



# THE NEED FOR E-FAIRNESS

## OUR POSITION

It is time for Congress to pass legislation to level the playing field for community based-retailers. These retailers currently face a significant price disadvantage versus their online-only competition. Sellers should compete on price, inventory and customer service, not on tax treatment. This issue is the International Council of Shopping Centers' top legislative priority.

## HOW WE GOT HERE

Under the current state sales and use tax system, local retailers must collect sales taxes on all sales, while their online-only counterparts are exempt. When a retailer does not collect the tax at the time of purchase, the consumer is responsible, by law, for remitting the use tax. This is rarely factored into the purchase decision and as a result local merchants suffer from this government-sanctioned price disadvantage.

In a 1992 pre-Internet Supreme Court case (*Quill v. North Dakota*) the high court ruled that a business must have a physical presence in a state for that state to require it to collect sales taxes. However, the court explicitly stated that Congress can overrule the decision through legislation. ICSC has been aggressively advocating that Capitol Hill do just that – enact e-fairness legislation to reflect 21st Century retail. Since *Quill*, technological advances have become readily available to address the issues of complexity that may have previously existed. On March 3, 2015, Supreme Court Justice Anthony Kennedy issued a new call for this issue to be resolved.

In the previous 114th Congress, ICSC supported both the bipartisan, bicameral bills, S. 698, the Marketplace Fairness Act of 2015, (which mirrored legislation that was passed with strong bipartisan support (69-27) in the Senate in 2013) and H.R. 2775, the Remote Transactions Parity Act of 2015 (RTPA), which granted states the authority to require remote sellers to collect sales taxes. It included several provisions that will protect sellers, such as extensive audit protections and free sales tax collection software. RTPA also provided a transition period for small remote sellers.

## WHAT'S NEXT

ICSC wants reintroduction and enactment of e-fairness legislation like S. 698 or H.R. 2775 in the new Congress. Community-based retailers have waited for more than two decades for Congress to take action. Meanwhile, states are moving forward with various state laws and litigation, creating marketplace chaos. It's time for Congress to solve this problem for all retailers and support local businesses by giving them a fair chance to compete. The time has come to level the playing field for 21st century retail. A sale is a sale no matter where it takes place!

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