

**HOUSE JUDICIARY COMMITTEE CHAIRMAN BOB GOODLATTE ON EFFORTS
TO RESOLVE THE REMOTE SALES TAX ISSUE**

December 4, 2017

I am the Chairman of the Committee on the Judiciary of the U.S. House of Representatives. The Committee has jurisdiction over the Commerce Clause of the U.S. Constitution and issues concerning interstate commerce that arise out of States' measures to collect taxes on sales to their citizens by sellers residing outside of the States' respective borders. Since I became Chairman in 2013, I, Members of the Committee, and Committee staff have spent literally thousands of hours on these issues.

In September 2013, after some study, I released seven "Basic Principles on Remote Sales Tax."¹ These principles were well received and generally agreed upon. Of particular note were the specific principles of "No Regulation Without Representation" and "Simplicity." Discussions with stakeholders ensued.

On March 12, 2014, I convened a hearing to explore five solutions that had emerged during the discussions. Two options emerged as frontrunners. One, the Remote Transaction Parity Act (RTPA), essentially would have legislatively overturned *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), in exchange for states simplifying their tax codes. However, RTPA presented lingering concerns about compliance burdens and fresh concerns about expansion of states' cross-border regulatory reach.² To address these concerns, I favored an origin-based solution under which sellers would collect tax on interstate sales under the rates and rules of their home state and remit the tax collected to their home-state taxing authority. The seller's state would then be responsible for forwarding the tax to the customer's state via a proven clearinghouse method used for the collection of commercial fuel use taxes.³ Sellers would only be legally responsible to their home state taxing authority, so there would be neither cross-border audits nor other regulatory assertions of authority by taxing States over remote sellers with no physical presence in the taxing States.

This approach was novel, but it was clear that fresh thinking was needed to break the logjam that had hitherto confronted Congress. As with many new concepts, it took some time to educate interested parties on the details. Numerous questions were raised and answered, including how to address potential tax havens in States with no sales taxes. Internet sellers, who had opposed other solutions, embraced

¹ See Press Release, House Committee on the Judiciary, House Judiciary Committee Releases Principles on Internet Sales Tax (Sept. 18, 2013) available at <https://judiciary.house.gov/press-release/house-judiciary-committee-releases-principles-on-internet-sales-tax/>.

² *Exploring Alternative Solutions on the Internet Sales Tax Issue: Hearing before the H. Comm. on the Judiciary*, 113th Cong. (Mar. 12, 2014) (Statement of Cong. Bob Goodlatte, Chairman, H. Comm. on the Judiciary).

³ *Exploring Alternative Solutions on the Internet Sales Tax Issue: Hearing before the H. Comm. on the Judiciary*, 113th Cong. (Mar. 12, 2014) (Testimony of the Hon. Christopher Cox). The International Fuel Tax Agreement establishes such a clearinghouse.

the simplicity of this one. However, traditional retailers worried that, because the tax rate applied to remote sales would be based on the seller's location, not the customer's, the plan did not fully level the playing field. Traditional retailers in high-tax states might still lose customers to online retailers based in low-tax jurisdictions who would be collecting at a lower rate. Experts proceeded to assist the Committee to identify the extent to which this approach would solve the bulk of the problem.

Between July and December 2014, a series of technical articles analyzing the concept appeared in the leading trade publication for tax practitioners.⁴ In the meantime, the Committee continued to seek additional compromises that would close any lingering rate gap. Through these discussions, the Committee arrived at the critical insight that the greatest complexity for sellers lies in the tax base, not the tax rate. Determining the taxability of the same item in over 13,000 jurisdictions with different rules is the major challenge. Once the remote seller knows whether the item is taxable, the rate is just arithmetic. This was a breakthrough moment for the Committee.

In 2015, we proposed a revised compromise, under which sellers would follow their home state rules on taxability (base), but would collect at the rates applicable in their customers' states, provided that the seller's home state incorporated those rates into its own tax laws.⁵ This approach achieved critical price parity for traditional retailers while keeping compliance simple for online sellers. In fact, because compliance would be so simple, no State-subsidized software would be necessary for sellers to identify taxability, saving States an estimated \$2 billion annually as compared to other approaches. As before, Internet sellers would answer only to their home state taxing authority, so there would be no cross-border reach. The Committee's analysis is that this compromise would capture between 80 percent and 100 percent of the tax revenue on cross-border sales not currently being collected. The Committee spent the ensuing months meeting with States and localities, online sellers, traditional retailers, consumer groups, tax experts, and other interested parties to test and refine the concept.

In August 2016, Congresswoman Anna Eshoo (D-CA) and I released draft legislative language embodying the compromise.⁶ The draft, entitled the "Online Sales Simplification Act" (OSSA), received support from unprecedented quarters.

⁴ Terry Ryan and Eric J. Miethke, *A 'Radical' Solution to the Internet Sales Tax Problem*, TAX NOTES (Dec. 23, 2014); Terry Ryan and Eric J. Miethke, *A 'Radical' Solution to the Internet Sales Tax Problem: Issues and Options*, TAX NOTES (Sept. 15, 2014); Terry Ryan and Eric J. Miethke, *A 'Radical' Solution to the Internet Sales Tax Problem*, TAX NOTES (July 29, 2014).

⁵ For further simplification, rather than forcing sellers to contend with 13,000 different rates, the draft required states to select a single statewide rate that remote sellers would apply when selling to customers in those states and which the seller's state would incorporate by reference into its own tax laws.

⁶ Stephen Kranz, Diann Smith, and Mark Yopp, *BREAKING NEWS: Discussion Draft of Online Sales Simplification Act of 2016 Released*, MCDERMOTT WILL & EMORY (Aug. 25, 2016), <https://www.insidesalt.com/2016/08/breaking-news-discussion-draft-of-online-sales-simplification-act-of-2016-released/>.

Over 100 online retailers wrote to Congress in support of the draft bill.⁷ Most importantly, the revised draft won the support of a leading national retailer that had sided with the States against *Quill* and rejected earlier versions of the Committee's compromise solution. Certainly, the draft was not perfect. In the ensuing months, the Committee held marathon meetings in the hopes of ironing out the remaining issues before the end of the 114th Congress. In the end, the Committee ran out of time. However, the problem is becoming progressively less difficult to solve as seventeen of the top eighteen online retailers collect use tax on all of their online sales.⁸

In 2017, at the start of the 115th Congress, the Committee resumed its work, but, frankly, the pendency of the litigation challenging *Quill* has hindered negotiations. In particular, States that oppose the limitations of *Quill* believe that the U.S. Supreme Court will overturn that decision if they simply wait for action by the Court and do not agree to a congressionally proposed solution. This leaves them less open to compromise with Congress. Nevertheless, the Committee persists in its efforts to achieve a legislative solution, as the Court in *Quill* encouraged Congress to do.

⁷ Businesses United Behind Goodlatte Sales Tax Plan, NETCHOICE, <https://netchoice.org/library/businesses-unite-behind-goodlatte-sales-tax-plan/> (last visited Nov. 17, 2017).

⁸ See Arthur Zaczekiewicz, "Amazon, Wal-Mart Lead Top 25 E-commerce Retail List," WWD (Mar. 7, 2016), <http://www.wwd.com/business-news/financial/amazon-walmart-top-ecommerce-retailers-10383750/>.