

1 **JOINT RESOLUTION ON REMOTE SALES**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Steve Eliason**

5 Senate Sponsor: Wayne A. Harper

7 **LONG TITLE**

8 **Committee Note:**

9 The Revenue and Taxation Interim Committee recommended this bill.

10 **General Description:**

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

14 **Highlighted Provisions:**

15 This resolution:

16 ▶ urges the United States Congress to act to authorize states, subject to the enactment
17 of any necessary state laws, **Ⓢ→ and subject to principles established in the resolution, ←Ⓢ** to
17a require all retailers whose sales to consumers in the
18 state exceed a minimum threshold to collect applicable sales taxes on the sales in
19 the state.

20 **Special Clauses:**

21 None

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

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



28 WHEREAS, the Supreme Court further held "that the underlying issue is not only one
29 that Congress may be better qualified to resolve, but also one that Congress has the ultimate
30 power to resolve";

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

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

35 WHEREAS, a complex aspect of sales taxation, from the individual consumer's
36 perspective, is the requirement to pay "use" tax directly to the state or locality when sales tax is
37 not collected by the retailer;

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

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

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

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

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

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

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

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

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

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

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

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

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

72 2. Immunity from civil lawsuits for retailers utilizing state-provided or state-certified
73 software in tax collection and remittance;

74 3. Tax audit accountability to a single state tax audit authority;

75 4. Elimination of interstate tax complexity by streamlining taxable good categories;

76 5. Adoption of a meaningful small business exception so that small, remote seller
77 businesses are not adversely affected; and

78 6. Fair compensation to the tax-collecting retailer, taking into account such elements as
79 the exchange fees retailers are charged for consumer credit card transactions, which fees apply
80 equally to any state taxes collected on the purchase of goods sold as well as the actual purchase
81 amount:

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

88 BE IT FURTHER RESOLVED that the Legislature of the state of Utah, having
89 addressed the principles of fairness outlined in this resolution, urges Congress to require all

90 retailers whose sales to consumers exceed a minimum threshold to collect and remit applicable
91 sales taxes on sales in the state.

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

Legislative Review Note
as of 1-3-13 2:25 PM

Office of Legislative Research and General Counsel