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REMOTE SALES TAX LEGISLATION

REQUESTED ACTION: Approve legislation that would provide states with the authority to require remote sellers to collect and remit sales and use taxes.

BACKGROUND: The U.S. Supreme Court ruled in 1992 (*Quill Corp. v. North Dakota*) that online retailers were exempt from collecting sales taxes in states where they have no physical presence, or nexus, because requiring these companies to comply with various sales tax rules would place an undue burden on interstate commerce. In its decision, the Court also noted that Congress has the ultimate power to resolve the question surrounding the physical presence standard and determine whether undue burdens on interstate commerce have been eliminated.

While the Court did release out-of-state remote sellers from the burden of collecting sales and use taxes on purchases, it did not exempt the consumer. What most buyers don't realize is that the tax burden actually falls to them. So, when a purchase is made from an out-of-state remote seller, the consumer is still responsible for calculating the use tax and remitting the payment to the relevant jurisdiction(s).

It should be noted that consumer compliance with the aforementioned requirements is extremely low - less than one percent. Consequently, millions of purchases each day are not properly taxed, resulting in the loss of billions of dollars in uncollected state and local sales tax revenue every year. This long-term erosion of the sales tax base threatens state and county funding obligations such as education, transportation, and public safety.

In the 113th Congress, the Senate approved bipartisan legislation - the *Marketplace Fairness Act* - that would allow states to require internet and mail-order retailers to collect and remit state and local sales taxes. In an effort to reduce the compliance burden on small businesses, the bill would exempt from tax collection requirements online retailers with less than \$1 million in annual sales. The Senate measure is likely to be reintroduced in 2015.

In the House, critics of the *Marketplace Fairness Act* - including Judiciary Committee Chairman Bob Goodlatte (R-VA) - have expressed concerns about the challenges faced by businesses in collecting and remitting sales taxes to thousands of different jurisdictions. They also have stressed the need for safeguards to ensure that states cannot discriminate against out-of-state retailers. Chairman Goodlatte is expected to unveil his own online sales tax proposal to address these concerns.

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