

June 10, 2015

An Open Letter to the House of Representatives: Oppose the Remote Transactions Parity Act!

Dear Representative,

On behalf of the millions of citizens represented by the undersigned organizations, we write in strong opposition to the so-called "Remote Transactions Parity Act" (RTPA). Despite what some supporters claim, this legislation does not appropriately address the fatal flaws of its predecessor, the "Marketplace Fairness Act" (MFA). Like the failed MFA, the new RTPA would dismantle proper limits on state tax-collection authority while potentially causing serious damage to electronic and interstate commerce.

The "Remote Transactions Parity Act" would countenance an enormous expansion in state tax-collection authority by wiping away the "physical presence standard," a baseline protection that shields taxpayers from harassment by out-of-state collectors. Current law dictates that a state can only require a business to collect its sales tax if it is physically present within its boundaries. Far from a "loophole" intended to advantage the Internet, it is the result of the 1992 Supreme Court decision in *Quill v. North Dakota*, which was grounded in a bedrock foundational principle of federalism: states must not be allowed to extend their taxation and regulatory authorities beyond their borders. Dismantling this protection for remote retail sales would create a very slippery slope for states to attempt collection of business or even income taxes from out-of-state entities.

Furthermore, the bill would create a decidedly "unlevel" playing field between brick-and-mortar and online sales. Brick-and-mortar sales across the country are governed by a simple rule that allows the business to collect sales tax based on its physical location, not that of the item's buyer. Under the RTPA, that convenient collection system would be denied for online sales, forcing remote retailers to ascertain their customers' place of residence, look up the appropriate rules and regulations in nearly 10,000 taxing jurisdictions across the country and then collect and remit sales tax for a distant authority with which they may have no tangible connection, subjecting themselves to as many as 46 state tax audits in the process. Imposing this unworkable collection standard on remote retail sales but *not* on brick-and-mortar retail sales would not only be unfair and result in enormous complexity and damage to interstate commerce.

While RTPA sponsors claim that it "fixes" auditing and compliance concerns raised by the previous Marketplace Fairness Act, the reality is that it does nothing of the sort. The bill's paltry "small-seller exception" eventually settles at just \$1 million and, unlike previous bills, applies to *all* annual receipts instead of just the portion associated with remote sales.

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As a result, the RTPA would ensnare dramatically *more* businesses in burdensome collection schemes than the misguided MFA.

The legislation is also problematic in its increased reliance on so-called “certified software providers” to function as tax-collection agents for states. These software providers constitute an ostensibly private, but state-paid, “middle man” between tax agencies and sellers in whom most collection and audit responsibilities are vested.

While it ostensibly protects businesses below a \$5 million sales threshold from out-of-state audits, the language contains an enormous loophole empowering any state to audit any remote seller if it believes there is “intentional misrepresentation.” Aggressive states undoubtedly would seize upon this opening to audit businesses outside their borders.

In seeking to address the failures of the “use tax” systems employed by states, the RTPA ends up blessing a massive expansion in state tax-collection authority and dismantling a vital taxpayer protection upon which virtually all tax systems are based. This will harm online sales, which – despite their dramatic expansion – still only account for roughly \$0.07 of every \$1 in retail spending. Conservatives in Congress should oppose this unwise legislation and instead work to preserve geographical limits to tax authority and to encourage tax competition.

Sincerely,

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