

Senator Wayne A. Harper proposes the following substitute bill:

**JOINT RESOLUTION ON REMOTE SALES**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Steve Eliason**

Senate Sponsor: Wayne A. Harper

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**LONG TITLE**

**General Description:**

This joint resolution of the Legislature urges the United States Congress to pass S. 336 and H.R. 684, The Marketplace Fairness Act, which would permit states that enact certain tax simplification and uniformity standards to require retailers whose sales to consumers in the state exceed a minimum threshold to collect applicable sales taxes on sales in the state.

**Highlighted Provisions:**

This resolution:

► urges the United States Congress to pass S. 336 and H.R. 684, known as the Marketplace Fairness Act, which would permit states that enact certain tax simplification and uniformity standards to require retailers whose sales to consumers in the state exceed a minimum threshold to collect applicable sales taxes on 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



26 U.S. 298 (1992) that the "dormant" or "negative" Commerce Clause of the  
27 United States prohibits a state from requiring a retailer to collect and remit sales tax on sales to  
28 consumers in the state unless the retailer has physical presence in the state;

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

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

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

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

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

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

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

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

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

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

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

60 WHEREAS, the state of Utah has adopted or supports, and Congress is considering, the  
61 following items in federal legislation:

62 1. State-provided or state-certified tax collection and remittance software that is simple  
63 to implement and maintain, and paid for by states;

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

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

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

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

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

74 WHEREAS, the Marketplace Fairness Act, currently introduced in the United States  
75 Senate as S. 336 and the United States House of Representatives as H.R. 684, helps level the  
76 playing field between remote sellers and main street sellers by requiring larger remote sales to  
77 collect the same sales and use taxes that the brick and mortar stores in Utah already collect;

78 WHEREAS, in *Quill Corp. v. North Dakota* (1992), the Supreme Court of the United  
79 States indicated that Congress has the ability to resolve this sales tax collection inequity  
80 between remote sellers and brick and mortar sellers;

81 WHEREAS, the Marketplace Fairness Act will provide states with the authority to  
82 require remote sellers to collect and remit the sales tax due if the state is willing to make  
83 significant simplifications for sellers;

84 WHEREAS, Utah has already shown the way by adopting all the simplifications and  
85 uniformity standards required in the Streamlined Sales and Use Tax Agreement;

86 WHEREAS, these simplifications, along with the ease of reporting through recent  
87 technological advances, have removed the obstacles to remote sellers collecting sales taxes just

88 like any other retailer;

89 WHEREAS, this is evidenced by the fact that over 1,800 sellers have voluntarily  
90 registered to collect the taxes in the states, including Utah, that have conformed their laws to  
91 the requirements of the Streamlined Sales and Use Tax Agreement;

92 WHEREAS, there is an urgent need to pass this long overdue legislation to level the  
93 playing field for all retailers;

94 WHEREAS, the legislation is about fairness, simplification and stemming the erosion  
95 of state sales tax systems;

96 WHEREAS, that both houses of Congress have agreed on the approach and legislative  
97 language indicates there is a readiness to take this important step to safeguard state sales tax  
98 systems;

99 WHEREAS, although purchasers still owe a corresponding use tax on taxable  
100 purchases from remote retailers, most individuals are either not aware of this requirement or  
101 choose to ignore it;

102 WHEREAS, while the Internet was essentially unknown to consumers in 1992, the  
103 loophole identified in the Quill Corp. v. North Dakota decision points out the competitive  
104 advantage online and mail order merchants have over traditional brick and mortar stores that  
105 are required to collect and remit sales tax from their customers;

106 WHEREAS, no compelling reason exists for government to continue to give remote  
107 sales retailers a competitive advantage over in-state merchants who live and work in a  
108 community, hire employees, and pay taxes;

109 WHEREAS, the United States Congress should act now so businesses compete on the  
110 basis of price and service, not on the ability of one form or retailer to avoid collecting taxes;

111 WHEREAS, the Marketplace Fairness Act would give states the authority to require  
112 remote sellers with more than \$1 million in total remote sales in the preceding calendar year to  
113 collect their state's sales and use tax on sales to customers; and

114 WHEREAS, the Marketplace Fairness Act identifies minimum simplification  
115 requirements a state must enact before it can require remote sellers to collect its sales and use  
116 taxes, making it easier for the remote sellers to comply with the laws of multiple states:

117 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah  
118 urges Congress to enact S. 336 and H.R. 684 to authorize states, consistent with this resolution

119 and principles of taxation espoused by national associations of legislators and governors, and  
120 subject to the enactment of any necessary state laws, to establish true fairness in state tax  
121 collection for both retailers having physical presence in a state and retailers who are remote  
122 sellers.

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

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