

ACMA Talking Points for Members of Congress – Re: Tax Issues, May 2012

This document contains three parts. Please use Part 1 as a guide for approaching your Member of Congress on tax matters, most notably our efforts to preserve the Quill v. North Dakota remote sales tax collection law. For Parts 2 (“leave behinds”) and 3 (“minimum simplification standards”), we recommend you print these out on separate pieces of paper and leave them with your Members of Congress as a short reminder of what you’ll have discussed with them.

1. Talking Points:

- We believe every effort must be made to preserve the exemption for remote sellers from collecting and remitting sales and use tax upheld in the 1992 Supreme Court case, *Quill v. North Dakota*, for companies with no physical presence in a jurisdiction.
- Legislatively, overturning *Quill* must also include minimum simplification standards written into federal law otherwise remote sellers must deal with the complexity of 9,600 tax jurisdictions.
- Implementation is not as easy as simply using “free lookup software” as some would claim. Tax software must be integrated with companies’ proprietary legacy software systems that exist across all functional areas of the business to account for the numerous transactions required for every single order, return, substitution, and billing.
- The Streamlined Sales Tax Agreement is neither simple nor streamlined. It does not satisfy the objections stated by the Supreme Court to prevent sales and use tax from being an unreasonable barrier to interstate commerce as guaranteed by the commercial clause of the Constitution.
- The MFA is a bad tax policy. It does nothing to simplify the existing “crazy quilt” of existing state sales tax laws. With so much talk in Washington these days about simplifying the federal tax code, why should Congress pass a law that will massively complicate tax obligations for tens of thousands of small and medium-sized businesses and millions of consumers? The states should reform their tax systems before asking Congress to export those taxes across state borders and add yet another complicated tax “system” to our economy.
- The MFA is a “job killer.” It will have an adverse impact on the economy. At a time of high unemployment and sluggish consumer demand, why would Congress pass a law that targets an entire segment of the economy with new burdens?
- The MFA is attempting to fix a problem that does not exist. The claim that states are losing billions of dollars of tax revenues annually from catalog and internet sales is grossly overstated. Recent studies show the amount of lost revenue is actually far less than what the states claim.
- Further, this amount of “missed” revenue is diminishing as remote sellers become multichannel or establish regional and local warehouses to speed order delivery times, facilitate returns and reduce shipping costs. By establishing nexus, these growing multichannel retailers must already start collecting and remitting sales tax in the jurisdictions they operate. [Click here](#) to see a list of the largest Internet/catalog marketers and the number of states they already collect in.
- There is no uneven playing field. The argument that current nexus standards result in an “uneven playing field” is patently false. Big box retailers receive all sorts of 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, tax deductions for new hires, etc. The list is endless. Remote sellers get none of these government benefits and do not have any representation or redress in these jurisdictions, yet would be burdened with collection of the tax to fund these subsidies and local services they do not use or benefit from. Overturning *Quill* actually creates an uneven playing field!
- Remote sellers provide an enormous social benefit to the American way of life, providing solutions, diversity of products, convenience and employment that would not otherwise exist. See [ACMA’s whitepaper, [The American Catalog Experience](#)] for a complete list of the social, economic and cultural benefit possible only through the existing network of remote sellers such as the catalog industry.
- This would represent a new tax on these businesses and is anti-small business and anti-consumer.

2. 'Leave-Behinds':

- Main Street/Marketplace Fairness Act isn't fair for Main Street and is unconstitutional because without minimum simplification standards written into federal law, states and municipalities have created barriers to interstate commerce through their varied sales and use tax regimes. It unfairly taxes out-of-state remote sellers and even many of the Main Street retailers it seeks to help.
- Until such a time when true minimum simplification standards are forced on states and municipalities, the *Quill* law must be preserved. Forcing remote sellers to collect from 9,600 taxing jurisdictions will harm my company financially and lead to employment reductions. Small and medium sized companies will be substantially harmed.
- Overturning *Quill* legislatively does not solve state and municipal revenue problems. This new tax would collect only one-third of 1% of existing state revenues while placing unreasonable costs and demands on remote marketers, which ironically includes many small independent retailers on main street.

3. Minimum Simplification Standards and Dispute Resolution Requirements

Congress is considering overturning the present *Quill* standard, which requires retailers to collect sales tax only for states where they have a physical presence. *Quill* is based on Constitutional protections for interstate commerce, which were used to address the complex burdens of collecting sales tax for thousands of tax jurisdictions, each with its own rates and rules.

But as Congress considers whether to eliminate *Quill's* protection for interstate commerce, it must first ask whether the states have truly simplified their sales tax systems. They have not, so Congress must ask how to hold states accountable to minimum simplification standards and fair procedures for dispute resolution.

Fortunately, Congress can take the time to get it right. First, potential tax collections are far lower than tax advocates have claimed: uncollected sales tax on B2C e-commerce is only one-third of 1% of all state and local taxes. Second, the fastest growth in e-commerce is among multi-channel retailers who already collect for all states where they have stores.

However, if Congress is determined to overturn Constitutional protections for interstate commerce, it must require states to adopt minimum simplification requirements and agree to fair procedures for dispute resolution. Below are the **minimum simplification requirements**:

- Single sales tax rate for each state (states would remain free to divide sales tax proceeds between state and local jurisdictions)
- Compensate vendors for true cost of collecting taxes
- Single set of definitions for taxable and exempt products for all states
- Single audit conducted by retailer's home state on behalf of all states
- Spreadsheet tax return filed with home state for sales and use taxes due to all states, which must be accepted by all remote states. Home state responsible for distributing funds to remote states.
- Single national rule for sourcing sales (either destination or origin)
- Eliminate sales tax holidays or adopt single uniform national sales tax holiday (same dates and same products)
- Eliminate sales tax on shipping & handling charges
- States to provide certified software for collection and remittance. Users of the software would be immune from civil liability for errors in taxes collected.
- Exclude merchants based in states that have no sales tax (New Hampshire, Delaware, Montana, Oregon, and Alaska)
- Maintain some form of market discipline to hold states to their simplification requirements. For example, exclude merchants based in states that opt-out of SSTP or otherwise forego their authority to force remote sellers to collect their state's sales tax.
- Commitment to have a single national sales tax base within 10 years

Resolution of disputes:

- Out-of-state companies may challenge tax assessments that violate federal statutes or U.S. Constitution in federal court. This would require repeal of the Tax Injunction Act (28 USC§1341).
- Mandatory mediation by independent organization of tax disputes between state revenue departments and remote sellers.

For more information, please go to www.CITFAF.org