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REMOTE SALES TAX LEGISLATION

REQUESTED ACTION: Approve legislation - the *Marketplace Fairness Act of 2013* (S 743/HR 684) - that would provide states with the authority to require remote sellers to collect and remit sales and use taxes.

BACKGROUND: The U.S. Supreme Court ruled in 1992 (*Quill Corp. v. North Dakota*) that online retailers were exempt from collecting sales taxes in states where they have no physical presence, or nexus, because requiring these companies to comply with various sales tax rules would place an undue burden on interstate commerce. In its decision, the Court also noted that Congress has the ultimate power to resolve the question surrounding the physical presence standard and determine whether undue burdens on interstate commerce have been eliminated.

While the Court did release out-of-state remote sellers from the burden of collecting sales and use taxes on purchases, it did not exempt the consumer. What most buyers don't realize is that the tax burden actually falls to them. So, when a purchase is made from an out-of-state remote seller, the consumer is still responsible for calculating the use tax and remitting the payment to the relevant jurisdiction(s).

It should be noted that consumer compliance with the aforementioned requirements is extremely low - less than one percent. Consequently, millions of purchases each day are not properly taxed, resulting in the loss of billions of dollars in uncollected state and local sales tax revenue every year. This long-term erosion of the sales tax base threatens state and county funding obligations such as education, transportation, and public safety.

The *Marketplace Fairness Act of 2013* is a bipartisan bill that would allow states to require internet and mail-order retailers to collect and remit state and local sales taxes. It should be noted that the legislation incorporates a number of key provisions supported by CSAC. For example, the measure would not require California to join the Streamlined Sales and Use Tax Agreement (SSUTA). Instead, the State could choose to adopt a minimum set of simplification requirements, which are outlined in the bill. Additionally, in an effort to reduce the compliance burden on small businesses, online retailers with less than \$1 million in annual sales would be exempt from the tax collection requirements.

The Senate approved S 743 on May 6, 2013, by a vote of 69-27. However, the House has yet to act on such legislation. For his part, House Judiciary Committee Chairman Bob Goodlatte (R-VA) in September of 2013 released a framework of principles that will guide his committee's approach to remote sales tax legislation.

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