

United States Senate

WASHINGTON, DC 20510

April 22, 2013

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, DC 20510

Dear Senate Majority Leader Harry Reid,

We, the undersigned, urge you to reconsider your decision to expedite consideration of S. 743, the so-called “Marketplace Fairness Act”. As described more fully below, we have a number of substantive concerns with the bill. At the very minimum, we believe these concerns warrant a thorough vetting of the bill through regular order.

Though the official title of the bill references states’ “sovereign rights”, it does nothing but erode them. As you know, the Marketplace Fairness Act would allow states to force retailers that have zero physical presence, in a state outside of their own, to collect and remit sales tax to it. Under current Supreme Court precedent, in the absence of a sufficient nexus, a state cannot reach beyond its borders to compel out-of-state Internet vendors to collect taxes on a particular transaction. This standard is the result of the 1992 decision *Quill v. North Dakota*, in which the Court held that requiring remote vendors to collect such taxes would place an unconstitutional burden on interstate commerce. By usurping this standard, the Marketplace Fairness Act would undermine an important limitation of the Commerce Clause: the nexus requirement.

Further, the bill will result in crippling compliance costs on small Internet businesses. These costs include not only those associated with the new collection and remittance requirements, but these small businesses will also be on the hook for expensive audits and legal bills if there are any errors in the thousands of tax calculations and distributions they must make every day. At a time of tepid economic growth, Congress should enact measures that are designed to promote innovation and entrepreneurial risk-taking; its priority should not be to look for creative ways to plug state budget holes.

Despite these concerns, S.743 has yet to go through a markup in its committee of jurisdiction. A bill with such constitutional and economic implications deserves nothing less. Again, we respectfully request that you reconsider your decision to expedite consideration of S. 743.

Sincerely,

Kelly A. Ayotte

Sen. Kelly Ayotte

Ron Wyden

Sen. Ron Wyden

Ted Cruz

Sen. Ted Cruz

Mike Lee

Sen. Mike Lee

Marco Rubio

Sen. Marco Rubio

Jon Tester

Sen. Jon Tester

Jeanne Shaheen

Sen. Jeanne Shaheen