

Testimony on H.R. 3179, the “Marketplace Equity Act”

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Mr. Chairman and Members of the Judiciary Committee, let me take this opportunity to thank you for allowing us to have this discussion today regarding an issue that Congress—and only Congress—can resolve. I’d also like to thank my colleague and co-sponsor, Jackie Speier, for her hard work and dedication to the bill before you.

In short, this bill levels the “playing field” in the world of retail sales.

Currently, as I trust most of you now understand, traditional retailers—I’ll refer to them as “brick and mortar” retailers—collect sales taxes on purchases made in their respective stores. These taxes are remitted to the political subdivisions who levy them—typically by the state department of finance and administration. This is not an option for the retailer. It is a requirement.

There is no requirement, however, for online, remote retailers—with no presence in a given state—to collect such a tax. The United States Supreme Court, in a 1992 decision (*Quill v. North Dakota*), ruled that pursuant to the Commerce Clause, states cannot make such a requirement on businesses that do not have a “nexus” or presence in the state. The burden of remitting these “use” taxes falls on the consumer—not the retailer—and the realistic effect of this situation is bad for our traditional retailers, bad for cities, counties and states who levy sales taxes, and bad for consumers who are unwittingly exposed to potential tax evasion issues.

Mr. Chairman, in short, the *Quill* Decision explicitly says that only Congress can remedy this terrible disparity—and it is my strong belief that Congress should intercede.

Prior to serving in Congress, I had the honor of serving as Mayor of a city in northwest Arkansas that has become a premier destination for retail shopping. A revitalized Main Street and new outdoor lifestyle center in Rogers, Arkansas was the basis for more than \$1 billion in local development during my tenure. We created thousands of jobs. Revenue generated through retail sales growth lifted our city, county, and state. These retailers in my district—and retailers across America—are crying out for help to eliminate the loophole that chases more and more discriminate shoppers away from Main Street and to the internet, where the feeling of buying something “tax free” is all-too-often a major factor for shopping online.

Small retail stores have become “show rooms” for their online counterparts. Merchants have intimated to me the stories of would-be consumers, in growing numbers, visiting their stores to get a first-hand look at the merchandise under consideration for purchase. And once committed to purchasing, simply use their smart phone to purchase it online—there’s an APP for that—having it delivered to their home, and motivated by the opportunity to “save the tax.”

I do very little online shopping. But recently, having made a purchase from a well-known online retailer without a presence in Arkansas, I realized the burden of remitting the use tax was on me—so I downloaded the proper form, filled it out, and enclosed a check to my state’s Department of Finance. It occurred to me, Mr. Chairman, that a lot of my constituents don’t know this is a requirement. And when told of the requirement, would not know how to process the payment. These transactions—millions of them everyday—are simply going without proper tax treatment. And with the exponential growth of internet retailing, the result to traditional retailers—not to mention critical local services—is devastating.

It is time this loophole is closed. Our bill, HR 3179, is purposed in doing just that. It is simple and straight-forward. It is not instructive—it is permissive legislation, just like the Quill Decision invited us to do. And our bill is based on three conservative values:

- States Rights—allowing states to decide whether or not to compel remote sellers to collect/remit; the rate; and the method of remittance
- Promoting free-market competition—allowing the discerning shopper to make decisions on price, convenience, service, etc—NOT on an outdated tax policy weighted to one business model
- Keeping taxes low—helping our cities, counties, and states meet their demands by avoiding the certain reality of raising other taxes to offset the exponential loss of sales tax revenue.

I’ve heard the arguments against this legislation. It’s too complicated. Too many rates. Punitive to small, online retailers. The notion of this involving a “new” tax.

It’s not complicated. There is existing off-the-shelf software to make the necessary reports and our bill requires the states to provide that software. And just as it is easy to track, in real time, approaching storms, traffic congestion, and the activities of this institution, it is also very easy for online merchants to provide the necessary documentation and payment of taxes—just as their Main Street counterparts do.

Plus, our bill has a small-business exemption to lessen the burden on the small operators and newly formed E-retailers.

And Mr. Chairman, this is NOT a new tax. This is an existing, lawfully due tax imposed on consumers. The difference is that it is paid to the traditional retailer at the time of purchase and the remittance is handled by the retailer. But for the online shopper, the obligation falls on him/her.

The traditional, brick and mortar retailer is not asking for special treatment. They know they have to compete against a number of consumer criterion. What they don’t want—and should not compete against—is a disadvantage based on a tax loophole.

With simple legislation, we can finally address an issue that has been 20-plus years in the making. I plead with this committee to give favorable support to bringing this bill to the floor.

Thank you for your time.