



August 1, 2012

The Honorable Michael B. Enzi
United States Senate
379A Russell Senate Office Building
Washington, D.C. 20510

The Honorable Richard J. Durbin
Assistant Majority Leader
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Lamar Alexander
United States Senate
455 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senators Enzi, Durbin and Alexander:

Thank you for your efforts to enact sales tax fairness legislation. Retailers in your states and around the country are encouraged by your stubborn determination to see the Marketplace Fairness Act become law.

This morning's *Wall Street Journal* features an op-ed authored by Senator Jim DeMint, who describes sales tax fairness legislation now before Congress as "antithetical to our federalist system." As a leading supporter of the Marketplace Fairness Act and Marketplace Equity Act, the National Retail Federation feels it necessary to rebut the Senator's assertions.

- For consumers in forty-five states, **taxes are already due on Internet purchases** – plain and simple – whether as a sales tax collected by retailers or a use tax paid directly by the consumer.
- Remote and online businesses are subjecting themselves to the regulatory and taxation authority of the states by voluntarily "availing" themselves to customers within those states. This was a key point of the Quill decision and the Supreme Court made clear that there are **no due process concerns** if states subject these businesses to a requirement to collect sales taxes on sales to consumers in these states.
- **Online retailers would not be paying taxes to states**, they would only be responsible for collecting the taxes already owed by the consumer. Legislation simply authorizes states to require remote and online retailers to collect sales tax in their states just like local retail shops and Main Street stores. This is an **issue of collection, not taxation**. Those subject to the sales tax are consumers in their home states, not the retailers in remote locations.

- **This is NOT a nationally mandated Internet tax.** Senator DeMint's suggestion that sales tax fairness equates to "new Internet taxes" is a red herring. Taxes have always been owed on these purchases, but the current constitutional situation leads to inefficient and inequitable rules for collection. Pending legislation would simply empower states to collect the taxes already owed in a way that is fair.
- **An origin-based sales tax system would subject consumers** to the sales tax rate of other states where they do not have any representation. The Marketplace Fairness Act and the Marketplace Equity Act include destination rate sourcing systems to protect consumers and basic principles of federalism. These bills protect consumers and enhance states' rights. Sales tax fairness legislation would not permit taxation without representation.
- NRF agrees that the **sales tax system needs to be simplified** so online retailers and small businesses can comply. We would encourage Senator DeMint to work with his colleagues so it levels the playing field for all retailers.

Thank you again for your leadership on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "David French", with a stylized flourish at the end.

David French
Senior Vice President
Government Relations

cc: Members of the Senate Committee on Commerce, Science & Transportation