

RESOLUTION 2018-2

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.

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 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.

On June 21, 2018, the U.S. Supreme Court issued its opinion in *South Dakota v. Wayfair*, 585 U.S. __ (2018), with all justices agreeing that *National Bellas Hess* was wrongly decided. The majority held that *Quill* and *Bellas Hess* should be overruled, that the physical presence rule of *Quill* is unsound and incorrect, and that remote sellers could be required to collect and remit sales and use taxes as long as the states did not discriminate against or impose undue burdens on interstate commerce. The Court did not prescribe exactly how the states should implement the new economic nexus standard established by the decision. In light of the *Wayfair* decision, state legislatures and revenue departments have been taking steps to ensure that their remote seller collection laws are consistent with the Constitution. While the minority opinion acknowledges that *National Bellas Hess* was an “erroneous decision,” they argue for a Congressional solution.

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. Now that the U.S. Supreme Court has ruled, any federal legislation that addresses the remote seller issue could contain language that limits state taxing authority. Therefore, FTA supports the right of each state to enact fair and reasonable laws related to remote seller collection authority within the limits of the *Wayfair* decision without additional action by Congress.

This resolution shall automatically terminate three years after its adoption, unless reaffirmed or replaced in the normal policy process.