

Internet sales tax could foster anti-business climate

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The prospect of an Internet sales tax has hung over the head of e-commerce like the Sword of Damocles. It's the boogeyman that threatens to pull the World Wide Web into the stone age of brick-and-mortar. But the [ugly rumors](#) [1] may finally be true.

A [bill](#) [2] under consideration in the Senate would impose an Internet sales tax and amend any "competitive" disparity. Prepare to spend a lot more for your online purchases.

Whenever a bureaucrat proposes a bill with language and implications inherently distasteful to the general populace, they couch the bill in cute, innocuous terms — the "Marketplace Fairness Act," for instance. It sounds...*fair*. We all want what's fair. But the bill actually entails a massive tax on companies that do business in other states — even states in which they have no physical presence.

"Each Member State under the Streamlined Sales and Use Tax Agreement is authorized to require all sellers not qualifying for a small seller exception to collect and remit sales and use taxes with respect to remote sales sourced to that Member State pursuant to the provisions of the Streamlined Sales and Use Tax Agreement."

The entire bill doesn't contain a single mention of "online" or "internet," but the target is clear — e-commerce. It tars online retailers with the impersonal nom de plume "remote seller" and compels them to tax customers based upon their state of origin. In other words, it violates the fundamental intent and nature of federalism.

It also implicitly contradicts the Supreme Court ruling in [Quill Corp. v. North Dakota](#) [3], 504 U.S. 298 (1992), which found that a "seller whose only connection with customers in the State is by common carrier or the mail lacked the requisite minimum contacts with the State" [for taxation purposes].

The Marketplace Fairness Act explicitly acknowledges *Quill Corp. v. North Dakota* in its text, but plows forward anyway.

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For those unawares, a "use tax" refers to transactions where the seller doesn't levy a sales tax. The buyer — often an online or out-of-state customer — is supposed to pay a "use tax" equivalent to their home state's sales tax rate.

But nobody does that. According to a 2009 study, 0.3 percent of Californians paid use taxes, while Maine residents are the most honest at 9.8 percent.

And that's how the crony capitalists...er, *supporters*...see this bill — not as a tax issue, but as a collections issue. Predictably, this divides retailers appropriately — brick-and-mortars like Walmart support the Marketplace Fairness Act, while e-commerce giants like eBay oppose it.

Amazon.com, for its part, [plans to open distribution centers](#) [4] in New Jersey, Virginia, Texas, Tennessee, Indiana, and California in order to offer same-day shipping and slay brick-and-mortar retailers; some say this could be the final nail in the coffin for local businesses.

Not coincidentally, Amazon also supports the Marketplace Fairness Act.

More thoughtful observers might say that new business models — e-commerce, for instance — compels new rules and that artificially shackling one business or technology violates a cornerstone principle of the free market.

Sen. Jim DeMint (R-S.C) believes this is no less than "taxation without representation." In an [Op-Ed for the Wall Street Journal](#) [5], Senator DeMint writes:

"Such online sales tax proposals are taxation without representation. The proposed federal law tells businesses that there is no escape from the clutches of tax-hungry politicians. That concept is antithetical to our federalist system, which promotes competition among our states for the best economic policies."

He points out that the Marketplace Fairness Act could force companies to relocate overseas or close shop altogether.

Supporters believe the bill is an issue of "fairness." "If there's a sales tax, there's no reason online shoppers should be exempt," writes Bob Sullivan of NBC News.

But will punishing legislation create an attractive business climate? Instead of fretting over "competitive *disadvantages*," should we not seek out "competitive *advantages*" to bolster the marketplace and promote new technologies?

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[1] http://redtape.nbcnews.com/_news/2012/08/03/13089943-no-one-will-say-the-t-word-but-internet-sales-tax-is-all-but-inevitable?lite

[2] <http://www.govtrack.us/congress/bills/112/s1832/text>

[3] <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=504&invol=298>

[4] http://www.slate.com/articles/business/small_business/2012/07/amazon_same_day_delivery_how_the_e_commerce_giant_will_destroy_local_retail_single.html

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