

HJR004S01 compared with HJR004

~~{deleted text}~~ shows text that was in HJR004 but was deleted in HJR004S01.

inserted text shows text that was not in HJR004 but was inserted into HJR004S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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

LONG TITLE

~~{Committee Note:~~

~~—The Revenue and Taxation Interim Committee recommended this bill.~~

~~}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 ~~{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}~~ pass S. 336 and H.R. 684,

HJR004S01 compared with HJR004

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 ~~the~~ sales in the state.

Special Clauses:

None

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 not collected by the retailer; ~~{ }~~

WHEREAS, 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; ~~{ }~~

WHEREAS, because there are over 9,600 state and local taxing jurisdictions 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;

~~{ — WHEREAS, less than half of the states have worked to make it simpler or less costly for retailers that collect and remit sales taxes in multiple states, and the largest states have not~~

HJR004S01 compared with HJR004

~~participated in simplification or cost reduction;~~

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

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

‡ WHEREAS, consumption taxes can be used to achieve competitiveness;{ }

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

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 organizations;

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

‡ 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;

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}~~

WHEREAS, the state of Utah has adopted or supports, and Congress is considering, the following items in federal legislation{, should at least consider the following principles in the enactment of such federal legislation that 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, and paid for by states;

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;

HJR004S01 compared with HJR004

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 to any state taxes collected on the purchase of goods sold as well as the actual purchase amount;

†:

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

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

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

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

WHEREAS, these simplifications, along with the ease of reporting through recent technological advances, have removed the obstacles to remote sellers collecting sales taxes just like any other retailer;

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

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

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

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

HJR004S01 compared with HJR004

systems:

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

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

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah urges Congress to enact ~~{legislation}~~ S. 336 and H.R. 684 to authorize states, consistent with this resolution and principles of taxation espoused by national associations of legislators and governors, and 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.

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

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

HJR004S01 compared with HJR004

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Legislative Review Note

~~as of 1-3-13 2:25 PM~~

~~Office of Legislative Research and General Counsel}~~