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## Memorandum

To: The Revenue and Taxation Interim Committee

From: Phil Dean, Policy Analyst  
Rebecca Rockwell, Associate General Counsel  
Bryant Howe, Assistant Director

Date: August 1, 2012

Re: The following model legislation (Version 1) served as the basis for the committee's motion during its June 20, 2012 meeting. In addition, as a follow-up at Senator McAdams' request, attached is another version (Version 2) that was referenced in the June committee meeting. Draft legislation related to the motion taken on Version 1 will be mailed to committee members upon its completion.

# VERSION 1

## DRAFT – FOR DISCUSSION PURPOSES ONLY – DRAFT

### Resolution Urging Congress to Restore State Sales Tax Collection Sovereignty

#### *Summary*

The Supreme Court of the United States held in *Quill* (1992) that a state cannot require a retailer without a physical presence in the state to collect and remit tax on sales to consumers in the state. Importantly, the Supreme Court recognized “that the underlying issue is not only one that Congress may be better qualified to resolve, but also one that Congress has the ultimate power to resolve.” Congress should act, consistent with the American Legislative Exchange Council (ALEC) Principles of Taxation, to authorize states, subject to the enactment of any necessary state laws, to require all retailers whose sales to consumers in the state exceed a minimum threshold to collect applicable sales taxes on sales in the state.

#### *Resolution to Congress*

**WHEREAS**, the Supreme Court of the United States held in *Quill v. North Dakota*, 504 U.S. 298 (1992) that the “dormant” or “negative” Commerce Clause of the United States Constitution prohibits a state from requiring a retailer to collect and remit sales tax on sales to consumers in the state unless the retailer has physical presence in the state; and;

**WHEREAS**, the Supreme Court further held “that the underlying issue is not only one that Congress may be better qualified to resolve, but also one that Congress has the ultimate power to resolve;” and;

**WHEREAS**, the sales tax, as applied to consumer purchases, can be ~~is the most~~ transparent tax levied by state and local governments; and;

**WHEREAS**, the sales tax is, from the individual consumer’s perspective, one of the simplest taxes imposed by state and local governments; and, ~~and more than 20 states have worked to make it simpler for retailers that collect the tax in multiple states,~~ and;

**WHEREAS**, a ~~the most~~ complex aspect of sales taxation, from the individual ~~for~~ consumer’s perspective, is the requirement to pay “use” tax directly to the state or locality when sales tax is not collected by the retailer; and;

**WHEREAS**, ALEC has previously stated and continues to believe that the electronic commerce industry needs to be left free from government interference and any argument in favor of taxing sales on the Internet is problematic in light of Constitutional provisions regarding interstate commerce and interstate compacts; and

**WHEREAS**, because there are over 9,600 state and local taxing jurisdictions in in the United States, each with unique and changing definitions, rules and holidays the sales tax is, from a remote seller’s perspective, one of the most complex and costly taxes imposed by state and local governments; and

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WHEREAS, less than half the states have worked to make it simpler or less costly for retailers that collect and remit the tax in multiple states, and the largest states have not participated in simplification or cost reduction; and

~~WHEREAS, current federal policy prohibiting uniform sales tax collection violates the principle of economic neutrality by favoring some retailers over others and encouraging consumers to evade paying legally owed taxes; and;~~

~~WHEREAS, this federal policy also violates the principle of equity and fairness because it uses the tax system to pick winners and losers in the marketplace; and;~~

~~WHEREAS, the sales tax is the one major tax that is frequently both a state and local tax; and~~

WHEREAS, remote uniform collection of the sales tax may will help to strengthen state and local tax systems; and;

~~WHEREAS, consumption taxes, like the sales tax with appropriate exemptions to minimize tax pyramiding on business inputs, are among the most economically neutral taxes and are a necessary component can be used to achieve effective competitiveness; and;~~

~~WHEREAS, the sales tax has been a is one of the most stable sources of state and local revenue and provides some level of certainty for both states and localities taxpayers; and;~~

~~WHEREAS, some proposed federal legislation authorizing states to require all retailers whose sales to consumers in those states exceed a minimum threshold to collect sales taxes has garnered support from some businesses and business groups large and small and organizations across the political spectrum; and; and~~

~~WHEREAS, some such federal legislation would allow states to improve the collection of legally owed sales taxes and thus provide flexibility to lower tax rates for all taxpayers; and~~

WHEREAS, despite the progress states have made in simplifying state sales tax collection for remote sellers, there remain some inequities between the burden of tax collection obligations imposed upon sellers with physical presence, and the burdens those same obligations would impose on remote sellers serving consumers in multiple states without physical presence; and

WHEREAS, any federal legislation should be fair to both in-state and remote sellers, whether such legislation requires sales and use taxes to be collected on a point-of-sale or point-of-delivery basis; and

WHEREAS, Congress, in considering federal legislation, should at least consider the following principles in the enactment of such federal legislation which would permit states to impose sales tax obligations on remote sellers:

- 1) State-provided or state-certified tax collection and remittance software that is simple to implement and maintain;

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- 2) Immunity from civil lawsuits for retailers utilizing state-provided or state-certified software in tax collection and remittance;
- 3) Tax audit accountability to a single state tax audit authority;
- 4) Elimination of interstate tax complexity by streamlining taxable good categories;
- 5) Adoption of a meaningful small business exception so that small remote seller businesses are not adversely affected; and
- 6) Fair compensation to the tax-collecting retailer, taking into account such elements as the exchange fees retailers are charged for consumer credit card transactions, which fees apply equally any state taxes collected the purchase of goods sold.

**NOW THEREFORE LET IT BE RESOLVED**, ALEC urges Congress to enact legislation, consistent with this resolution and the ALEC Principles of Taxation, to authorize states, subject to the enactment of any necessary state laws, to establish true fairness in state tax collection, for both retailers having physical presence in a state, and retailers who are remote sellers, and, further, having addressed the principals of fairness herein outlined, require all retailers whose sales to consumers ~~in the state~~ exceed a minimum threshold to collect and remit applicable sales taxes on sales in the state, and;

**BE IT FURTHER RESOLVED**, copies of this resolution shall be distributed to all Governors and members of the United States House of Representatives and United States Senate.

# VERSION 2

## Resolution Urging Congress to address unreasonable burdens on interstate commerce before overturning the *Quill* standard of Physical Presence for sales tax collection

### *Summary*

The Supreme Court of the United States held in *Quill* (1992) that a state cannot require a retailer without a physical presence in the state to collect and remit tax on sales to consumers in the state. Importantly, the Court recognized “that the underlying issue is not only one that Congress may be better qualified to resolve, but also one that Congress has the ultimate power to resolve.” Until Congress so acts, *Quill* remains the law notwithstanding the efforts of several states to require retailers without a physical presence to collect and remit sales taxes. Congress should act, consistent with the American Legislative Exchange Council (ALEC) Principles of Taxation, to authorize states to require sales tax collection from remote retailers, provided that such authority is contingent on minimum simplifications and an exception for small businesses.

### *Resolution to Congress*

**WHEREAS**, the Supreme Court of the United States held in *Quill v. North Dakota*, 504 U.S. 298 (1992) that the “dormant” or “negative” Commerce Clause of the United States Constitution prohibits a state from requiring a retailer to collect and remit sales tax on sales to consumers in the state unless the retailer has physical presence in the state, and;

**WHEREAS**, the Supreme Court further held “that the underlying issue is not only one that Congress may be better qualified to resolve, but also one that Congress has the ultimate power to resolve,” and;

**WHEREAS**, until Congress so acts, *Quill* remains the law notwithstanding the efforts of several states to require retailers without a physical presence to collect and remit sales taxes; and

**WHEREAS**, the sales tax, as applied to consumer purchases, is a transparent tax levied by state and local governments, and;

**WHEREAS**, the sales tax is, from the individual consumer’s perspective, one of the simplest taxes imposed by state and local governments, and more than 20 states have worked to make it simpler for retailers that collect the tax in multiple states, and;

**WHEREAS**, a complex aspect of sales taxation from the individual consumer’s perspective is the requirement to pay “use” tax directly to the state when sales tax is not collected by the retailer, and;

**WHEREAS**, the sales tax is, from a remote seller’s perspective, one of the most complex and costly taxes imposed by state and local governments, and less than half the states have worked to make it simpler or less costly for retailers that collect and remit the tax in multiple states, and the largest states have not participated in simplification or cost reduction; and

**WHEREAS**, there are over 9,600 state and local taxing jurisdictions in in the United States, each with unique and changing definitions, rules and sales tax holidays; and

**WHEREAS**, the sales tax is the one major tax that is frequently both a state and local tax, and;

**WHEREAS**, the sales tax has been a stable source of state revenue and provides certainty for both states and taxpayers, and;

**WHEREAS**, some pending federal legislation would authorize states to require all retailers whose sales to consumers in those states exceed a minimum threshold to collect sales taxes has garnered support from many businesses and organizations, and;

**WHEREAS**, such federal legislation may allow states to improve the collection of legally owed sales taxes and thus provide flexibility to lower tax rates for all taxpayers, and;

**WHEREAS**, despite the progress some states have made in simplifying sales tax collection for remote sellers, there remain inequities between the burden of tax collection obligations imposed upon sellers with physical presence, and the burdens those same obligations would impose on remote sellers serving consumers in multiple states without physical presence.

**NOW THEREFORE LET IT BE RESOLVED**, ALEC urges Congress to enact legislation to authorize states to require remote retailers to collect applicable sales taxes on sales made in the state, provided that such legislation requires authorized states to adopt the following minimum simplifications:

1. Tax audit accountability to a single state tax audit authority;
2. Remote retailers may use a single sales tax rate in each state for any defined category of goods or services;
3. A single national standard for sourcing remote sales;
4. Nationally standardized definitions for taxable goods and services;
5. A Congressionally-determined small business exception so that small remote businesses are not adversely affected;
6. Remote retailers are not required to honor, but may observe, caps or thresholds for sales tax computation;
7. Remote retailers are not required to honor, but may observe, sales tax holidays;
8. State-provided or state-certified tax collection and remittance software that is simple to implement and maintain;
9. Immunity from civil lawsuits for retailers using state-provided or state-certified tax software;
10. Fair compensation to the tax-collecting retailer, taking into account such elements as fees for consumer credit card transactions and costs of software implementation and maintenance; and
11. Federal court jurisdiction over disputes arising between states and remote businesses regarding a state's compliance with tax simplification standards established by federal law.

**BE IT FURTHER RESOLVED**, copies of this resolution shall be distributed to all Governors and members of the United States House of Representatives and United States Senate.