

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: May 21, 2013

TO: Honorable Members of the Rules, Elections and
Intergovernmental Relations Committee

FROM: Gerry F. Miller 
Chief Legislative Analyst

Council File No.: 13-0002-S69
Assignment No.: 13-05-0376

SUBJECT: Resolution (Parks-Perry) to Support H.R. 684, S. 336 and S. 743.

CLA RECOMMENDATION: Adopt the attached revised Resolution to include in the City's 2013-2014 Federal Legislative Program SUPPORT for H.R. 684, S. 336 and S. 743, the Marketplace Fairness Act, to allow qualifying states to establish a system to collect Sales and Use Taxes of online, catalog and other remote sellers.

SUMMARY

Resolution (Parks-Perry) notes that due to a 1992 Supreme Court ruling (Quill Corp vs. North Dakota), states have been unable to enforce their own Sales and Use Tax laws on sales by out-of-state, catalog and online sellers. The Resolution also notes that this situation has created a disadvantage for brick and mortar businesses and has led to greater confusion and further distortion of the marketplace. According to the Resolution, on February 14, 2013, Representative Steve Womack introduced the Marketplace Fairness Act of 2013 (H.R. 684) and subsequently, similar legislation (S. 336 and S. 743) was introduced. The Resolution states that bills do not impose a new tax, but rather provide states and localities with a mechanism to require the collection of Sales and Use Taxes on internet and mail-order sales. The Resolution further indicates that while electronic commerce creates new marketplaces, it has also put traditional retail outlets at an unfair disadvantage because of outdated and inequitable tax and regulatory systems. According to the Resolution, the United States Congress has the ability to enable state and local governments to require sellers to collect Sales and Use Taxes from their customers if they do not have a physical presence in their jurisdictions. The proposed bills would authorize states to require all sellers making remote sales to collect and remit Sales and Use Taxes regardless of the location of the seller, if such state implements a simplified system for administration of sales and use tax collection for remote sellers. The Resolution states that the City has previously supported similar legislation. It is therefore recommended that the City support the Marketplace Fairness Act of 2013 to allow qualifying states to establish a system to collect Sales and Use Taxes from online, catalog and other remote sellers.

BACKGROUND

On April 30, 2013, Resolution (Parks-Perry) was introduced to support H.R. 684, S. 336 and S. 743, The Marketplace Fairness Act of 2013, to allow qualifying states to establish a system to collect Sales and Use Taxes from online, catalog and other remote sellers. Currently, California law requires brick and mortar retailers to pay a sales tax for the sale of tangible goods. Retailers may pass this tax on to the consumer if the retailer properly posts or informs the consumer of the tax. Use tax is levied on tangible goods consumed in California even if the goods were purchased from an out-of-state seller. This tax is paid by the consumer either directly to the out-of-state retailer, or to the California Board of Equalization.

California Legislative Analyst's Office (LAO)

According to the LAO, businesses generally collect sales taxes and remit them to the State Board of Equalization (BOE). By contrast, businesses without a physical address in California cannot be forced to collect and remit use taxes to BOE. Therefore, consumers themselves are responsible for remitting the use tax. BOE estimates that approximately \$1.1 billion of use taxes related to remote electronic and mail sales from out-of-state vendors are unpaid. The LAO states that use tax non-compliance creates a competitive disadvantage for some businesses. According to the LAO, enhancing use tax compliance would tend to reduce this competitive disadvantage.

U.S. Supreme Court Rulings

States may not require online, or other remote retailers that do not have a physical presence in the state, to collect and remit Sales and Use Taxes due to a 1992 Supreme Court decision (*Bellas Hess v. Illinois and Quill Corp. v. North Dakota*). Supporters of the bills argue that this system places brick and mortar businesses at a competitive disadvantage. Opponents argue that the passage of this legislation could impact small businesses. The proposed bills would enable states with the legal structure to collect Sales and Use Tax from out-of-state, catalog and online retailers.

The Marketplace Fairness Act

The Marketplace Fairness Act would provide states with the authority to require online and catalog sellers to collect Sales and Use Taxes at the time of transaction. States would only be granted such authority if they have simplified their sales tax laws. States seeking sales and use tax collection authority have the following two options:

- 1) Member states under the Streamlined Sales and Use Tax Agreement (Agreement), and those who wish to join, would be authorized to require all sellers with gross receipts over \$1,000,000 to collect and remit Sales and Use Taxes with respect to remote sales provided that the member state implements the previously adopted simplification requirements. States that are current members (24) or become members of the Agreement will have tax collection authority 90 days after enactment of the bill.¹ California is currently not a member state.
- 2) States that are not member states under the Agreement would be authorized to require all sellers with gross receipts over \$1,000,000 to collect and remit Sales and Use Taxes with respect to remote sales sourced in that state, provided that such state adopts and implements minimum simplification requirements. States that are not part of the Agreement must agree to:
 1. Notify retailers in advance of any rate changes within the state.
 2. Designate a single state organization to handle sales tax registration, filings, and audits.
 3. Establish a uniform sales tax base for use throughout the state.
 4. Use destination sourcing to determine sales tax rates for out-of-state purchases (a purchase made by a consumer in California from a retailer in Ohio is taxed at the California rate, and the sales tax collected is remitted to California to fund projects and services there).
 5. Provide software and/or services managing sales tax compliance, and hold retailers harmless for any errors that result from relying on state-provided systems and data.

The bills strictly limit the proposed authority to the collection of Sales and Use Taxes. States may not subject sellers to other forms of taxes, registration, licensing or regulatory requirements. Some of the organizations in support of the proposed bills include California Association of College Stores, the

¹ Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

California Business Properties Association, the California Retailers Association and the California Veterinary Medical Association.

Forbes

According to Forbes, "big box" retailers support this tax arguing that out-of-state retailers have an unfair advantage over brick and mortar stores, as they are not required to collect sales tax owed on products they sell. However, small business owners object to a national sales tax on the internet. Additionally, Forbes and e-Bay believe that the proposed tax system would create complicated administrative issues, imposing audits, compliance costs and lost wages for small businesses.

CONCLUSION

Supporters of the bills argue that brick and mortar businesses are forced to do business at a competitive disadvantage because they are required to collect taxes and online sellers are not. The City of Los Angeles supports legislative efforts that level the playing field for businesses. Additionally, passage of the bills could lead to an increase in Sales and Use Tax for California taxpayers. Currently, the State collects Sales and Use Tax at a rate depending on the local jurisdiction. In California, the basic Sales and Use tax rates is 7.50 % of which approximately 1% point is distributed to local governments. Given the potential tax benefits to California taxpayers, it is recommended that the City support The Marketplace Fairness Act.

DEPARTMENTS NOTIFIED

Office of Finance

BILL STATUS

H.R 684

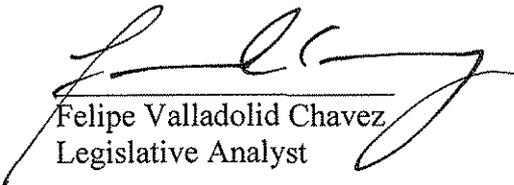
Introduced	2/14/13
Referred to the House Committee on the Judiciary	2/14/13
Referred to the Subcommittee on Regulatory Reform, Commercial and Antitrust Law	4/8/13

S. 336

Introduced	2/14/13
Referred to Senate Committee and referred to Committee on Finance	2/14/13

S. 743

Introduced	2/16/13
Passed the Senate	5/6/13



Felipe Valladolid Chavez
Legislative Analyst

Attachments: Revised Resolution
GFM:fvc

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies to or pending before a local, state or federal government body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, due to a 1992 Supreme Court ruling (Quill Corp vs. North Dakota), states have been unable to enforce their own sales and use tax laws on sales by out-of-state businesses, catalogues, and online sellers; and

WHEREAS, this situation has created a disadvantage for brick and mortar businesses and has led to greater confusion and further distortion of the marketplace; and

WHEREAS, on February 14, 2013, Representative Steve Womack introduced the Marketplace Fairness Act of 2013, and subsequently, similar legislation was introduced (S. 336 and S. 743); and

WHEREAS, the bills do not impose a new tax, but rather provide states and localities with a mechanism to require the collection of sales and use taxes on Internet and mail-order sales; and

WHEREAS, while electronic commerce creates new marketplaces, it has also put traditional retail outlets at an unfair disadvantage because of outdated and inequitable tax and regulatory systems; and

WHEREAS, the United States Congress has the ability to enable state and local governments to require sellers to collect sales and use taxes from their customers if they do not have a physical presence in their jurisdiction; and

WHEREAS, the proposed bills would authorize states to require all sellers making remote sales to collect and remit sales and use taxes regardless of the location of the seller, if such state implements a simplified system for administration of sales and use tax collection for remote sellers; and

WHEREAS, the proposed bills would benefit many brick and mortar businesses given their disadvantage for having to collect taxes whereas online sellers do not; and

WHEREAS, in the previous Congress, the City supported S. 1832 and H.R. 3179 which also sought to level the playing field for brick and mortar businesses by empowering states to collect sales and use taxes;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by adoption of this Resolution, the City of Los Angeles, hereby includes in its 2013-2014 Federal Legislative Program, SUPPORT of the Marketplace Fairness Act (H.R. 684, S 336 and S 743) to allow qualifying states to establish a system to collect sales and use taxes from online, catalog and other remote sellers.