



TAXES-MARKETPLACE FAIRNESS ACT

Issue:

The businesses that line the streets of our nation's small and rural towns provide essential goods and services to the farmers and ranchers who work the fields that surround them. But hometown businesses are at a disadvantage when they compete with online only retailers that do not have to collect sales taxes. When this disadvantage causes a "main street" business to close or scale back, the impact is especially harmful to already struggling small and rural towns.

In addition to placing local merchants at a disadvantage, the disparity deprives state and local governments of the tax revenue they need to provide essential services. Since local governments and schools rely heavily on property taxes for funding, when sales tax revenues decline they often turn to property taxes to make up the difference. For land-based businesses like farming and ranching, this is particularly onerous.

Background:

The Commerce Clause of the Constitution gives the federal government power to regulate interstate commerce and prohibits certain state actions that interfere with trade among the states. In 1992, the Supreme Court ruled, in *Quill Corp. v. North Dakota (Quill)*, that out-of-state sellers can only be required to collect sales tax if they have a store or other physical presence in the customer's state. The Supreme Court is re-evaluating the physical nexus standard by hearing *South Dakota v. Wayfair*, with a ruling expected in June. Depending on the outcome, businesses that sell into a state but who do not have a physical presence may be required to collect and remit the state's sales tax.

As a result of *Quill*, 44 states responded by working with local governments and the business community to adopt a comprehensive interstate system to harmonize and simplify their sales tax rules and administrative requirements called the Streamlined Sales and Use Tax Agreement. To date, 24 states have changed their laws to comply with this interstate agreement. The *Quill* decision made it clear Congress would need to authorize and sanction such an agreement.

Legislative Status:

Legislation has been introduced in the House and Senate to promote fair competition between main street retailers and internet-only sellers. S. 976, The Marketplace Fairness Act, was introduced by Sens. Mike Enzi (R-Wyo.) and Richard Durbin (D-Ill.). The House bill, H.R. 2193, The Remote Transactions Parity Act, was introduced by Reps. Kristi Noem (R-S.D.).

The legislation creates a destination-based collection system for sales tax when the vendor and customer live in different states. Using the system, states are able to enforce their existing sales tax laws but not to create new taxes or increase existing ones. The sales tax due is based on the rate in the location where the

buyer receives the product. The bill provides an exemption for small sellers and requires that software for collecting the tax be provided to ease the administration burden.

AFBF Policy:

Farm Bureau supports allowing the collection of sales taxes on internet sales of consumer goods by out-of-state sellers. Farm Bureau supports S. 976, Marketplace Fairness Act of 2017, and H.R. 2193, Remote Transactions Parity Act of 2017.

Farm Bureau filed an amicus curiae brief in *South Dakota v. Wayfair* that can be found at <http://www.scotusblog.com/wp-content/uploads/2017/11/17-494-cert-tsac-AFBF.pdf>. The brief supports the ability for states to collect sales taxes from out of state sellers.

Contact: Pat Wolff, 202-406-3670, patw@fb.org