

The catalog industry has a wide-sweeping impact on American culture, well beyond the economic benefits of employing millions of people, paying millions in federal, state and local taxes, and conserving energy and natural resources. The American catalog experience has significant and important social benefits to American culture and consumers.

### **Catalogs are Good for American Consumers and Our Quality of Life**

- Catalog shopping is convenient and available 24/7/365 from one location accessed by mail, telephone or online. Oil consumption, traffic congestion, and parking are not factors.
- Catalog shopping is unconstrained by geography, thus eliminating physical and distance boundaries. Catalogs put a world of products in the hands of Americans.
- Catalogs allow instant service whenever and wherever people wish to shop. They are accessed anywhere, home or business.
- Catalogs define “universal access” for merchandise and commerce.
- Catalog shoppers consistently report it is easier to get detailed product knowledge and excellent customer service over the phone than elsewhere (or even to find a sales associate). There is usually no or little waiting time to get help.
- Catalogs fight the homogenization of products driven by retail consolidation (“the Wal-Martization of America”). Retail economics force aggressive rationalization of merchandise assortment. If retailers do not sell a high number of pieces per individual store, they cannot exist. If catalogers, who usually offer a much broader assortment, do not sell a high number of pieces nationwide, they cannot exist. Retail and catalog are different business models and both are important for the growth of the American economy.
- Catalogs create an easy way to comparison shop without necessitating multiple trips to different stores.
- Catalogs make sending a birthday, holiday or special occasion present to anyone, anywhere a convenient pleasure, helping Americans stay connected in an increasingly mobile society.
- Catalogs allow people to shop for potentially embarrassing products in the privacy of their own home without worrying about being out in public — for instance, a cancer patient buying a wig, or consumers buying unusual or plus-sized clothing in the privacy of their home rather than in public at stores. Personal hygiene, medical and disability-related products are frequently purchased from catalogs for enhanced privacy.
- Some of the specialty products sold by catalogs includes diabetes-related products, organic products, business productivity tools, pharmaceuticals, and other specialized goods for which a ready retail market might not otherwise exist.
- Catalogs contribute to the quality of life by providing a convenient, fun, compelling leisure time experience. Recreational shopping is an important pastime for many Americans.
- Catalogs remain part of a shared experience in America that remains relevant, human and enjoyable in the increasingly impersonal age of ecommerce and electronic media.

- Catalogs form part of our collective experience. Who doesn't remember the childhood pleasure of paging through the often-remembered Sears Wishbook catalog?

### **Catalogs are Good for the Environment**

- Catalogs may be America's biggest carpool.
- Catalogs have a low carbon footprint and are becoming more environmentally friendly every year. Yes, catalogs use paper, but the modern advances in forestry management have made trees a sustainable crop. In fact, there are more trees in North America today than there were at the time of Columbus's voyage. Plus, advances in the recycling of paper continue to develop and it takes 60% less water and energy to make recycled paper than to break lignin into virgin fiber. Please see [www.catalogmailers.org](http://www.catalogmailers.org) for more information on «Catalogs and the Environment».
- Catalogs make the phone ring, a nearly environmentally neutral communications method in a society increasingly aware about ways to cut our carbon footprint.
- With very few exceptions, catalog companies demonstrate responsible mailing practices, honoring consumer demands concerning mailing frequency, contact methods, and individual consumer needs and wishes. Catalogers are, by the precise and stringent economics of cataloging, self-regulating, and cannot afford to do otherwise.

### **Catalogs are Good for the Economy**

- Catalogs stimulate consumer demand, both for direct and retail, fuelling the largest engine of economic activity we have.
- Catalogs are highly targeted and merchandised to meet specific consumer interests and needs, thus representing an effective and efficient marketing channel to maintain and strengthen American competitiveness.
- Catalog brands have a long-term relationship with Americans that is part of the shared American experience. The ability to come back to trusted brands and companies for the things we need, knowing the consistency and helpfulness we will find as consumers can be relied upon again and again. This is a high ideal of American commerce.
- The robust American catalog shopping experience allows for a shift in power from the retailer to the consumer.
- Catalogs are mailed predominately to willing customers who may have a pre-existing relationship with retailers, or to those consumers who have requested a catalog from a company they are interested in shopping with, or to other "opted-in" consumers who have expressed interest in receiving marketing information or specific offers.
- Catalogs help small businesses succeed.

### **Catalogs Encourage Small Business**

- Catalogs allow many small businesses to quickly and efficiently access specialized products that keep them competitive despite their niche focus, small scale or remote location.
- Catalogs efficiently and effectively serve niche avocations and vocations, serving Americans and allowing these businesses to be productive at a lower cost of operations. They help "level the playing field" with larger companies that have more extensive sourcing operations.
- Catalogs provide an important distribution option for small- and medium-sized manufacturers, importers, wholesalers, inventors and designers, all of whom do not have the scale, sophistication or capital to sell their products to the "Big Box" retail giants, which demand prices that are impossible to meet.

- Catalogs provide a national market test for new products and the discovery of small niche market opportunities that would otherwise require large budgets and sophisticated deployment. This creates greater innovation and broader consumer solutions than would be possible otherwise. For example, the electronic thermometer, which is now a standard for families with newborns, was developed in exactly this manner.
- Catalogs provide a national audience for small companies and start-up operations, helping keep small business as the largest creator of jobs in our economy.

### **Catalogs are Good for Disadvantaged and Rural Americans**

- Catalogs can be the only alternative for shut-ins, infirmed, handicapped, elderly or those with limited mobility.
- Catalogs provide viable shopping venues for rural citizens who live too far from stores.
- Catalogs provide the older population with well-being benefits. The regular contact with letter carriers and delivery service providers who deliver packages to the home reduce the sense of isolation and provide beneficial human contact and a “safety-net,” helping seniors stay connected to the community and creating a sense of normalcy so critical to well-being and mental health.
- Catalogs enable people to lend a helping hand to those they do not know, including the poor, destitute or imperiled throughout the world (consider, for example, Heifer International, CARE, NWF or other nonprofits that have catalog businesses).
- Catalog companies do not have to be located in urban centers and can instead create quality jobs for rural America. High-employment catalog companies are found in locations such as Freeport, Maine; Dodgeville, Wisconsin; Dyersville, Iowa; and many other remote locations.

### **Catalogs, Their History, and Their Role in American Commerce**

- Interstate commerce developed because of catalogs.
- Rural free delivery was spurred on by catalogs.
- Parcel Post developed the required scale due to catalog shipments.
- Early catalog brands were among the first to have a national identity.
- More than half of America shops via catalogs.
- Catalogs allow marketers to have a national footprint without being a mass merchant, having helped develop the idea that we can have national brands without the requirement to open stores in every state.
- Baby Boomers buy more from catalogs — per capita — than any other generation.
- Catalog use increases with the age of the consumer, particularly pertinent in “the graying of America.”
- Catalogs provide important content to keep mail relevant and welcome in the household.
- Cataloging did \$270 billion in sales in 2006 and supported more than 20,000 different firms, as well as thousands of supplier companies and service vendors.
- Cataloging economics fundamentally changed in 2007 and have spurred industry-wide experimentation to reduce mail volumes, down 35% two short years later. That’s a figure that will likely continue to grow once catalogers perfect non-mail marketing techniques.

### **Catalogs and the Internet**

- As a whole, catalogers were pioneers in the use of the Internet for the sale of products and services to consumers and businesses.
- By in large, catalogers receive about half their orders online depending on the product category and demographic they serve—yet the paper catalog is responsible for generating

more than half a company's online sales (some companies report it is upwards of 90%). The symbiotic relationship between the paper catalog and online technology yields greater convenience for everyone from single, working moms to full families, to the elderly, to the physically handicapped, further driving social and environmental benefits, time and efficiency.

- Catalogs are also drivers of retail traffic, promoting commerce, jobs, and convenience for brick and mortar retailers.
- With rare exception, every cataloger has sophisticated e-commerce deployment, making full use of all established and most emerging, technologies.
- Catalogers largely do not distinguish between mail and Internet as business objectives. They see it as being about communicating with people in the way they want to be reached via media consumers already use. It is also about using the most efficient and desirable means possible to stay in touch with customers. The combination of the catalog plus the Internet creates a very powerful marketing and distribution system that impacts and improves lives.
- Catalogs establish brands then extend those brands' reach to the Internet, offering Americans hard-to-find products at value-based pricing.
- Catalogs help consumers feel confident about online purchases. Catalog merchants have a long and protected tradition of honoring their commitments as responsible, customer-oriented, integrity-driven businesses.
- Catalogs prompt people to tell others through social media (i.e., blogs, Twitter and Facebook) about the products that inspire. This "viral" effect of community and commerce has multiplicative financial and emotional benefits. It also increases consumer satisfaction and marketer responsiveness by providing a ready forum for customer comments, reviews and feedback.
- Catalogs provide an alternative transactional method for those Americans concerned about online privacy or transactional safety.
- Catalogs still have the highest order response of any vehicle available to direct marketing. Consumers "vote with their feet." This indicates that a great deal of value is put on the receipt of a catalog that creates a residual benefit for both online commerce and the American economy.

### **Conclusion**

Since the mid-1990s, many experts have predicted the extinction of the printed catalog. However, until the double-whammy of the huge postage increase of 2007 and the Great Recession of 2008-2009, catalogs in America continued to thrive, aided and enhanced by the maturation of Internet marketing. As both the general economy and postal rates settle down, it will be proven that "rumors of catalogs' demise" continue to be over-stated.

With catalogers' continuously responsive use of recycled paper and tree replanting, as well as their close attention to self-regulation, this responsible industry is primed for greater growth going forward.