

**Statement of**

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**Testimony before the United States Senate, Commerce Committee**

**Hearing on: S. 1832 the “Marketplace Fairness Act”**

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Chairman Rockefeller, Ranking Member Hutchison, and Members of the Committee: Thank you for inviting me to present my views on the Marketplace Fairness Act. I hope to be able to give you an insight into the day-to-day impact of collecting sales tax, both in-store and for remote sales online.

My name is Steven Bercu, CEO and co-owner of BookPeople, an Austin, Texas, independent bookstore that has been in business since 1970. I employ about 100 people, with some slight seasonal variations. My store is a large format, general interest bookstore that hosts numerous community events, including about five author signings per week. Parenthetically, two members of this Committee have appeared at my store to sign copies of their books, Senator Hutchison (twice) and Senator Kerry. I am actively involved with both independent retail and the book world, serving as Vice President of the American Booksellers Association, Vice President of the American Independent Business Alliance, Founder and President of the Austin Independent Business Alliance, and as a Board Member of the Texas Retail Association.

I am in favor of the Act. There are many reasons why I urge you to support it.

**The Act will end the unfair advantage online retailers have over traditional stores and level the playing field.**

Currently, many online retailers are exercising a business model that encourages tax avoidance by consumers as the online retailers fail to collect and remit sales tax. This provides them with an unfair advantage over brick-and-mortar stores as traditional Main Street stores must collect sales tax at the point of purchase every day (and for orders they take via their e-commerce sites). As a result, remote online retailers receive a government-sanctioned price advantage of up to 10 percent in many states.

Furthermore, as well as tax avoidance, online retailers encourage a behavior that has been called “showrooming,” in which consumers spend the time and resources of brick-and-mortar stores to inform themselves about products, and then make their actual purchases online to avoid paying the sales tax. I have had the misfortune to observe this in my store many times; but what is somewhat discouraging in a small-ticket environment like mine becomes cause for apoplexy in big-ticket worlds. Peers of mine have spent hours explaining every aspect of various cameras and other electronic gadgets only to have the customer tell them they intend to buy online to save the hundreds of dollars due in sales tax. A friend with a jewelry store tells me he loses over \$2 million per year in sales to the Internet to avoid sales tax. We can all compete on price and match any price offered online, but we cannot sell without collecting the sales tax. This Act would level that playing field.

**The Act will allow for free markets to pick and choose winners, as opposed to the government.**

America is built on a free-market economy that encourages business competition. By allowing some businesses to avoid collecting sales tax while others are required to do so, the government is effectively picking winners and losers in the marketplace. I do not

believe the government should be in the business of picking winners and losers in the marketplace, but so long as the government allows remote retailers to work at this unfair advantage, that's exactly what is happening. Nobody likes paying or collecting sales taxes, but everyone should be playing by the same rules. It makes no sense to promote tax avoidance for some sales while taxing the rest. A sale is a sale no matter where it takes place.

**This bill will save and create jobs.**

The approximately 1,600 member stores of the American Booksellers Association who operate in approximately 2,000 locations nationwide generate annual sales of approximately \$1 billion. When those bookstores, and small businesses just like them, lose sales to out-of-state, online-only retailers due to an unfair competitive advantage, it threatens jobs nationwide and damages the very retailers that currently create millions of jobs everywhere. An economic impact study conducted in Texas by Angelou Economics, an economic development consulting firm, showed that more than 13,000 jobs would be created annually in Texas alone as a result of collecting the sales tax from online-only retailers, and more than 9,600 of these jobs would be created in the retail sector. In addition to the \$774.4 million in sales taxes that would be collected in Texas as a result of collecting the sales tax from online-only retailers, nearly \$400 million more in local and state tax revenues would be generated annually throughout the state (figures from Susan Combs, Texas Comptroller of Public Accounts). These numbers derive from conservatively estimating what the thousands of Texas businesses that employ about two million people would generate if they only added 0.5% to their payrolls to handle the increase in business to be expected when the approximately ten

percent competitive disadvantage they suffer is removed. We will be able to track those gains to some degree over the coming year now that the largest online retailer has begun to collect sales tax for Texas sales.

**Collecting sales tax is good for local economies.**

BookPeople participated in a landmark economic impact analysis in 2002. The study showed that shopping at locally-owned businesses provides 3.5 times the economic impact as shopping at chain retail. Shopping online at remote internet retailers has **no** economic impact locally. This Act would help remedy this unfortunate situation. It is well known that recycling money within a community causes what economists call a “multiplier” effect as the money recirculates within the community and its value is “multiplied” at each subsequent use. Since 2002, numerous other economic impact analyses in cities across the country (Chicago, San Francisco, Grand Rapids, Salt Lake City, etc.) have confirmed these findings. These and more studies can be found at [www.civiceconomics.com](http://www.civiceconomics.com), the website of the economists who did most of these studies, under their “library” tab.

**The Act is not a new tax.**

Under existing law, tax on these sales is due. The Act simply defines who is liable to collect an existing tax, as consumers already owe use taxes on purchases. However, as most state comptrollers will tell you, unless you collect sales tax at the point of purchase, it is very hard (impossible) to collect. The Act provides an even-handed solution to sales tax collection that would require online-only retailers to play by the same rules as every other business. It provides states with the clear authority to require retailers to collect sales tax.

It is sometimes argued that the Act would authorize states to impose a new tax with complex burdens on businesses without a storefront, in that it would impose obligations on out-of-state businesses. Just because some online retailers do not currently collect sales tax does not mean the tax is not due. Online retailers are simply shifting the burden to report and remit the tax to consumers, knowing that the overwhelming majority will never declare and remit the tax. Undoubtedly, the Act contemplates that retailers would be obliged to collect sales tax for another jurisdiction, but the collection is not difficult and the Act simplifies the process of remitting the collected revenues. These days there are numerous services that can manage as much of the sales tax collection process as a retailer would want from simply supplying the data necessary (the tax rates) to becoming the backend of your website and handling the entire process.

**The Act allows states to decide whether or not to collect sales and use taxes already owed under state law.**

This legislation is not a government mandate. Under this legislation, it is the states that decide whether or not they will collect sales tax on online sales. If they do choose to collect, they can do so by either becoming a member state of the Streamlined Sales and Use Tax Agreement, or they can adopt minimum simplification requirements.

**The Act preserves states' rights.**

The Marketplace Fairness Act would help states enforce their own tax laws and collect millions of dollars in lost revenue from online retailers that do not collect sales tax.

**The Act protects small online retailers.**

Sellers with less than \$500,000 in annual online sales would be exempted from collecting sales and use taxes, so they are not overly burdened by tax collection requirements. BookPeople would be exempted from collection under the Act, but BookPeople already collects for every jurisdiction that has a sales tax using some of the software mentioned above. We do so because it is the right thing to do and because our books can only arrive at a remote location by using public roadways and services in those remote locations. That is true for everyone. It is fatuous to argue that we are burdened by being asked to help maintain the services necessary to the functioning of our businesses.

The Act requires states to simplify their tax laws if they do not participate in the Streamlined Sales and Use Tax Agreement. Those provisions remove any major burden a small retailer might face. If I can send a package across the globe using a simple table of shipping costs, then I should be able to handle a little sales tax.

### **Collecting sales tax will not be difficult**

The simple fact is, collecting sales tax is not all that hard. Those who trot out this red herring are doing so solely to keep the special tax treatment they currently enjoy.

By typing in a shipping address, a customer has already given the online retailer the exact information they need to collect the appropriate sales tax—the calculation will happen in a nanosecond.

Whether a state is part of the Streamline Sales Tax and Use Agreement or not (Texas is not) a common set of definitions of what is or is not taxable, along with a single collection authority for the entire state, will make collection quite simple for online retailers. Truly small sellers will be exempt, but remember that many small sellers also

sell the majority of their products through eBay, Amazon, Best Buy, and others. Those companies all have the ability to collect and remit the appropriate sales tax, and all offer that service to their sellers.

This isn't that hard. The truth is that collection has become radically simpler with new and cheaper software. Combined with a streamlined process, there is simply no legitimate excuse for Congress to be treating some retailers differently than others.

**The Act does NOT add a penny to the federal deficit.**

This legislation does not impose funding requirements on the federal government. In fact, it should have a positive impact on government since all extra revenue to the states should reduce their reliance on federal funds (and their requests). It is argued that the anticipated revenue does not justify whatever might be required to collect it since e-commerce generates only about 1% of total tax revenue. That reasoning makes anything irrelevant. The estimated revenue lost by the states is around \$23 billion. I think that most Americans would think that is enough to worry about.

### **Conclusion**

For all the reasons above and because the Act will create jobs, help retail, help our states, help consumers stop being scofflaws, and because the free market deserves fair competition, I urge you to support S. 1832.