

**JOINT RESOLUTION ON REMOTE SALES**

2013 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This joint resolution of the Legislature urges the United States Congress to require all retailers whose sales to consumers in the state exceed a minimum threshold to collect applicable sales taxes on the sales in the state.

**Highlighted Provisions:**

This resolution:

- ▶ urges the United States Congress to act 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 the sales in the state.

**Special Clauses:**

None

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*Be it resolved by the Legislature of the state of Utah:*

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 Constitution of the United States 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;

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";

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

WHEREAS, the sales tax is, from the individual consumer's perspective, one of the simplest taxes imposed by state and local governments;

WHEREAS, a complex aspect of sales taxation, from the individual consumer's perspective, is the requirement to pay "use" tax directly to the state or locality when sales tax is

33 not collected by the retailer;

34 WHEREAS, the electronic commerce industry needs to be left free from government  
35 interference, and any argument in favor of taxing sales on the Internet is problematic in light of  
36 constitutional provisions regarding interstate commerce and interstate compacts;

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

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

44 WHEREAS, the sales tax is frequently both a state and local tax;

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

47 WHEREAS, consumption taxes can be used to achieve competitiveness;

48 WHEREAS, the sales tax has been a stable source of state and local revenue and  
49 provides some level of certainty for states and localities;

50 WHEREAS, some proposed federal legislation authorizing states to require all retailers  
51 whose sales to consumers in those states exceed a minimum threshold to collect sales taxes has  
52 garnered support from some businesses and organizations;

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

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

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

63 WHEREAS, Congress, in considering federal legislation, should at least consider the

64 following principles in the enactment of such federal legislation that would permit states to  
65 impose sales tax obligations on remote sellers:

- 66 1. State-provided or state-certified tax collection and remittance software that is simple  
67 to implement and maintain;
- 68 2. Immunity from civil lawsuits for retailers utilizing state-provided or state-certified  
69 software in tax collection and remittance;
- 70 3. Tax audit accountability to a single state tax audit authority;
- 71 4. Elimination of interstate tax complexity by streamlining taxable good categories;
- 72 5. Adoption of a meaningful small business exception so that small, remote seller  
73 businesses are not adversely affected; and
- 74 6. Fair compensation to the tax-collecting retailer, taking into account such elements as  
75 the exchange fees retailers are charged for consumer credit card transactions, which fees apply  
76 equally to any state taxes collected on the purchase of goods sold as well as the actual purchase  
77 amount:

78 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah  
79 urges Congress to enact legislation to authorize states, consistent with this resolution and  
80 principles of taxation espoused by national associations of legislators and governors, and  
81 subject to the enactment of any necessary state laws, to establish true fairness in state tax  
82 collection for both retailers having physical presence in a state and retailers who are remote  
83 sellers.

84 BE IT FURTHER RESOLVED that the Legislature of the state of Utah, having  
85 addressed the principles of fairness outlined in this resolution, urges Congress to require all  
86 retailers whose sales to consumers exceed a minimum threshold to collect and remit applicable  
87 sales taxes on sales in the state.

88 BE IT FURTHER RESOLVED that a copy of this resolution be sent to the members of  
89 the United States House of Representatives and to the members of the United States Senate.