



March 11, 2013

**An Open Letter to the United States Congress:**  
**Oppose the Marketplace Fairness Act!**



Dear Member of Congress,



On behalf of the millions of citizens represented by the undersigned organizations, we write in strong opposition to S. 336, the so-called "Marketplace Fairness Act." Despite what some supporters claim, this legislation is bad news for conservative principles and the cause of limited government. It would dismantle proper limits on state tax collection authority while causing serious damage to electronic and interstate commerce.



S. 336 would countenance an enormous expansion in state tax collection authority by wiping away the "physical presence standard," a baseline protection that shields taxpayers from harassment by out-of-state collectors. Current law dictates that a state can only require a business to collect its sales tax if it is physically present within its boundaries. Far from a "loophole" intended to advantage the Internet, it is the result of a Supreme Court decision grounded in a bedrock foundational principle of tax policy: states must not be allowed to extend their taxation and regulatory authorities beyond their borders. Dismantling this protection for remote retail sales would create a very slippery slope for states to attempt collection of business or even income taxes from out-of-state entities.



Furthermore, the bill would create a decidedly "uneven" playing field between brick-and-mortar and online sales. Brick-and-mortar sales across the country are governed by a simple rule that allows the business to collect sales tax based on its physical location, not that of the item's buyer. Under the "Marketplace Fairness Act," that convenient collection standard would be denied for online sales, forcing remote retailers to interrogate their customers about their place of residence, look up the appropriate rules and regulations in thousands of taxing jurisdictions across the country, and then collect and remit sales tax for that distant authority.



Imposing this unworkable collection standard on remote retail sales but *not* on brick-and-mortar retail sales would not only be unfair, it would result in enormous complexity while damaging interstate commerce. Online sellers would be weighed down by substantial compliance burdens associated with the existence of over 9,600 separate taxing jurisdictions, each with its own unique definitions, holidays, and rates. The bill's paltry "small seller exception" of just \$1 million (when the Small Business Administration sets the limit as high as \$30 million in some cases) in remote sales does little to mitigate the damage.



In seeking to address the failures of the “use tax” systems employed by states, the “Marketplace Fairness Act” ends up giving a federal blessing to a massive expansion in state tax collection authority, the dismantling of a vital taxpayer protection upon which virtually all tax systems are based, while harming a segment (online sales) that despite its dramatic expansion still only accounts for roughly \$0.07 of every \$1 in retail spending.

Conservatives in Congress should oppose this unwise legislation and instead pursue thoughtful alternatives that preserve geographical limits to tax authority and encourage tax competition.

Sincerely,

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Phil Kerpen  
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James Valvo  
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