



Written by [Raven Clabough](#) on April 23, 2013

Internet Sales Tax Bill Moves Forward in Senate

[Legislation](#) that would permit states to impose state and local taxes on Internet purchases is currently making its way through Congress. On Monday, after a hearty endorsement from President Obama, a Senate procedural vote of 74 to 20 moved the bill forward. The Senate will now begin debate on amendments before a final vote on the bill, scheduled to take place later this week.



Senate Majority Leader Harry Reid (D-Nev.) has received some backlash for bypassing the committee review process and bringing the bill to the table before it had a chance to be properly vetted. The move took place after he was compelled to shelve gun control legislation.

Senators Kelly Ayotte (R-N.H.), Ron Wyden (D-Ore.), Jon Tester (D-Mont.), Jeanne Shaheen (D-N.H.), Marco Rubio (R-Fla), Mike Lee (R-Utah), and Ted Cruz (R-Texas) sent Reid a letter Monday asking him to delay the legislation, which they said has the potential to “erode” states’ rights and “result in crippling compliance costs on small Internet businesses. At the very minimum,” the letter continued, “we believe these concerns warrant a thorough vetting of the bill through regular order.”

Senator Max Baucus (D-Mont.), chairman of the Finance Committee, also criticized Reid for bypassing his committee, which has jurisdiction over tax issues. “This bill is not ready for debate on the Senate floor,” he declared. “It has not been completely thought through. It is full of unintended consequences that could seriously harm America’s small businesses.”

Entitled the Marketplace Fairness Act, the bill touts itself as one that would “restore States’ sovereign rights to enforce State and local sales and use tax laws,” by granting states the authority to compel online and catalog retailers, regardless of their location, to collect sales tax at the time of the transaction. The bill requires that states be permitted that authority only after they have simplified their sales tax laws. The purpose of that single caveat is to ensure that collecting sales taxes for multiple states is not too difficult, based on Supreme Court rulings in *Bellas Hess* and *Quill*.

In the 1967 Supreme Court case *National Bellas Hess v. Illinois Department of Revenue*, the court ruled that “the many variations in rates of tax, in allowable exemptions, and in administrative and record-keeping requirements could entangle [the company’s] interstate business in a virtual welter of complicated obligations to local jurisdictions.”

The 1992 *Quill v. North Dakota* decision confirmed the *Bellas Hess* decision, ultimately on the basis of *stare decisis*, a doctrine requiring the court to respect the precedent set by prior rulings. The court explained, “Our decision is made easier by the fact that the underlying issue is not only one that Congress may be better qualified to resolve, but also one that Congress has the ultimate power to resolve.”

The states are provided [two options](#) in order to comply with the simplification mandate: They may either join the 24 other states that have already adopted the simplification measures outlined in the Streamlined Sales and Use Tax Agreement, or simply adopt their own rules that adhere to the five



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simplification mandates listed in the bill. Those mandates are as follows:

- The state must provide advance notification to retailers of rate changes.
- A single state organization must be designated to handle sales tax registrations.
- A uniform sales tax base must be established for use throughout the state.
- The state must utilize destination sourcing to determine sales tax rates for out-of-state purchases.
- The state must provide the necessary software, at no cost to the retailers, for managing sales tax compliance, and subscribe to a policy of not holding retailers responsible for errors that occur as a result of relying on state-provided systems and data.

The bill includes a small business exemption for companies that earn less than \$1 million annually.

The Obama administration enthusiastically voiced its support for the bill on Monday. White House Press Secretary Jay Carney stated, “We have heard overwhelmingly from governors, mayors, and the business community on the need for federal legislation to level the playing field for our business and address sales tax fairness.”

Likewise, 26 Republicans joined Senate Democrats in moving forward with the bill. A number of Republican governors have announced their support for the bill, including Chris Christie of New Jersey, Rick Snyder of Michigan, and Bob McDonnell of Virginia. The bill’s passage would certainly mean billions of dollars in increased state revenue.

According to the bill’s lead co-sponsors — Senators Dick Durbin (D-Ill.), Lamar Alexander (R-Tenn.), and Mike Enzi (R-Wyo.) — the bill would eliminate the “competitive disadvantage” that plagues traditional brick-and-mortar retailers when trying to compete with online sellers.

The Marketplace Fairness Act has found support amongst major retailers who assert that it would help close an unfair loophole that works in favor of online merchants. According to [The Hill](#), “The National Retail Federation, which represents chains such as Macy’s, and the Retail Industry Leaders Association (RILA) ... announced it would score lawmakers’ votes.”

Online giant Amazon.com has proven to be a [significant supporter](#) of the legislation, asserting that a single national framework for tax collection is better than a variety of state laws.

But the bill has acquired a number of opponents as well.

The Securities Industry and Financial Markets Association and the Financial Services Roundtable assert that the measure would lead to financial transaction taxes at the state level.

Scott Talbott, senior vice president for public policy for the Roundtable, said in a statement, “It’s important for Congress to explore all the possible outcomes and costs of the proposal, especially the impact on consumers.” He added,

A transaction tax on financial services products will hurt retail investors, retired Americans, and small businesses, effectively making it more expensive for them to invest and plan for the long-term. Without hearings, these implications and others will not be properly addressed.

Ebay CEO John Donahue has [argued](#) that the bill would “penalize small online businesses,” and e-mailed eBay users encouraging them to contact their representatives in Congress to ask them to vote against it.

Ebay is lobbying for the small-business exemption to be increased from \$1 million to \$10 million.



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If the bill passes in the Senate, it could face some difficulties in the House, as a number of conservative groups such as Heritage Action, Americans for Prosperity, and FreedomWorks are already mobilizing campaigns against it.



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