

Testimony of Utah State Representative Wayne Harper before the Judiciary Committee of the United States House of Representatives on July 24, 2012:

Thank you Chairman Smith, Ranking Member Conyers and Members of the Judiciary Committee for the invitation to talk to you today. Today, Congress is focusing on one of the most serious issues facing state authority over their taxes, and also one of the most challenging issues for our retailing community.

Introduction:

I am a Republican State Representative from Utah. I chair of the House Rules Committee. I come before you today in my role as someone responsible for producing a balanced state budget, reducing government's burden on business and as the in-coming president of the country's most successful business tax simplification initiative.

Background:

I appreciate the title of today's hearing: "H.R. 3179, the "Marketplace Equity Act of 2011." That subject is of paramount urgency and importance. As you know, two US Supreme Court decisions of the previous century are the basis of this hearing and the situation in which states and business find themselves in this century. Since *Bellas Hess* was decided in the 1960's, I don't believe that anyone could have imagined how that Court's interpretation of the Constitution's limitations on state taxes would produce such an ominous effect for state budgets and for retailers that exist today. When the Court decided *Bellas Hess* over four decades ago, this focus and issue was on catalog sales. While catalogs offered greater variety than many stores at that time, catalogs could not compete with local customer service and immediate availability. In contrast, today, one day and two day delivery of ordered goods is normal, and same day delivery is possible. Retailers are accustomed to competition and improved business and delivery models. However, the crux of the issue Congress is addressing, why we are, is the competitive advantage government grants certain retailers over others. The bottom line problem that exists today is the 6-10% government mandated price difference. Remote business selling the same product as a retailer in your home town has an inherently lower end transaction price. Government is picking retail winners and losers under the current Court decision.

The second case, *Quill*, circumscribed the state's authority over its own tax codes. In *Quill*, the US Supreme Court made it clear that a state's ability to employ an effective sales tax was going to depend on the authority granted by Congress under the Commerce Clause. I come before you today to ask you to exercise that authority and end the current government sanctioned business inequality.

E-commerce Sales:

According to the Department of Commerce e-commerce sales in 2005 were \$87 billion. This year e-sales will total more than twice that amount. The quarterly e-commerce sales in 2011 increased on average 17% more than the same quarters in 2010, while total sales increased less than 8%. While that difference may seem great, it is actually below normal for e-commerce sales. Prior to this year e-commerce sales increased at a much greater rate than did total sales. If e-commerce sales are increasing at a rate greater than total sales, the difference must be sales that would have otherwise gone to a local retailer. The stark truth is that local retailers across this

country often find themselves acting as the display case for consumers who come in and try out the product but then go home and buy it on-line. Why? Because people want to save money on purchases and because there is a Court and government sanctioned incentive to buy remotely due to the nearly 50 year old Bellas Hess decision that remote sellers are not required to collect sales tax as are stores in your home towns. Bottom line is that states fund critical governmental services with sales tax. Certain retailers are not collecting due sales and use taxes on transactions, taxpayers generally are not remitting use taxes and states are not receiving the taxes needed to either provide services or cut their tax rates.

Let's investigate some of the arguments against parity and simplification.

First, Collecting is too complex:

Some continue to argue that it is impossible or expensive to collect sales tax on-line or via a catalog. Every retailer today looks to automate everything that can be automated. Sales tax collection software exists, it works, and it is affordable. Computer technology and supply chain management have radically changed retailing. In many ways the Internet is the perfect environment in which to collect sales taxes because sales tax collection can be automated. The customer is already supplying to the vendor in their shopping cart, all data that is needed to collect due sales tax. Existing technology available from over 8 companies allow for the easy collection of due sales tax. For example, E-Bay is currently doing a pilot program with two companies that, and I quote: *"delivers small and mid-sized business a fast, easy, accurate and affordable solution for achieving sales and use tax compliance."*

Second, Impact on small business:

Some opponents will argue against placing another burden on businesses, and especially on small business. Unfortunately, today the real burden is on those retailers who are trying to compete against someone who isn't collecting due sales tax. Your home town retailers are at the mercy of a 6-10% government mandated price disadvantage. That is the real burden on most small business. The mom and pop businesses in each of your districts are fighting to survive, and are being discriminated against by last century's Court decisions and technology. For truly small businesses for which collecting sales tax truly could be a burden, Congress protects them with a small sellers exemption threshold in all of the bills introduced. That exemption is for REMOTE sales. Congress also helps businesses that exceed the threshold and would be required to collect by 1) requiring states to simplify their laws and processes, and 2) by requiring states to provide software. These and other safeguards, I support.

Third, Collecting a tax that is already due is a tax increase:

Some groups will tell you that these bills are a tax increase. That is not true. How, may I ask, is collecting a tax you owe, but are not paying, is a tax increase? Use tax is on the books of state in this country. If this theory were taken to its logical extreme, every audit assessment would be a tax increase since someone is being forced to pay a tax they hadn't paid. The obligation to pay sales tax on retail sales, regardless of transactional location, exists today. Asking one retailer to collect sales tax, simply because they have a store in your home town without asking the same of all retailers doesn't seem like equal protection under the law.

Fourth, States have not done enough to collect the tax owed today:

Some groups claim that states don't do a good enough job collecting the use tax. Under current Court rulings, there are basically only two ways to collect use tax: have the retailer collect it, or educate and then audit consumers. There is nothing more inefficient, onerous or agitating than conducting an audit on individual consumers. To those who argue that states should engage in more audits, I would ask if they really think we should have a more intrusive collection system in which the average consumer will be made to feel as if they have a resident auditor at their kitchen table? I resoundingly say no!

Fifth, States have not simplified enough:

Some opponents will say the states have not simplified their tax systems enough to warrant Congressional authority. In 1967, the Supreme Court said that the various sales tax systems and the very limited technology that then existed there was too great of a burden on retailers to allow states to require every business to collect. What the Supreme Court didn't answer was how much simpler the sales tax system would have to be and what technology would have to exist to rule differently. Technology has changed in every possible way since 1967. The debate since the Supreme Court's decision is how much simplification must be done.

Sixth, Business has not been involved:

In the vein of business simplification and parity, states and the business community have been cooperatively working for over 10 years to simplify sales tax collection and administration. In addition to the decade long streamlined sales tax effort, states and the business community have been working on documents and Resolutions that specify principles and elements that should be in the federal legislation. For example, Utah adopted HJR 14 this year, which is a list of simplifications principles that should be included in federal legislation addressing Quill and Bellas Hess. That Resolution was a cooperative effort between the Utah's legislature, retail community and Utah based on-line retailer Overstock.com. Additionally, national organizations, on-line retailers, brick and mortar retailers and elected officials have been working on principles and areas of simplifications that should be in a federal bill. Significant progress and agreements have been made.

In conclusion, I submit that technology has so radically improved that the challenge issued by the Supreme Court has been answered and successfully resolved. It is time now to eliminate the government sanctioned competitive advantage some retailers have over our local retailers. It is time to end government picking winners and losers in the retail community. It is time to treat all retail businesses the same. I believe Congress has the ability to balance appropriately the needs for simplification, state sovereignty in tax matters, and equity. I encourage you to make that decision and act now.

Principles and Simplification Elements that should be Addressed in Federal Sales Tax Legislation

1. State certified tax collection and remittance software that is readily available and affordable.
2. Immunity for civil liability for retailers using state certified software.
3. Uniform definitions between states so that retailers have a clear understanding of terms when collecting a tax.
4. Rate simplification as an option.
5. Single state sales tax return
6. Single state tax audit
7. Jurisdictional boundary database created, updated and managed by the state and no liability to the retailer who uses the database for errors in the database.
8. Uniform sourcing rules.
9. Small business exemption.
10. Reasonable vendor compensation.

