

NAR Issue Summary

Commercial Finance / Sales Tax Fairness

What is the fundamental issue?

In 1992 the U.S. Supreme Court ruled in *Quill Corporation v. North Dakota* that complex state and local sales tax rules were a burden to interstate remote retailers, and therefore, Internet and catalog retailers should be exempt from collecting sales taxes unless they have a physical presence, such as a store or warehouse, in the purchaser's state. Thus, the burden to remit sales tax on Internet and catalog purchases has fallen on the consumer, who is usually unaware of the responsibility. The Supreme Court also stated that "Congress may be better qualified to resolve [the problem]." But for the last two decades, Capitol Hill has not taken action.

I am a real estate professional. What does this mean for my business?

While consumers are required under state laws to pay sales and use taxes on the goods they purchase, online sellers are not required to collect the tax in the same way that local businesses do. This unequal treatment puts local brick and mortar businesses at a competitive disadvantage. The resulting pressure on established retail districts and historic downtowns can adversely affect overall economic sustainability in a community. Consumers can be audited and charged with penalties for failing to pay sales and use taxes, but too often States are unable to enforce this requirement.

NAR Policy:

NAR supports the passage of legislation to level the sales tax playing field for all retailers.

Legislative/Regulatory Status/Outlook

Since the Quill ruling, 24 states have simplified their sales tax systems through the Streamlined Sales and Use Tax Agreement (SSUTA). The SSUTA provides one uniform system to administer and collect sales tax, eliminating the burden of the country's diverse sales tax systems on retailers. However, because this is a matter of interstate commerce, Congressional authorization is still required to allow states to collect taxes from out-of-state sellers and online retailers.

H.R. 3179, the Marketplace Equity Act, was introduced on October 12, 2011 by Reps. Steve Womack (R-AR) and Jackie Speier (D-CA). This bill would require states to demonstrate a minimum level of simplification, with SSUTA as one of many simplification options, in order to be empowered to compel remote sellers to collect sales taxes. On November 9, 2011, Sens. Enzi (R-WY), Durbin (D-IL) and Alexander (R-TN) introduced S. 1832, the Marketplace Fairness Act, that would also allow states meeting minimum simplification standards to require remote retailers to collect sales taxes.

H.R. 3179 and S. 1832 represent a next generation of proposals that provide an alternative path for states that are not already part of the SSUTA and do not wish to be. This is in contrast to the Main Street Fairness Act introduced in July 2011 by Sen. Richard Durbin (D-IL) as S. 1452 and by Rep. John Conyers Jr. (D-MI) as H.R. 2701, which requires compliance with SSUTA as a precondition to collecting taxes from out-of-state sellers. NAR supports the more recent H.R. 3179 and S. 1832 as alternatives to H.R. 2701/S. 1452 because of the additional flexibility provided to states. H.R. 3179 has been referred to the U.S. House Subcommittee on Courts, Commercial and Administrative Law, while S. 1832 has been referred to the U.S. Senate Finance Committee.

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Current Legislation/Regulation (bill number or regulation)

[S.1452](#)

[H.R. 2701](#)

[S. 1832](#)

[H.R. 3179](#)

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