



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 114th Congress, Senators Mike Enzi (R-WY), Dick Durbin (D-IL), Lamar Alexander (R-TN) and Heidi Heitkamp (D-ND) introduced S.698, the Marketplace Fairness Act of 2015, which mirrors legislation that was passed with strong bipartisan support (69-27) in the Senate in 2013. ICSC appreciates the hard work and leadership of the Senate sponsors and supports this bill.

In the House of Representatives, Congressmen Jason Chaffetz (R-UT) and Steve Womack (R-AR) introduced H.R. 2775, the Remote Transactions Parity Act of 2015 (RTPA), which has support from a broad group of stakeholders. RTPA grants states the authority to require remote sellers to collect sales taxes. It includes several provisions that will protect sellers, such as extensive audit protections and free sales tax collection software. RTPA also provides a transition period for small remote sellers. ICSC is strongly in favor of this legislation.

Judiciary Committee Chairman Bob Goodlatte (R-VA) has put forth a draft proposal, referred to as the Online Sales Simplification Act (OSSA). While we continue to work with Chairman Goodlatte, ICSC has significant concerns with aspects of this proposal. Most notably, the Goodlatte framework codifies the current disparity in the marketplace by calculating the consumer's sales tax based on the sellers location (origin sourcing), rather than the purchaser's location (destination sourcing) and creates new layers of complicated bureaucracy.

WHAT'S NEXT

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 (see reverse). 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!

- **ICSC asks Senators to cosponsor S. 698, the Marketplace Fairness Act of 2015.**
- **ICSC asks Representatives to cosponsor H.R. 2775, Congressman Chaffetz's Remote Transactions Parity Act.**
- **70% of Americans support federal legislation that would require online-only sellers to collect sales tax at the time of purchase.***
- **82% of Americans think it would be easier to collect sales tax from online-only vendors at the time of purchase.***

**Aug. 2014 poll by Opinion Research Organization.*

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Patchwork Lawmaking Creates Uncertainty For Businesses

\$23.1 Billion

That's the amount of revenue states missed out on because they didn't collect online sales taxes in 2012.

In the last four years, more than 70 bills related to e-fairness have passed. As of May 10th, 42 bills have been introduced in 2016 in 16 states:

South Dakota

Notified certain out-of-state sellers that they must register with the state and begin collecting and remitting sales tax. The state is currently suing some of these sellers for not paying sales tax.

Missouri

Cities and municipalities like Columbia are considering cuts to law enforcement and emergency responders due to declining sales tax revenue.

Colorado

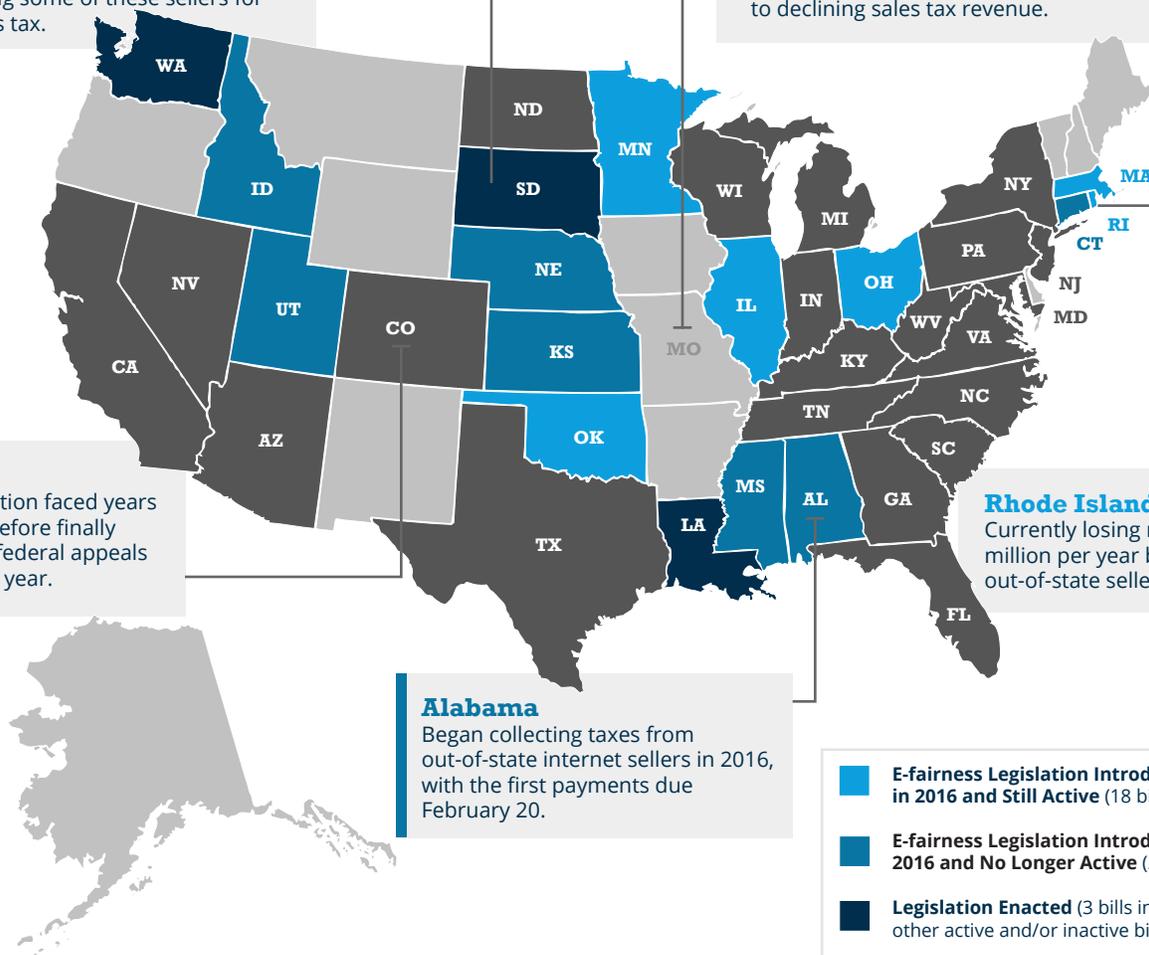
E-fairness legislation faced years of legal battles before finally being upheld in federal appeals court earlier this year.

Rhode Island

Currently losing more than \$30 million per year because of out-of-state sellers.

Alabama

Began collecting taxes from out-of-state internet sellers in 2016, with the first payments due February 20.



When Will Congress Act To Level The Playing Field For Main Street Business?

As it stands, most states don't collect online sales tax, meaning brick-and-mortar retailers are at a competitive disadvantage. The Senate voted overwhelmingly to close this loophole in 2013. We urge Congress to act on this issue as soon as possible.