

Statement of Congresswoman Jackie Speier (CA)

Judiciary Committee full hearing

“Taxation of Internet Sales”

Tuesday July 24, 2012 10:00, 2141 RHOB

Chairman Smith, Ranking Member Conyers and members, thank you for allowing me to be here today to discuss this important issue and HR 3179—the Marketplace Equity Act. I am very proud to have partnered with Congressman Womack on this truly bi-partisan effort. If a Republican from Arkansas and a Democrat from California can come together on a bill that deals with tax issues, then the time really has come to finally resolve this issue. And this is an issue that ONLY Congress can resolve.

The fundamental unfairness in the marketplace and in our communities that this bill addresses has grown dramatically over the past few years. When Quill was decided by the Supreme Court in 1992, the internet and the World Wide Web did not even exist as a retail marketplace. Sales taxes were collected on almost all retail sales. But according to the Commerce department, online retail sales have increased 300% to \$224 Billion over the past eight years, and they are expected to almost triple again over the next eight to more than \$600 billion—overtaking sales at brick and mortar stores. This is clearly not a business model in its infancy.

And there should be no doubt that this is not a new tax. Consumers owe sales and use tax for these purchases in all states with a sales tax, but only about one percent actually pays them. This is an issue of collection and fairness. Some retailers have to collect the tax from the consumer, and some don't, for the very same product.

State and local governments impose sales taxes to help pay for essential public services such as police, firefighters, and teachers. As online sales grow, the financial hit to our communities gets more severe. Each sales tax dollar not collected is a service not provided and a possible job lost—these are cuts to police,

fire departments and schools. I have seen it happen in my district, and I am sure it is happening in all of your districts. Almost \$7 out of every \$10 spent at a local brick and mortar retailer stays local. More than \$4 out of every \$10 spent at a national retailer stays local. But none of the money spent at an online-only retailer stays in the community. The only option left to state and local governments facing even greater losses as more retail shifts to the internet will be to raise taxes.

We have all seen it--large online-only retailers have been able to trample the small retailers in all of our communities through the big price advantage of not charging sales tax. Across the United States, the brick and mortar stores who can compete on price but can't compete with tax-free online sales are closing, and jobs are being lost. Brick and mortar retailers create four jobs for every one job created by an online retailer.

In a state like California, that sales tax price advantage is huge, particularly at a time when financially strapped consumers are looking for ways to stretch their dollars as far as possible. Technology has now made it possible for them to shop for goods in brick and mortar stores, get advice and kick the tires on products like TVs and computers and cameras and bicycles, and then find and buy the item online—sometimes right on their mobile phone while still standing in the store.

Eric McCrystal, who runs a small powertools company in my district in San Carlos, told me it happens regularly—people come in and test his power tools and then go online to buy because they can escape the sales tax--even though it is owed. This simply isn't fair to the merchants like Eric who have invested in a storefront and hired employees to provide a service. And ultimately it isn't fair to the taxpayer who has a legal obligation to pay but isn't able to easily fulfill it or doesn't even know they owe the tax, and could be subject to audit and penalties for failure to pay.

But there are also lots of people turning to the online marketplace to expand their small businesses or to reinvent themselves after losing their job. Those legitimately small online businesses are exempted from having to collect sales taxes under this bill—but only until they too become sophisticated marketplace actors.

The same way technology has made it easy for online shopping, technology has made it much simpler for online retailers to collect sales taxes. And since Congress must grant this authority to the states, our bill provides a very simple framework for states to opt in to this framework. It also requires states to provide the tools and services required to comply cost-free to online retailers. This is certainly more than brick and mortar retailers get.

Once upon a time there was a valid argument that the internet marketplace was in its infancy and we didn't want to stifle its development. Those days are gone. Companies like Amazon and Overstock.com are proof of it. California is expected to lose more than \$1.8 billion in uncollected tax revenue this year alone, and the amount is going up every year as more purchases are made through online retailers that have become expert at gaming the system to avoid the obligation to collect and remit sales taxes.

The failure of Congress to address this issue has led to more, not less confusion in the marketplace. Instead of a national approach, desperate states are taking their own actions in response to this problem—there are the Streamline states, the Amazon deals, and the states that have expanded the reach of nexus through legislation. At least 30 states have taken some action to try and increase their sales tax collections on online sales.

Rather than hide its head in the sand, Congress could solve this issue for all states by allowing states to require online sellers to collect tax even if they do not meet a physical presence test. It could set the conditions that states must satisfy if they wish to do so, ensuring that it is simple and not unduly burdensome, while at the same time respecting states' rights. That is precisely what the Marketplace Equity Act does.