



THE E-TAX SCAM

"We may be assured by past experience, that such a practice [as some states charging high taxes on goods from other states] would be introduced by future contrivances..." --James Madison (1788)

Obama's losing gun-ban legislation last week overshadowed another piece of legislation, rushed through a Senate cloture vote with the support of many Republicans in order to put it before the full Senate.

I'm referring to the laughably euphemistic "Marketplace Fairness Act," a behemoth Internet sales tax collection scheme on interstate sales, which would be more aptly named the "Mega-Retailer Protection Act." This tax-and-spend legislation was formerly designated S. 1832 when backed last year by the [Internet Tax Tag Team](#) of Dick Durbin (D-IL) and Lamar Alexander (R-TN.)

Alexander and other backers of this tax collection scheme argue that Internet sales are driven by the avoidance of state and local sales tax.

Fact is, e-commerce is driven by product selection, retail price comparison and convenience -- old-

FAIRNESS?



PatriotPost.US

fashioned free-enterprise competition -- not the avoidance of local sales tax. The price of shipping often exceeds whatever sales tax was saved. Additionally, many items purchased on the Internet may not be available in a local market, and, much to the shock of some Beltway politicians, not everyone in America lives next to a mall, or wants to burn up time and fossil fuels in search of a higher priced and lower quality product from a Walmart, K-Mart or Sears. (Alexander's assumptions are so off-base that I wonder if he has ever personally completed an online transaction?)

Some otherwise erudite Republican senators joined Alexander, supporting this tax legislation, suggesting that if on board, they can amend it in order to ease the pain on small online businesses -- recalling that most job creation takes place in small companies. For the record, I do not consider that to be legitimate justification for backing this measure. As Sen. Kelly Ayotte (R-NH) has concluded, "There is absolutely nothing conservative about this proposal because, again, what this is about is officials in cash-strapped states across the country looking for new ways to plug their budget holes."

Predictably, Senate backers are attempting to cover their posteriors with this little nugget in section 3(d) of the bill: "[N]othing in this Act shall be construed as encouraging a State to impose sales and use taxes on any goods or services not subject to taxation prior to the date of the enactment of this Act." In other words, they can point their fingers at the states when the massive impact of this legislation pounds consumers and the economy.

In effect, this legislation sidesteps the Supreme Court's landmark 1992 ruling in [Quill Corporation v. North Dakota](#), in which the Court determined that, in the case of interstate sales, a seller in one state cannot

be forced to collect taxes from a buyer in another state and remit those taxes to the buyer's state. Not only did the Court uphold the historic prohibition on interstate sales tax collections (in this case retail catalog sales), but also given the advent of e-commerce, nonexistent in 1992, there are now millions of small businesses that depend upon online sales.

Perhaps those who have sworn a [solemn oath](#) to uphold our Constitution, should read Article 1, Section 9: "No Tax or Duty shall be laid on Articles exported from any State." That prohibition is not expressly modified by the Sixteenth Amendment and pertains to federal taxation, but the same principle applies to one state taxing the sale of an item purchased in another state.

Based on the "logic" of those arguing for the e-tax, if I travel across a state line to make a purchase in Georgia, which is only a mile away from our Tennessee home, that purchase should be subject to the state and local sales tax where I reside, not Georgia taxes, and the Georgia seller should have to collect and remit it to Tennessee.

Many states, which depend in part on sales taxes, have already legislated that residents of their states remit sales taxes annually on any and all out-of-state purchases. This existing legislation is intrastate, between the voters and their state representatives, exactly where it belongs in a federalist system.

Requiring a seller in one state to collect and remit sales tax on behalf of another state is tantamount to "[taxation without representation](#)," according to Heritage Foundation President Jim DeMint. The former South Carolina senator notes correctly that the mega-retailers "are in favor of the Internet sales tax, because online retailers are competitors. But the other big proponents of the tax are state governments, which would be able to reach into other states for revenue. Politicians want this bill passed to raise new tax revenue for broken state governments facing budget shortfalls. But legislators in state capitals don't want to make the hard decisions to cut spending or raise taxes on their constituents -- they fear the voter

backlash. So they'd like their allies in Washington to make it legal for them to tax people who can't vote against them."



Political analyst [Jeff Jacoby](#) asserts, "States must not be allowed to reach beyond their borders, imposing tax obligations on retailers who had no vote or voice in creating those obligations, no political recourse, no opportunity to be heard. Against such unfairness, Americans once fought a revolution.

A craving for revenue is no reason to forget that."

Of course, the National Retail Federation, which represents huge sellers like Walmart and Amazon.com, backs Senate Majority Leader Harry Reid's effort to quickly vote on this legislation before American consumers figure out its implications.

But why would an online seller like Amazon support this measure? Because Amazon already has warehouse and shipping facilities in most states, and has already cut tax-break deals with those states.

Moreover, for millions of small online businesses, our own [Patriot Post Shop](#) being one, determining, collecting and remitting state and local sales taxes on every purchase massively increases transactional overhead. So Amazon and other mammoth e-commerce sellers are now positioning themselves to "rescue" poor little "mom and pop" online sellers by offering to process all of their transactions -- in return for a substantial fee...

The e-Tax not only will stifle the very product and market competition, innovation and entrepreneurship that drive our economic growth, it most assuredly will force small businesses "under the protective wing" of big transaction clearinghouses, because in addition to state taxes, there are now more than [9,500 regional](#)

[and local tax jurisdictions](#) in the United States, with, as Jacoby writes, "an ever-shifting kaleidoscope of sales-tax rates, definitions, exemptions, and deadlines."

All of them would have their hand out for every out-of-state sale.

John Donahoe, president and CEO of eBay, which is the selling arm of millions of small business entrepreneurs, notes, "This isn't a debate pitting the Internet against Main Street. This is about big retailers, like Amazon, trying to undermine small online businesses."

Needless to say, the e-Tax has the full support of the Obama administration, which should give prima facie pause to any Republican and every conservative.

The administration's statement noted that it "strongly supports S. 743, which will level the playing field for local small business retailers that are in competition every day with large out-of-state online companies. ... This bill would eliminate the unfair advantage currently enjoyed by big out-of-state online companies over local neighborhood-based small businesses."

Now *that's* a load of bull pucky! This legislation will in no way "level the playing field" for small retailers. Walmart and other mega-retailers backing this measure have already put most small local American

retailers out of business -- with the help of their Chinese producers and sweatshops around the globe.

Of course, I support free enterprise and free markets. But the fact is, small online retailers are doing to Walmart and other mega-retailers what the latter did to small local retailers!

The bottom line is this: State legislators already have the ability to require interstate sales taxes payment by their constituents. They just want to avoid the accountability associated with having to collect those taxes -- especially when they're up for re-election.

If the House [affirms the 69-27 Senate vote](#) on the "Mega-Retailer Protection Act," every governor and state legislator should be held accountable to ensure it is revenue neutral -- meaning state sales taxes should be reduced by the same amount of new sales taxes collected -- lest those collections would be a windfall to increase the size and scope of state governments -- which is, in large measure, the underlying motivation for this tax collection charade.

I'll close with some wise words from former Supreme Court Chief Justice John Marshall, which are as true today as they were in 1819: "An unlimited power to tax involves, necessarily, a power to destroy; because there is a limit beyond which no institution and no property can bear taxation."