

November 11, 2011

- **ICSC Hails Introduction of S. 1832, the Marketplace Fairness Act**
- **MA: House Briefed on Streamlined Sales Tax**
- **Election Updates: AZ, CO, OH**
- **Wetlands Guidance Document Opposed**

ICSC Hails Introduction of S. 1832, the Marketplace Fairness Act

On November 10, 2011, Senators Lamar Alexander (R-TN), Mike Enzi (R-WY) and Dick Durbin (D-IL) introduced the Marketplace Fairness Act which, if enacted, will close an online sales tax loophole that has hurt local retailers, fueled state budget shortfalls, and placed consumers at unnecessary risk for fines and penalties. The bill, S. 1832, will empower states to enforce existing laws by requiring online retailers and other remote sellers to collect sales taxes.

"ICSC applauds these Senators for crafting a bipartisan solution that will enable states to close the online sales tax loophole," said David B. Henry, chairman of ICSC and president & CEO of Kimco Realty Corporation. "It's an issue that hits home for consumers, businesses and local governments in red states, blue states, and everywhere in between. Every day, brick-and-mortar retailers of all sizes do their duty to collect and remit sales taxes, putting them at a significant competitive disadvantage to online and catalogue retailers who continue to reap the benefits from an antiquated and unfair system. It's time Congress took action to level the playing field, close this loophole, and help states and communities across the country," Henry added.

"Most consumers are unaware that they are already responsible for paying sales tax on online purchases, even when the online retailer does not collect the tax," said Michael Kercheval, president and CEO of ICSC. "The Marketplace Fairness Act will remove the burden from consumers of remitting sales tax on online purchases and correct an artificial disruption in the retail marketplace. The bill will allow all retailers to thrive on equal footing, and reflects the realities of the 21st century marketplace."

Joining Senators Alexander, Enzi and Durbin as co-sponsors of S. 1832 are Senators Roy Blunt (R-MO), John Boozman (R-AR), Bob Corker (R-TN), Tim Johnson (D-SD), Mark Pryor (D-AR), Jack Reed (D-RI) and Sheldon Whitehouse (D-RI).

ICSC has promoted sales tax fairness for over a decade, advocating that a "sale is a sale" regardless of whether the purchase takes place on Main Street, at a shopping center, via mail-order or over the Internet.

FAQ about The Marketplace Fairness Act and E-Fairness

- **Why does Congress need to get involved, isn't this a matter for the states?**
 - For the past 20 years, States have been unable to enforce their own sales and use tax laws on sales by out-of-state, catalog, and online sellers due to the 1992 Supreme Court decision *Quill Corp. v. North Dakota*.
 - Congress has been debating solutions for more than a decade, and some States have been forced to take action on their own, leading to greater confusion and further distorting the marketplace. Because this is a matter of interstate commerce, Congress *MUST* grant the authority needed for states enforce sales tax collection and remittance from out-of-state sellers.
 - On average, States depend on sales and use taxes for 20% of their annual revenue. At a time when State budgets are under increasing pressure, Congress should give States the ability to enforce their own laws.
- **Why now?** Internet-based commerce continues to grow, and States will be unable to collect as much as

\$23 billion in revenue in 2012 unless Congress acts.

- **Won't this raise taxes?** No. Consumers are required under state laws to pay sales and use taxes on the goods they purchase, but online sellers simply are not required to collect the tax in the same way that local businesses do – which puts local businesses at a disadvantage. Consumers can be audited and charged with penalties for failing to pay sales and use taxes, but too often States are unable to enforce this requirement. Five states have no sales tax – Delaware, Montana, Oregon, New Hampshire and Alaska.
- **Will this help Businesses?** Yes. Thousands of businesses are forced to do business at a competitive disadvantage because they have to collect taxes and online sellers do not, which in some states can mean a 5 to 10% price advantage.
- **Will this help States?** Yes. The legislation empowers the States and allows them to collect sales and use taxes two ways: States can collect under the Streamlined Sales and Use Tax Agreement (SSUTA) or they can adopt minimum simplification requirements. States would have the option to choose the best solution for them, and not be required to conform to a one-size-fits-all model.
- **Will small sellers be protected from new requirements?** Yes. Online sellers with less than \$500,000 in remote sales annually will be exempt from collection requirements.
- **Aren't there other bills already in Congress on this issue?** Yes, in July Senator Dick Durbin and Congressman John Conyers introduced the "Main Street Fairness Act" in their respective chambers (S. 1452/HR 2701). While the ultimate goal is the same, the Durbin/Conyers bill only provides authorization for states that are part of the Streamlined Sales and Use Tax Agreement. Currently there are 24 such states; there are no alternatives in the bill to implement remote sales tax collection for the remaining 21 states that have a sales and use tax. Both the Marketplace Fairness Act and Marketplace Equity Act (HR 3179 - - introduced in October) do provide for such an alternate path - - minimum requirements - - as previously noted.
- **What can I do to help?** Talk to your Senators and ask them to support S. 1832; Ask your House members to support sales tax fairness - - it's time to level the playing field for all retailers.
- **How can I find out more information?** Visit www.icsc.org/salestaxfairness. Information is being added on a regular or as-needed basis. Or contact ICSC's Office of Global Public Policy at 202-626-1400. [Click here for the Marketplace Fairness Act.](#)
[Click here for the Marketplace Equity Act.](#)

MA: House Briefed on Streamlined Sales Tax

House Democrats were briefed on the Streamlined Sales Tax bill (H 3673) this week in a closed caucus. Also in attendance were U.S. Rep. Edward Markey, Chris Rants, former speaker of the House of Representatives in Iowa, Scott Peterson, Executive Director of the Streamlined Sales Tax Governing Board and Jon Hurst, President of the Retailers Association.

Election Updates

AZ: Senate President Russell Pearce (R) was ousted in a recall election by fellow Republican Jerry Lewis. Pearce, the main proponent in the legislature of the state's controversial immigration law, is the first legislator to be recalled in state history.

CO: Elections were held in Colorado on Tuesday, Nov. 1. Proposition 103, the only statewide ballot issue, would have raised state income tax and state sales tax to fund education. The measure was soundly defeated with 63.5% voting against and 36.4% voting in favor. Voters in the City and County of Denver turned down Initiative 300's mandated paid "safe and sick" leave for all employees with the issue losing by a nearly 2-1 ratio. Initiative 300 was opposed by business groups and a number of city and state officials.

Meanwhile, congressional redistricting nears completion, as closing arguments were heard in the state's redistricting lawsuit on Monday, October 31. The new congressional boundary map should be issued by the end of the month.

OH: Ohioans overwhelmingly voted to repeal SB 5, a measure enacted by the state legislature this year that barred public employees from engaging in collective bargaining. The repeal vote won 61% to 39%. Voters also passed Issue 3, which amends the state constitution to exempt Ohio residents from federal healthcare laws mandating the purchase of insurance.

Wetlands Guidance Document Opposed

Within the next two weeks, the US Senate is expected to vote on an amendment being offered by Senators John Barrasso (R-WY) and Dean Heller (R-NV) to the fiscal 2012 Energy-Water appropriations bill (HR 2354). The two GOP Senators currently are seeking Democratic votes for their amendment, which already has overwhelming support among senate Republicans. The amendment would bar the U.S. Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) from implementing a controversial "Guidance" document that was released in draft form in May 2011. The Barrasso-Heller amendment could come to the floor for a vote as early as Tuesday. The Guidance would be used by the two agencies to identify those waters and adjacent land areas that must be regulated under the federal Clean Water Act.

Recent Supreme Court decisions challenged federal agency practices in asserting federal jurisdiction over these areas. This new interpretation of the Clean Water Act (which would replace existing guidance on how to apply the rulings in these cases) would, according to the EPA's own description, expand federal jurisdiction beyond current practices. This is true even though the Supreme Court was critical of federal overreach by broadly designating areas as federally jurisdictional "wetlands" such as isolated waters, ephemeral streams and even manmade ditches.

At issue is whether or not federal permits (over and above state permits) will be required for a larger class of private and municipally owned properties. Obviously, the expense and time required to obtain additional federal permits is driving much of the opposition to the new Guidance. If adopted, the Guidance would impact more than just section 404 of the Clean Water Act (which regulates the development of wetlands). It would also impact Section 402 NPDES permits (industrial and municipal systems), Section 303 TMDL requirements (pollution limits), and Section 401 (water quality certifications).

ICSC supports efforts to slow down the adoption of any new Guidance processes so that more impacted entities will be able to analyze the proposal and to provide feedback before such rules become effective. ICSC also supports efforts to make Congress aware of exactly what EPA and the Corps are planning to do and to convince Congress to become directly involved.

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