

Responses to  
Questions from Representative Jason Chaffetz  
on the Marketplace Equity Act of 2011

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*1. Online retailer Overstock.com has told me and many others in Congress that it will support federal legislation to address the remote seller sales tax collection issue if the legislation addresses certain basic principles. Those principles are: (a) States must provide certified plug-and-play software to remote sellers; (b) Remote sellers have immunity from state and third party plaintiff liability for errors in the software and/or information provided by the seller; (c) States provide remote sellers fair compensation for the installation, integration, operation and maintenance of the software in remote sellers' infrastructure and the collection administration costs; (d) There be a single state audit in each state, including a single agent contact to address remote seller tax collection issues; (e) States make meaningful simplification of sales tax rules; (f) The legislation include clear language that the collection of sales tax by a remote seller, does not, of itself, create nexus in that state for any other taxing or regulatory purpose; and (g) There be federal court jurisdiction to determine if states are abiding by the law Congress passes.*

The process of sales tax collection is presently complex and fragmented. Key contributors to this are (1) a general determination by many jurisdictions to duplicate reporting, collecting, and auditing functions; (2) poor guidance on line-drawing between taxable and non-taxable items in advisory rulings; (3) states that permit jurisdictions to define their own tax base independently of the states; (4) far too many overlapping sales tax jurisdictions, which actually grow in number each year; and (5) states' eagerness to grant exclusions, exemptions, and preferential rates to special interests. The entire system is ad hoc and the costs are imposed entirely on retailers that collect the tax.

States' ability to export this mess to out-of-state companies has been limited by the Commerce Clause. To the extent Congress wishes to remove this constraint on state power to collect sales tax from out-of-state companies, some meaningful limitation on state tax power should be substituted. The best approach, in my opinion, is authorize states to collect tax *on condition that they adopt* meaningful minimum simplifications of the kind I explained in my testimony and some of which appear in the list you cite.

Above all, remember that each simplification not adopted is an additional cost that will be borne by interstate commerce. Require a lot of simplifications, and the costs are greatly minimized and you may not even need a minimum threshold. Require few simplifications and the costs are maximized, and state threats to interstate commerce will be great.

*2. It seems to me that states are asking that Congress solve their tax collection problem. Many say that plug-and-play remote seller sales tax software exists. While I agree that software exists, I question whether it is as simple for a remote retailer to implement as many proponents claim based on Overstock.com's actual experience in late 2010. Overstock.com selected a software package to enable it to collect sales tax in one additional state. It took 20-30 of the company's IT professional staff and nearly six months and more than 9,400 man hours to integrate the software into the company's IT system and map the million products the company sells. The company calculated that the total cost of just the start-up phase was nearly \$1.3 million for this ONE state, including the first year software license fee, employee and contractor time, and the use of existing IT hardware dedicated to the collection of the tax in the new state. While there would be some economies of scale in expanding to 50 states and the 9,600 taxing jurisdictions throughout the country, would you agree that the cost for a remote seller to become the sales tax collector for all or some portion of the 50 states is very high and that states should fairly compensate remote sellers for these costs?*

I agree that collection and compliance costs are high and that this fact is not appreciated by those who do not work with state sales taxes (as I do). Rather than figuring out how to pay for an unnecessarily complicated and economically wasteful enterprise, my position is that a better avenue would be to require simplification of sales tax systems as a condition of states gaining the power to collect from out-of-state vendors. No more vague definitions. No more having hundreds of different jurisdictions in your state. No more taxing food seven different ways. No more having everyone do forms and audits and payments differently from everyone else.

If we can do that, the waste of time and resources that goes into all that nonsense can be redirected into more productive avenues, without reducing the revenue that states and localities get. As the SSTP experience shows, only Congress will be able to get that set as a standard, either by enacting simplification requirements or credibly threatening to enact simplification requirements.