Computer & Communications Industry Association
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April 19, 2013

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The Honorable Ron Wyden
United States Senate
221 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Wyden:

On behalf of the Computer & Communications Industry Association (CCIA), I write to express serious concerns regarding S. 743, the Marketplace Fairness Act, and to urge you to oppose this highly problematic bill, scheduled to come to the Senate floor next week. The Marketplace Fairness Act would impose tax collection burdens for some 9,600 tax jurisdictions on small Internet businesses with no physical presence in them. Severing the relationship between taxation and physical presence would be a fundamental rethinking of the way we consider taxes, with profound impacts on electronic commerce and on the future shape of commerce itself. Such a consequential and complex issue deserves much more extensive consideration through the full legislative process, and should not be rushed to the floor bypassing the regular committee process.

While an amendment to the FY 2014 budget resolution that dealt with "allowing States to enforce State and local use tax laws and collect taxes already owed under State law on remote sales" did pass, it did not touch at all on the all-important question of HOW to achieve that enforcement and collection. That debate has yet to take place.

Proponents of this bill often speak of "fairness" and "leveling the playing field" between online retailers and physical stores. However, for this bill to actually result in a level playing field, the tax collection burden for online retailers would have to match that of brick & mortar stores. While the physical store only needs to collect sales tax for its own tax jurisdiction, an online retailer is being asked to administer a tax collection regime for thousands of jurisdictions, as an online purchaser could potentially be in any one of them. The difference between "one" and "thousands" would seem to constitute a significant disadvantage for online retailers and overcompensation into a new imbalance.

Proponents also seek to characterize this bill as a "states' rights" bill. Do states have the right to dragoon online retailers beyond their borders into collecting taxes for jurisdictions they have no physical presence in? What about states with no sales taxes, whose online retailers will nevertheless be forced to collect taxes for, and possibly face audits from other states? If states' taxing authority does not end at their borders but is allowed to reach retailers located in other states, does that not upend the concept of states' sovereignty? "States' rights" does not mean the right to infringe on the rights of other states.

We certainly agree with the need to update our tax laws to better address e-commerce, a 21st century business model that does not fit into a 20th century tax system. However, instead of doing the hard but necessary work of discussing how old frameworks may need to be adapted to fit new commercial realities, this bill would simply blame and penalize the new for not fitting into the old.

E-commerce has enabled businesses to broaden their scope beyond traditional geographical limitations. Allowing states to impose geographically-based taxation collection requirements on e-commerce businesses would re-impose the very limitations that innovation has enabled them to overcome. Indeed, since the broader the customer base, the more tax jurisdictions the business would have to collect for, so businesses would be in fact penalized for their success. We urge you to oppose the Marketplace Fairness Act and instead carefully examine the consequences of this issue, so that innovation can be promoted rather than undermined.

Sincerely,

Edward J. Black
President & CEO
Computer & Communications Industry Association