

1 **CONCURRENT RESOLUTION IN SUPPORT OF SALES AND**
2 **USE TAX TRANSACTIONAL EQUITY**

3 2016 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Wayne A. Harper**

6 House Sponsor: Brad L. Dee

7
8 **LONG TITLE**

9 **Committee Note:**

10 The Revenue and Taxation Interim Committee recommended this resolution.

11 **General Description:**

12 This concurrent resolution of the Legislature and the Governor urges the United States
13 Congress to pass the Remote Transactions Parity Act, H.R. 2775, legislation for fair,
14 uniform, simplified, and constitutional collection and remittance of state and local sales
15 and use taxes by both in-state and remote sellers.

16 **Highlighted Provisions:**

17 This resolution:

- 18 ▶ urges Congress to pass, without delay, the Remote Transactions Parity Act, H.R.
19 2775, for the fair, uniform, simplified, and constitutional collection of state and
20 local sales and use taxes due; and
- 21 ▶ affirms that, through passage of the legislation, Congress will:
- 22 • foster consistent standards for in-state and remote sellers who are obligated to
 - 23 collect state and local sales and use taxes, providing equal, consistent, and fair
 - 24 treatment among traditional brick-and-mortar retailers, brick-and-click retailers,
 - 25 catalogue retailers, and Internet-only retailers; and
 - 26 • require similarly situated purchasers to pay the same sales and use tax rates,
 - 27 regardless of which type of retailer they make their purchases from and



28 regardless of where that retailer is located.

29 **Special Clauses:**

30 None



32 *Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:*

33 WHEREAS, United States Supreme Court decisions in National Bellas Hess v.
34 Department of Revenue, 386 U.S. 753 (1967), and Quill Corp. v. North Dakota, 504 U.S. 298
35 (1992), require a seller to have a physical presence in a taxing state before the state may require
36 the seller to collect and remit sales and use taxes on transactions that occur within that state;

37 WHEREAS, the United States Supreme Court also declared in the Quill Corp. v. North
38 Dakota decision that Congress "has the ultimate power" under the commerce clause of the
39 United States Constitution to resolve "whether, when, and to what extent" the states may
40 require sales and use tax collection and remittance on remote sales;

41 WHEREAS, states and localities that use sales and use taxes as a revenue source may
42 not collect revenue from some portion of remote sales commerce under the current Supreme
43 Court rulings;

44 WHEREAS, since 1999, various state legislators, governors, local elected officials,
45 state tax administrators, and representatives of the private sector have worked together to
46 develop standards, protocols, and tax systems that mitigate the burdens addressed in Quill
47 Corp. v. North Dakota;

48 WHEREAS, between 2001 and 2002, 40 states enacted legislation expressing their
49 intent to simplify the states' sales and use tax collection systems and to participate in
50 discussions to allow for the collection of states' sales and use taxes;

51 WHEREAS, Utah has been a leader in demonstrating the political will to make
52 meaningful state sales and use tax reform and encouraging state membership in the Streamlined
53 Sales and Use Tax Agreement;

54 WHEREAS, 24 states, including Utah, have joined the Streamlined Sales and Use Tax
55 Agreement and have refined their state laws accordingly;

56 WHEREAS, the actions of these states provide justification for Congress to enact
57 legislation to allow states to require remote sellers to collect the states' sales and use taxes;

58 WHEREAS, the end consumer is responsible for paying the statutorily due sales and

59 use tax and the retailer is the state-appointed collector of sales and use tax;

60 WHEREAS, the enactment of legislation by Congress that allows states to require
61 remote sellers to collect the states' sales and use taxes is necessary to treat all sales transactions
62 the same regardless of whether they are done by an in-state, remote, or online retailer;

63 WHEREAS, Congress has had sufficient time to address the requirements of Quill
64 Corp. v. North Dakota and the states have acted to minimize the additional burdens on
65 businesses by implementing automated software to calculate tax rates imposed by each tax
66 jurisdiction;

67 WHEREAS, empowering states to collect sales and use taxes on in-state and remote
68 sales is consistent with the Tenth Amendment to the United States Constitution and is a states'
69 rights issue;

70 WHEREAS, requiring remote sellers to collect sales and use taxes may broaden Utah's
71 sales and use tax base and potentially enable the Utah Legislature and the Governor to lower
72 sales and use tax rates;

73 WHEREAS, the Utah Legislature has repeatedly passed resolutions over the last 10
74 years calling upon Congress to pass legislation supporting Tenth Amendment rights and
75 allowing states to collect the sales and use taxes due from all transactions;

76 WHEREAS, the United States Senate heeded that call by overwhelmingly passing the
77 Marketplace Fairness Act of 2013, but the United States House of Representatives failed to
78 consider or vote on the legislation;

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

82 WHEREAS, the Remote Transactions Parity Act of 2015, H.R. 2775 (the Remote
83 Transactions Parity Act), is currently introduced in the United States House of Representatives
84 and satisfies Quill;

85 WHEREAS, passage of the Remote Transactions Parity Act is intended to foster
86 consistent treatment of and standards for in-state and remote sellers in collecting and remitting
87 already due sales and use taxes;

88 WHEREAS, the small remote seller phase-in as set forth in the Remote Transactions
89 Parity Act needs to treat all retailers the same, including retailers using an electronic

90 marketplace;

91 WHEREAS, passage of the Remote Transactions Parity Act or the Marketplace
92 Fairness Act is the top priority of the National Governors Association and the National
93 Conference of State Legislatures; and

94 WHEREAS, passage of the Remote Transactions Parity Act is a top priority of the
95 Retail Industry Leaders Association, the International Council of Shopping Centers, the Farm
96 Bureau, the Chamber of Commerce, the United States Conference of Mayors, and other major
97 associations:

98 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the
99 Governor concurring therein, urges and calls upon the United States Congress to pass, without
100 delay, and the President of the United States to sign, the Remote Transactions Parity Act,
101 which provides for the fair, uniform, simplified, and constitutional administration of and
102 collection of state and local sales and use taxes due.

103 BE IT FURTHER RESOLVED that Congress, in the Remote Transactions Parity Act,
104 treat all retailers and small sellers the same in the small remote seller phase-in, including
105 retailers using an electronic marketplace.

106 BE IT FURTHER RESOLVED that the Legislature and the Governor call upon each of
107 Utah's members of Congress to actively support, to cosponsor, and to vote in favor of the
108 Remote Transactions Parity Act and for Utah's members of the Senate to do the same once the
109 legislation reaches the Senate.

110 BE IT FURTHER RESOLVED that the Legislature and the Governor affirm that,
111 through passage of the Remote Transactions Parity Act, the United States Congress will foster
112 consistent standards for in-state and remote sellers who are obligated to collect state and local
113 sales and use taxes, providing equal, consistent, and fair treatment among traditional
114 brick-and-mortar retailers, brick-and-click retailers, catalogue retailers, and Internet-only
115 retailers and require similarly situated purchasers to easily pay the sales and use taxes due,
116 regardless of which type of retailer they make their purchases from and regardless of where that
117 retailer is located.

118 BE IT FURTHER RESOLVED that the Legislature and the Governor urge all members
119 of Utah's congressional delegation to vote in favor of the Marketplace Fairness Act of 2015, S.
120 698, should that legislation be presented for a vote.

121 BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Majority
122 Leader of the United States Senate, the Speaker of the United States House of Representatives,
123 the chair and cochair of the Senate Finance Committee, the chair and cochair of the House
124 Judiciary Committee, and the members of Utah's congressional delegation.

Legislative Review Note
Office of Legislative Research and General Counsel