

March 14, 2014

- House Judiciary Committee Holds Hearing on E-Fairness
- Virtually There: How to Participate in the Strategic Leadership Summit from Home
- Flood Insurance Affordability Act Passed in Senate
- ICSC President and CEO Addresses Delegates at the NLC Congressional City Conference
- GA: ICSC Holds “Day at the Capitol” Event
- MA: Contaminated Site Cleanup Regulations Expected
- MA: Tax Fairness Commission Releases Report
- MN: ICSC Holds “Day at the State Capitol” Event
- CANADA: Quebec Election Overview

House Judiciary Committee Holds Hearing on E-Fairness

On Wednesday, March 12 the House Judiciary Committee held a hearing on “Exploring Alternative Solutions on the Internet Sales Tax Issue” as part of Committee Chairman Bob Goodlatte’s call to winnow down various esoteric proposals for determining what rate of sales tax is charged and how it is remitted. The hearing was well attended by both Republican and Democratic members of the Committee. There was general bipartisan agreement that there is an inequity in sales tax collection that must be addressed. Almost no one was opposed to the concept of leveling the playing field between e-retailers and brick and mortar sellers. The focus of discussion at the hearing, rather, was the details.

Here are a few succinct quotes of note:

- “Texas ought to be able to tax people who do business in Texas.” - Judge Ted Poe, Conservative R from TX and Marketplace Fairness cosponsor.
- “Only Congress can create a federal framework to help remote sellers. States will act if Congress doesn’t. The result will be multiple laws in various states and lots of litigation.” - Stephen Kranz, McDermott, Will & Emery, one of the witnesses and expert on sales tax.
- Congressman Ted Deutch (D-FL) spoke eloquently about the need to act and submitted ICSC’s statement for the record. The Marketplace Fairness Coalition’s **letter containing more than 1,000 small retail tenants** as signees was also mentioned and entered into the hearing record.
- Republican Congressman Jason Chaffetz (R-UT) said at the hearing that the so-called “origin sourcing” approach – the latest smoke-and-mirrors gambit by eBay and its allies – is “dead in the water.”
- Finally, in response to a question from Republican Congressman Lamar Smith (R-TX) even the opponents of marketplace fairness, led by Andrew Moylan from the R Street Institute, testified under oath that legislative efforts to level the playing field do not constitute support for a tax increase. In other words, in one fell swoop, one of the most misleading arguments against marketplace fairness that has been put forward by Heritage Action, R Street, and other eBay allies, was undercut at Wednesday’s hearing.

Here are some other key clips that you might have missed:

CQ-Roll Call reports that GOP lawmakers are moving forward with a version of marketplace fairness:

- Rep. Jason Chaffetz said he plans to develop an Internet sales tax measure that would follow the framework of a Senate-passed bill, with revisions to “smooth the edges” of a plan to allow states to collect taxes from online retailers...The changes sought by Chaffetz and Goodlatte would include language aimed at reducing the complexity of compliance and of potential audits by multiple states, and elimination of the Senate bill’s tax collection exemption for

businesses with \$1 million or less in gross U.S. remote sales...Some conservative Republicans such as Spencer Bachus of Alabama said they would support efforts by Chaffetz and Goodlatte to develop a bill that is based on the outline of the Senate bill, with revisions.

National Journal reported that a number of lawmakers rejected the latest origin sourcing approach put forward by eBay and its allies:

- Detractors said such a proposal could set off a "race to the bottom," causing retailers to rush en masse to establish locations in the five states that don't currently collect sales tax. Others argued for keeping consumers' tax contributions local. "If I buy something in Washington, I don't want to pay Washington," said Republican Rep. Spencer Bachus of Alabama. "I want to pay where my kids go to school."

And the Los Angeles Times reported both Republicans and Democrats noted that small businesses are being harmed and states' rights are being negatively impacted by the current loophole:

- Given expanding online retail sales, which now account for nearly 6% of all sales, the National Retail Federation, which represents bricks-and-mortar businesses, urged the committee to end the "unfair price and market advantage" that online retailers enjoy by not having to collect sales tax on all purchases.
- States also are anxious for Congress to act. California lost about \$2 billion in taxes on sales by out-of-state online retailers in 2012, according to data from the National Conference of State Legislatures.
- During the hearing, Rep. Steve King (R-Iowa) said his state's governor intends to use the new revenue to provide tax cuts. Other states said they need the tax revenue for infrastructure development. Rep. Jackie Speier (D-Hillsborough), who is sponsoring a House version of the Marketplace Fairness Act, said congressional action is needed to bring parity between e-commerce and conventional retailers. "[When] you look at it in the cold light of day, you cannot somehow suggest that it is fair that some retailers have to collect the sales tax and others do not," she said.

ICSC will keep up the pressure on House members, both at its upcoming **[Federal Fly-In on March 25-26](#)** and through stepped-up grassroots efforts. Since the Senate passed the Marketplace Fairness Act in May 2013, the clock is ticking for the House to pass eFairness this year, otherwise supporters must start over again in 2015.

Virtually There: How to Participate in the Strategic Leadership Summit from Home

Do you want to be a part of the Strategic Leadership Summit March 25-26, but can't make the trip to DC this year? You can still participate! **[Click here](#)** to get background on key legislative issues, view tips on setting up meetings with a district office, send an email to your Member of Congress and learn best practices about how to engage with them over Twitter. Then, during the week of March 24, take a moment to call, send a letter, email or tweet your Congressional offices and add your voice to the many ICSC members who will be on Capitol Hill that week. We hope you will join us!

Flood Insurance Affordability Act Passed in Senate

On Thursday afternoon the U.S. Senate passed HR 3370, The Homeowner Flood Insurance Affordability Act by a vote of 72 to 22. This legislation, which was passed by the House last week, will now be sent to President Obama for his signature. The Homeowner Flood Insurance Affordability Act will, among other things, reinstate grandfathering for those properties built after the implementation of flood insurance rate maps (Post-FIRM properties) as well as remove the sales trigger on all properties. If you have any questions or comments, please contact Mike Anderson at **mranderson@icsc.org**.

ICSC President and CEO Addresses Delegates at the NLC Congressional City Conference

Earlier this week ICSC President and CEO Michael P. Kercheval was a featured speaker in the opening plenary session of the National League of Cities Congressional conference in Washington, DC. The event was moderated by NBC and MSNBC Chief Foreign Affairs Correspondent Andrea Mitchell. During the session NLC President Chris Coleman, Philadelphia Mayor Michael Nutter and Mr. Kercheval discussed the crisis of confidence in the government and what government officials need to do help cities solve challenges and come up with solutions for their cities to create and maintain thriving communities.



NBC and MSNBC Chief Foreign Affairs Correspondent Andrea Mitchell, ICSC President and CEO Michael P. Kercheval, NLC President Chris Coleman, and Philadelphia Mayor Michael Nutter.

GA: ICSC Holds “Day at the Capitol” Event

ICSC members held their “Day at the Georgia Capitol” on February 26. Members gained access to several legislators to discuss items of interest including the creation of new cities, annexations of properties against the will of commercial property owners, general tax issues and proposed legislation creating a sales tax holiday at the beginning of August for “back- to-school” items. The group also met with Lieutenant Governor Casey Cagle in his office prior to the beginning of the Legislative Day. The sales tax holiday legislation (HB 958) has cleared a full vote of the House, the Senate Finance Committee and is awaiting a vote by the full Senate. Once passed, this Legislation will await the signature of the Governor.

MA: Contaminated Site Cleanup Regulations Expected

New comprehensive regulations impacting contaminated site cleanups are expected to be released by the Department of Environmental Protection in the coming weeks. The regulations affect the Massachusetts Contingency Plan, which governs the response to sudden hazardous material spills as well as the cleanup of Brownfields sites. The regulatory amendments will impact assessment and mitigation of vapor intrusion and “urban fill” at existing sites and new development sites, change tier classification criteria, create new site closure categories, and modify Activity and Use Limitations requirements.

MA: Tax Fairness Commission Releases Report

A Tax Fairness Commission appointed by the state legislature and charged with increasing equality in the state’s tax system released a preliminary report. There were five major recommendations, including instituting a graduated income tax through a state Constitutional amendment, and a recommendation for the Legislature to prepare for an online sales tax, should it be enacted by Congress.

MN: ICSC Holds “Day at the State Capitol” Event

ICSC members in Minnesota spent two successful days meeting with legislators at the State Capitol last week. Meetings were held with both Senate and House leadership and Tax Chairs on both sides of the aisle, along with a number of other legislators. Members discussed the repeal of the three business-to-business taxes currently on the books, and heard opposition to the proposed Street Improvement Fees. The House promptly passed the repeal of these taxes soon after and are awaiting confirmation from the Senate that they will accept the package.

Meanwhile, DFL Governor Mark Dayton unveiled a supplemental budget proposal that calls for \$616 million in tax cuts. With a \$1.2 billion budget surplus to work with, Gov. Dayton formally proposed the repeal of the three business taxes, including the warehousing tax that is scheduled to take effect on April 1.

CANADA: Quebec Election Overview

On March 5, Quebec Premier and Leader of Parti Quebecois, Pauline Marois, visited and asked Lt. Governor Pierre Duchesne to dissolve the legislature and issue an election for April 7. Former Quebecor CEO Pierre Karl Péladeau announced he will be running for the Parti Quebecois.

The parties up against Parti Quebecois are the official opposition, the Quebec Liberal Party, and Coalition Avenir Quebec (CAQ). The latest polls have the PQ and Liberal Party tied at 36%, and the CAQ at 17%.

The biggest issue of the election is the controversial Bill 60, The Quebec Charter of Values, which prohibits public sector employees from wearing or displaying "conspicuous" religious symbols.

Are You Involved in the Political Process? Let Us Know!

ICSC recently launched a survey to gauge the level of political engagement and relationships with elected officials that ICSC member have. If you have not done so yet, please take a moment to fill out our brief survey. It only takes about 5 minutes to complete and will make a tremendous difference in ICSC's ability to advocate at the state and federal levels on issues that are vital to the retail real estate industry. [Click here to begin the survey.](#)

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