

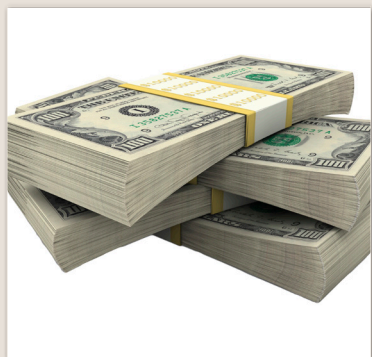
# The Remote Transactions Parity Act: Burdening the Private Sector

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*The U.S. Constitution protects interstate commerce from discriminatory state taxes.<sup>1</sup> Yet the growing e-commerce market and potential revenue from sales and use taxes prompts questions regarding expectations for online retailers.*



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The 2015 Remote Transactions Parity Act, which requires out-of-state online retailers to collect sales and use taxes from their customers, would undermine state sovereignty, place an unreasonable burden on online retailers and reduce healthy tax competition among the states. The steep administrative and implementation costs of the act, in addition to the possible damage to e-commerce, are greater than the potential uncollected revenue from online sales taxes.

**Congress Seeks to Expand the Definition of Nexus.** The U.S. Supreme Court's 1992 ruling in *Quill v. North Dakota* found that retailers are only subject to a state's sales tax when the retailer has a physical presence, or "nexus," in the same state as the buyer.<sup>2</sup> The court's ruling rests on the Interstate Commerce Clause of the U.S. Constitution, but its reach could be extended by new legislation because the decision allows Congress to expand the definition of nexus.<sup>3</sup>

In 2011, three bills were introduced in Congress requiring online sellers to collect state sales taxes. In 2013, Representative Steve Womack (R-Ark.) and Senator Mike Enzi (R-Wyo.) introduced the Marketplace Fairness Act (MFA) in an attempt to "level the playing field" between remote sellers and brick-and-mortar businesses. The bill passed the Senate but not the House. It was reintroduced in March 2015 by Sen. Enzi.

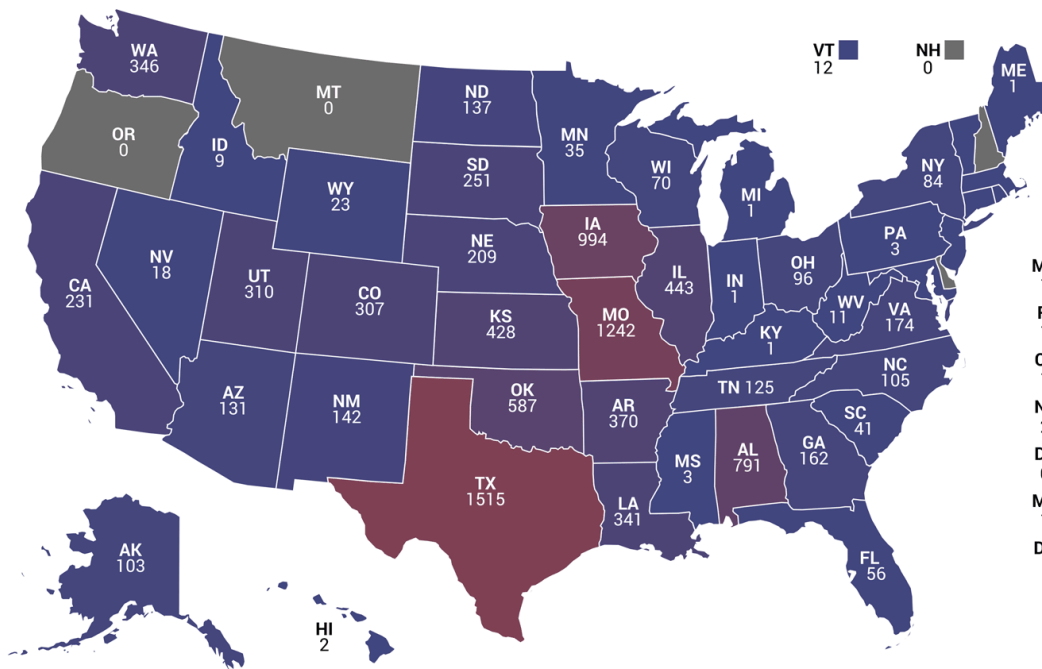
In June 2015, however, Representative Jason Chaffetz (R-Utah) introduced a broader internet sales tax bill in the House titled the Remote Transactions Parity Act. The act would grant states the ability to collect sales and use taxes from remote sellers, with the exception of qualifying small businesses. The RTPA would expand the definition of nexus to include retailers who 1) use the services of an agent to maintain a market in the state, 2) lease property in the state or 3) assign employees to the state.<sup>4</sup> This allows states to impose sales taxes on consumers not located within their borders.

The RTPA would require online retailers to charge, collect and redistribute sales taxes accurately to any state where the business has, as defined by the bill, a "physical presence." The RTPA provides assistance through specifically designed software, and holds sellers harmless for

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**Figure I**

### Total Sales Tax Jurisdictions by State in 2014



**Notes:**  
Data as of March 1, 2014.  
Published March 24, 2014.

**Source:**  
Vertex, Inc.



[taxfoundation.org/maps](http://taxfoundation.org/maps)

In the first year, online retailers with \$10 million or less in gross yearly sales are exempted. The following year only retailers with \$5 million in sales are exempted, and in the third year those with \$1 million. In the fourth year, there are no exceptions.<sup>7</sup> However, the SBA estimates that of the 2 million to 5 million online retailers, only 1,817 online companies report sales above \$1 million, representing less than 0.1 percent of all online sellers.<sup>8</sup>

#### Sales Taxes as a Source of Revenue.

Mississippi was the first state to implement a sales tax back in 1930.<sup>9</sup> Today, almost every state — with the exception of Alaska, Delaware, Montana, New Hampshire and

Oregon — has a state sales tax, and the median rate is 6 percent.<sup>10</sup> Sales taxes are the second-largest source of state income, accounting for approximately 30 percent of all state-government-collected taxes.<sup>11</sup> In addition to a state sales tax, 38 states also have local sales taxes with differing rates on purchases, such as prepared food or car rentals.<sup>12</sup> Accounting for all local and state sales taxes, there are 9,998 different tax jurisdictions in the United States, each with various rates, tax holidays and tax thresholds. [See Figure I.]<sup>13</sup>

Donald Bruce, William F. Fox and LeAnn Luna, of the University of Tennessee, estimated uncollected online sales tax revenue in 2009 (hereinafter the “Fox study”).<sup>14</sup>

errors made by the software provider. However, if the RTPA is implemented, many fear that e-commerce “small businesses,” defined by the Small Business Administration (SBA) as stores with annual revenues of less than \$30 million, will not be able to absorb implementation costs.<sup>5</sup> According to consultants with PriceWaterhouseCoopers, retailers face possible administrative costs of collecting taxes that could amount to as much as 13.5 percent of the total amount of taxes collected.<sup>6</sup>

In an attempt to ease small businesses into the new requirements, the RTPA includes a Small Seller Exception (SSE) for online retailers, but only if they are not using electronic marketplaces like eBay or BT Trading Places.

Jeff Eisenach and Robert E. Litan of Empiris, LLC, an economics consulting firm, evaluated the findings. Their estimates differed, as shown in Figure II:

- The average amount of uncollected online tax revenue was \$7.7 billion in 2008 and potentially would be \$12.7 billion in 2012, according to the Fox study projections.

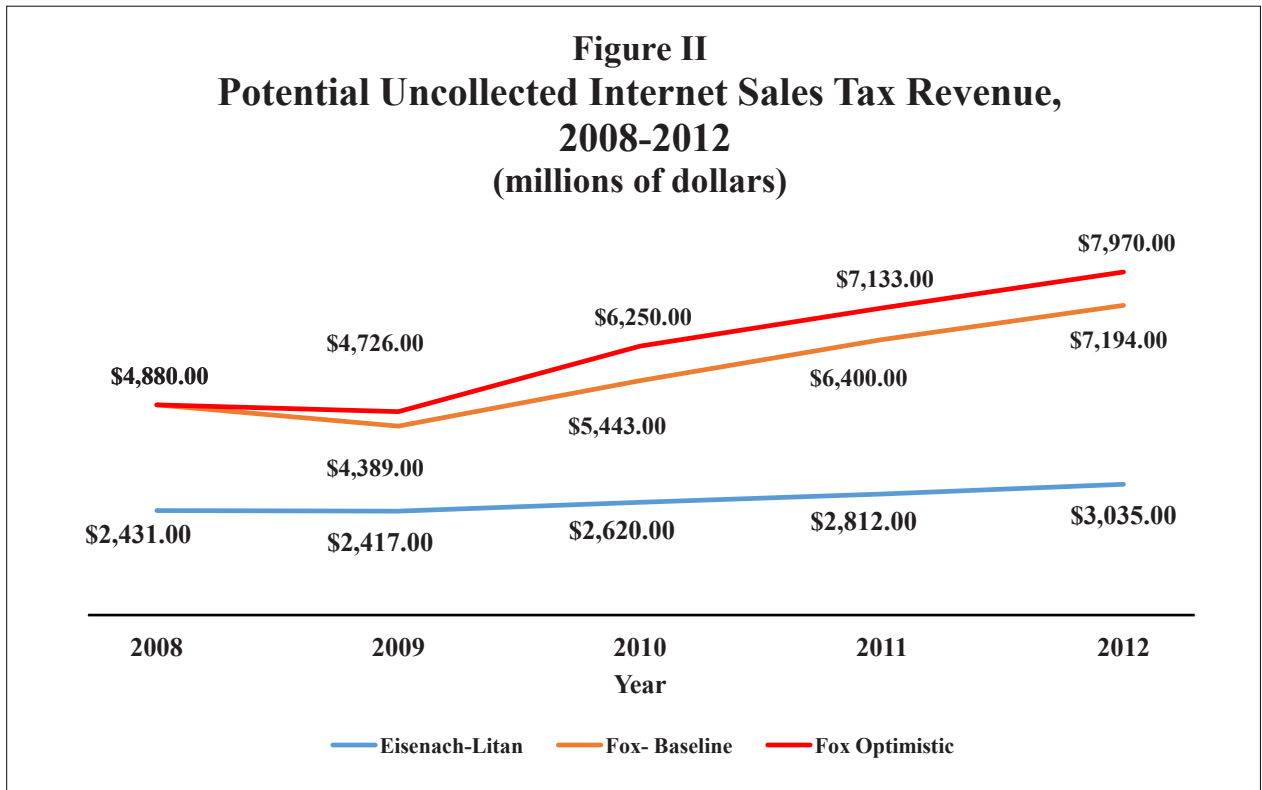
- However, Eisenach and Litan found that Fox overstated the amount of uncollected taxes associated with business-to-business online sales, understated current tax collections by small businesses and used an unrealistic growth rate to predict online sales.<sup>15</sup>

- Nationwide, Eisenach and Litan estimated that total potential uncollected sales tax revenues in 2008 were approximately \$3.9 billion, less than three-tenths of one percent of state and local tax revenues.

- For 2012, accounting for the slow rise in uncollected revenue, they projected the average loss would be closer to \$2.67 billion.<sup>16</sup>

Additionally, the growing trend of “brick and click” stores — those with both a physical and online presence — could further decrease the amount of uncollected tax revenue. For instance, of the top 25 online stores, 18 are collecting sales taxes for states where they have nexus.<sup>17</sup>

Thus, the evidence suggests that the RTPA is an unnecessary legislative overreach by states to collect comparatively small amounts of revenue at the expense of small online retailers.



**Healthy Competition between Retailers.** Supporters of the RTPA assert that requiring remote sellers to collect sales taxes “levels the playing field” between brick-and-mortar and online retailers. In the first quarter of 2015, e-commerce accounted for only 7 percent of total retail sales.<sup>18</sup> Furthermore, 45 states already have tax laws that require residents to pay sales taxes for online purchases.<sup>19</sup> The RTPA, however, would shift responsibility for paying sales taxes from the customer to the retailer. Brick-and-mortar stores benefit from government services, utilities, voting rights and political representation that online retailers do not.<sup>20</sup> Requiring e-commerce businesses to collect taxes for governments in which they have no say reduces states’ accountability to their own residents. Further, while online retailers would be required to collect and redistribute taxes for up to 9,998 different tax jurisdictions, local stores would only need to know the local tax laws. The extra administrative burden puts e-commerce at a competitive disadvantage.

**Conclusion.** E-commerce is a growing sector of the U.S. economy and burdening it as required in the Remote Transactions Parity Act is unwise. Expanding the states’ ability to impose taxes on citizens in other states in order to generate a small bit of revenue is not a trade-off in the best interest of either brick-and-mortar retailers

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or online stores. Additionally, the potential revenue from online sales taxes would not generate enough to compensate for the costs of implementation and damage to e-commerce. Thus, the RTPA is an unnecessary legislative overreach by states. Possible alternatives include origin-based taxation, where transactions are taxed at the seller's location, or a "flat-tax" solution that would institute a consumption tax to replace sales taxes.<sup>21</sup>

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### Notes

1. U.S. Supreme Court, *Quill Corp v. North Dakota*, 504 U.S. 298 (1992). The court's opinion was unanimous in finding for the complainant. Available at <https://supreme.justia.com/cases/federal/us/504/298/case.html>.
2. Donald Bruce and William F. Fox, "An Analysis of Internet Sales Taxation and the Small Seller Exemption," Small Business Administration, November 2013. Available at <https://www.sba.gov/sites/default/files/rs416tot.pdf>.
3. Ibid.
4. Stephen P. Kranz and Mark Yopp, "Internet Sales Tax: Remote Transactions Parity Act Introduced in the U.S. House," *National Law Review*, June 16, 2015. Available at <http://www.natlawreview.com/article/internet-sales-tax-remote-transactions-parity-act-introduced-us-house>.
5. Tim Chen, "Small Business and Internet Sales Tax," *Forbes*, August 2012. Available at <http://www.forbes.com/sites/moneybuilder/2012/08/07/small-business-and-internet-sales-tax/>.
6. PriceWaterhouseCoopers, "Retail Sales Tax Compliance Costs: A National Estimate, Volume I: Main Report," April 7, 2006. Available at <http://netchoice.org/wp-content/uploads/cost-of-collection-study-sstp.pdf>.
7. Stephen P. Kranz and Mark Yopp, "Internet Sales Tax: Remote Transactions Parity Act Introduced in the U.S. House."
8. Donald Bruce and William F. Fox, "An Analysis of Internet Sales Taxation and the Small Seller Exemption."
9. Mississippi adopted a 2 percent sales tax 1930 in response to the collapse in property tax revenue caused by the Great Depression. See Joseph Henchman, "Marketplace Fairness Act," Tax Foundation, Background Paper No. 69, July 2014. Available at <http://taxfoundation.org/sites/taxfoundation.org/files/docs/TF%20BP69%20The%20Marketplace%20Fairness%20Act.pdf>.
10. Donald Bruce and William F. Fox, "An Analysis of Internet Sales Taxation and the Small Seller Exemption."
11. Joseph Henchman, "Marketplace Fairness Act."
12. Ibid.
13. Ibid.
14. Donald Bruce, William F. Fox and LeAnn Luna, "State and Local Government Sales Tax Revenue Losses from Electronic Commerce," University of Tennessee, April 13, 2009. Available at <http://cber.utk.edu/ecomm/ecom0409.pdf>.
15. Jeffery A. Eisenach and Robert E. Litan, "Uncollected Sales Taxes on Electronic Commerce: A Reality Check," Empiris LLC, February 2010.
16. Ibid.
17. Donald Bruce and William F. Fox, "An Analysis of Internet Sales Taxation and the Small Seller Exemption."
18. Jonathan Barsade, "Equally Equal: Why the New Internet Sales Tax Bill Works," Connecticut Society of CPAs, July 9, 2015. Available at <http://www.ctcpas.org/content/26954.aspx>.
19. Joseph Henchman, "Marketplace Fairness Act," Tax Foundation, July 2014.
20. Matthew Glans, "Research and Commentary: Remote Transactions Parity Act," Heartland Institute, July 10, 2015, available at <https://www.heartland.org/policy-documents/research-commentary-remote-transactions-parity-act>; and Matthew Glans, "Research and Commentary: Online Taxes, Legislative Update," Heartland Institute, April 18, 2013, available at <https://www.heartland.org/policy-documents/research-commentary-online-taxes-legislative-update>.
21. Irene Switzer, "The Pitfalls of Internet Sales Tax Collection," National Center for Policy Analysis, Brief Analysis No. 781, February 15, 2013. Available at <http://www.ncpa.org/pub/ba781>.