RESOLUTION 2017-1
Remote Seller Collection Authority

Background

More than two decades ago, the U.S. Supreme Court decided *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) and invited Congress to resolve what United States Supreme Court Justice Alito has called the "quagmire" concerning the role of states in fairly taxing remote sellers.

The states have worked individually and together, including members of the Streamlined Sales and Use Tax Agreement, to simplify their tax administration systems in ways that encourage voluntary compliance and reduce the complexity and burdens faced by both in-state and out-of-state sellers.

On March 3, 2015, the U. S. Supreme Court issued its opinion in *Direct Marketing Ass'n v. Brohl*, Docket No. 13-1032. In his concurrence, Justice Kennedy opined that "[g]iven the changes in technology and consumer sophistication, it is unwise to delay any longer a reconsideration of the Court's holding in *Quill*. A case questionable even when decided, *Quill* now harms States to a degree far greater than could have been anticipated earlier." Justice Kennedy further noted that "[t]he legal system should find an appropriate case for this Court to reexamine *Quill* and *Bellas Hess.*" These comments shine a light on the immediate need to overrule these cases by either legislative action or judicial review.

Efforts to address remote seller collection authority via federal legislation have been ongoing since the 1967 predecessor to *Quill*, *National Bellas Hess v. Illinois.* Since the mid-1980s in particular, states have worked to persuade Congress of the need for action.

Legislation has been introduced in both the House and Senate regularly, but none has been acted on, even to be passed out of committee, with the singular exception of the Senate passage of the Marketplace Fairness Act in May 2013.

Since 2013, House committee leadership has been publicly adamant that it would not consider the Marketplace Fairness Act. The House instead has floated vague proposals, occasionally offered draft language and only rarely introduced a bill. In every form, the proposals have been unadministrable. At their worst, they would expand preemptions of state tax authority and severely affect state tax authority over sellers who are currently collecting and remitting sales and use tax.

Resolution

Decades of good-faith effort has generated no meaningful progress by Congress toward the goal of developing a workable solution for all stakeholders related to the issue of remote seller collection authority. At this time, it appears that any federal legislation could contain unacceptable language that limits state taxing authority. Therefore, FTA supports the right of any state to enact fair and reasonable laws related to remote seller collection authority and to test the limits of, or seek to overturn, the *Quill* decision.

This resolution shall automatically terminate three years after the Annual Business Meeting at which it is adopted, unless reaffirmed or replaced in the normal policy process. Passed by the membership by voice vote during the Annual Meeting of the membership June 14, 2017.