



Hearing on

Marketplace Fairness: Leveling the Playing Field for Small Businesses

Before the

Committee on Commerce, Science, and Transportation  
United States Senate

August 1, 2012

Testimony of

Paul Misener  
Vice President for Global Public Policy  
Amazon.com

---

Thank you, Chairman Rockefeller and Ranking Member Hutchison, for inviting me to testify. Amazon has long supported an even-handed nationwide framework for state sales tax collection, and only Congress may create this framework. To this end, Amazon believes that Congress should authorize the states to require out-of-state sellers to collect the sales tax already owed, and we strongly support enactment of S. 1832, a bipartisan bill already before the Senate.

Mr. Chairman, at the Philadelphia Convention, which the Founders convened principally to consider the challenging issue of trade among the states, Congress was granted exclusive power to regulate interstate commerce. Exactly two centuries later, in 1987, North Dakota challenged this exclusivity and, following five years of litigation, the U.S. Supreme Court held in *Quill v. North Dakota* that requiring out-of-state sellers to collect tax would impose an unconstitutional burden on interstate commerce. Importantly, the

*Quill* court also invited Congress to act, saying that this issue is “not only one that Congress may be better qualified to resolve, but also one that Congress has the ultimate power to resolve.”

Far from an e-commerce “loophole,” the constitutional limitation on states’ authority to collect sales tax is at the core of our Nation’s founding principles. For this reason, Amazon has steadfastly opposed state attempts to require out-of-state sellers to collect absent congressional authorization. We believe that, instead, Congress should enact S. 1832, the Marketplace Fairness Act, to authorize the states to require out-of-state retailers to collect sales tax at the time of purchase and remit those taxes on behalf of consumers.

Mr. Chairman, Congress should enact S. 1832 to protect the states’ rights, address the states’ fiscal needs, and level the playing field for all sellers.

Congress should act to protect the states’ right to make their own revenue policy choices. For example, some states have chosen to eschew personal income tax, making them particularly vulnerable to uncollected sales tax. The right of any state to make such a policy choice *effective* should be protected by allowing states to ensure that sales and use taxes already owed are collected in a uniform manner, including when sales are made across state lines. And doing so would not violate pledges that are limited to questions of income tax rates and deductions.

The states’ financial needs should be addressed. The states face serious budget shortfalls. Adopting sales tax collection reform is a way for Congress to help the states without spending federal funds. S. 1832

would simply allow the states to collect more efficiently the billions of dollars of uncollected sales/use tax revenue already owed.

Fairness among sellers also should be created and maintained. Sellers should compete on a level playing-field. Congress should not exempt too many sellers from interstate collection, for these sellers will obtain a lasting un-level playing field advantage versus Main Street and other retailers. Congress should rectify the current imbalance and avoid a future imbalance.

Mr. Chairman, the facts in the *Quill* decision arose a quarter of a century ago, and the Supreme Court's decision was rendered a year before the World Wide Web was invented. With today's computing and communications technology, widespread collection no longer would be an unconstitutional burden on interstate commerce, and Congress feasibly can authorize the states to require all but the smallest volume sellers to collect. Much attention has been paid to the size of a "small seller exception" threshold in federal legislation – and rightfully so. Such a threshold, which would exempt some sellers from any collection requirements, must be kept low to attain the objectives of protecting states' rights, addressing the states' needs, and creating fairness among sellers.

In this context, several kinds of small volume sellers must be considered. Foremost are the Main Street small business retailers who, unless the small seller exception threshold is kept very low, will forever face an un-level playing field compared to a newly-created exempt class of out-of-state sellers. Next are the online advertising affiliates, tens of thousands of whom have lost jobs or income as the result of ineffective, counterproductive sales tax laws recently enacted in many states. Congressional adoption of

reform legislation would immediately restore the lost jobs and income by creating a national framework for state sales tax collection.

Small volume *online* sellers have received much of the attention, and not without reason. No one wants these sellers to shoulder alone additional burdens compared to those faced by the small business retailers who already collect sales tax in our local communities. Yet no one should want these online sellers to have a newly-created un-level playing field advantage over small Main Street businesses, and no one should want government to pick business model winners and losers this way.

The consequences of the threshold level are significant, because a surprisingly large fraction of e-commerce is conducted by smaller volume sellers. According to research commissioned by Amazon, only one percent of online sellers sell more than \$150,000 per year. In other words, the \$500,000 threshold in S. 1832 would exempt well over 99% of online sellers.

Fortunately, today's computing and communications technology will readily allow all but the smallest online sellers to collect and remit tax like Main Street retailers. Large volume online sellers already have and use this technology. Amazon, for example, collects tax on sales to consumers in states where our retail businesses have nexus. And the online arms of large multichannel brick and mortar retailers collect in the states where they have retail stores. Quite obviously, state sales tax can be collected across state lines, and the technology is not limited to large sellers. Rather, service providers also make the technology available to medium and small volume sellers. Thus, collection is either *by* sellers or *for* sellers. There are many service providers already: ADP, Avalara (which works with eBay), and FedTax, for example. Amazon

also helps third party sellers by providing sales tax collection services to them, and we are committed to expanding these services.

In conclusion, Mr. Chairman, Congress may, should, and feasibly can attain the objectives of protecting states' rights, addressing the states' needs without federal spending, and leveling the playing field for all sellers. Amazon is grateful for the opportunity to submit these comments, and we look forward to working with you and your colleagues in Congress to enact S. 1832.

\* \* \* \* \*