long as it’s a fair fight. Also, the bill is not asking for a new tax; it’s asking that the existing tax is applied fairly and uniformly and doesn’t put the burden on the consumer to reimburse the state. That’s not too much to ask.

[From the Northwest Herald, May 2, 2013]

WHAT’S FAIR FOR BUSINESS (Editorial Board)

The scenario described by Play It Again Sports’ owner Bob Ruer happens all too often in local businesses. A customer comes into his Crystal Lake store, maybe tries out the wares, and then heads home to buy the same product online. Why? Because Internet retailers aren’t required to collect sales tax at the buyer’s local rate.

U.S. Sen. Dick Durbin, D-III., is pushing to end that with the Marketplace Fairness Act. We support Durbin’s effort and encourage lawmakers in Washington to pass the act.

The legislation would put the initial costs on the states to provide retailers with the appropriate software to collect taxes. Internet retailers are already required to comply with state tax laws, but they don’t have to fix them. This will simplify the system by saying there is no double taxation. It tries to provide for the retail-and-mortar businesses to have a level playing field. That is all we are asking.

Opponents of the bill, including large online retailers such as eBay and Overstock.com, have taken issue with the $1 million exemption and suggested it should be bumped higher.

The bill has the support of big-box stores such as Walmart, Best Buy and Target and online giant Amazon.

Beyond the unlevel playing field for businesses, the situation causes the state of Illinois to lose an estimated $1 billion in annual sales would be granted an exemption.

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Beyond the unlevel playing field for businesses, the situation causes the state of Illinois to lose an estimated $1 billion in annual sales would be granted an exemption.

Now, Illinois taxpayers are on an honor system when it comes to paying state sales tax for online purchases. Residents are supposed to pay the tax they owe, but nobody is checking to see if they are paying.

Durbin estimates that only 5 percent of Illinois taxpayers do so. Gov. Pat Quinn said the state stands to collect an additional $200 million annually in sales-tax revenue if the bill passed.

This is not a tax increase. It’s not a new tax. These sales taxes and tax rates are already in place.

This is a needed law to level the playing field for local businesses who’ve been good corporate citizens, hired local employees and paid property taxes that support local schools and other taxing districts.

Mr. DURBIN. Mr. President, what is happening with Internet sales? They are growing dramatically. Listen to these numbers. In 2012 online sales accounted for $225 billion in sales in America. In the next 5 years it will double to $435 billion. It is an endeavor that has become part of our lives. What are we asking in this bill is that those selling on the Internet be treated the same as those selling on the corners of our streets, to make sure the brick-and-mortar businesses have a level playing field. That is all we are asking.

This bill contains no new Federal tax, no new State and local tax. What it does is collect taxes already owed. It does not put the burden on the consumer to reimburse the state. That’s not too much to ask.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I thank all of the people who have participated, particularly Senator DURBIN who has helped to coalesce things. Senator ALEXANDER who came up with the idea for having a shorter bill, only 11 pages—never see it in the Senate—written in plain English, and it is States rights.

This does not cause the Federal Government to do anything. What it allows is for the States to do what they have already passed laws on. I can see this from the standpoint of an individual. I know in Wyoming if you buy something on the Internet and you are not charged a tax, you are supposed to fill out a form and send it in. That is a difficult thing to do, hard to even keep track of. This will eliminate that problem of individuals wanting to pay the tax but not knowing exactly how to do it.

I know it from the standpoint of a small businessman, if they had the experience of somebody coming in, trying on the goods, finding out exactly what they want, the color, the style, the fit, everything, and then ordering it on the Internet. The more even ironic part of it is when they have a problem with it, they bring it back to the local retailer to fix it.

I have seen it from the standpoint of a mayor. I know in Wyoming at least 30 percent and up to 70 percent of the revenue of the municipalities comes from the sales tax. That is on a declining basis at the moment. That is not only what they run the city’s streets and schools and everything, and then ordering it on the Internet. The more even ironic part of it is when they have a problem with it, they bring it back to the local retailer to fix it.

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The result was announced—yeas 70, nays 24, as follows:

[Rollcall Vote No. 112 Leg.]

YEAS—70

Alexander
Baldwin
Bennet
Blumenthal
Blunt
Boozman
Boxer
Brown
Cantwell
Cardin
Carper
Cassidy
Chambliss
Chambliss
Coats
Coats
Cooney
Collins
Collins
Cochran
Corker
Coons
Coors
Donnelly
Durbin
Enzi
Feinstein
Murphy
Murray
Nelson
Portman
Pryor
Reed
Reid
Risch
Rockefeller
Sanders
Schatz
Schumer
Sessions
Tennessee
Shelby
Stabenow
Thune
Warren
Whitehouse
Wicker

NAYS—24

Ayotte
Barrasso
Baucus
Colburn
Cruz
Flake
Heller
Heller

NOT VOTING—6

Begich
Burr


The amendment (No. 741) was agreed to.

UNANIMOUS CONSENT REQUEST—H. CON. RES. 25

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, this afternoon I offered a consent agreement dealing with the budget. I withdrew that because we did not have anyone here to object, and I had an inking there would be an objection if a Republican were here.

We have been asked to move with regular order. We have done that. We have done our very best to do that. People wanted amendments. We have done our best to have bills with amendments. We have been asked, let’s do as much work as we can with committees, and we have done that. We have bills reported out from the committee. Those are the bills we have handled here, with rare exception.

Now we have had our Republican friends saying for months and months, let’s do things with regular order. We know how hard it was to get a budget passed. We have had over 100 amendments on which we actually voted. We were here until 5 o’clock in the morning. We got a budget, even though—you know, we have been through this before. We do not need to go into more detail. We had a law signed by the President of the United States that gave us our budget allocations for several years. But we decided to do a resolution. It didn’t have to be signed by the President. I am glad we did. It was hard. Senator Murray and Sessions did a good job allowing us to move forward on that, so now it is time to go forward. We have a budget resolution we passed in the Senate. We want to meet with the House and work out our differences. That is what we have done here for two centuries. We should do it on this bill.

I ask unanimous consent that the Senate do add to the consideration of Calendar No. 33, H. Con. Res. 25, that the amendment which is at the desk, the text of S. Con. Res. 8, the budget resolution passed by the Senate, be inserted in lieu thereof; that H. Con. Res. 25, as amended, be agreed to, with the motions to reconsider being considered made and laid on the table; that the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses, and the Chair be authorized to appoint conferees on the part of the Senate, all without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

The Senator from Texas.

Mr. CRUZ. Mr. President, reserving the right to object, one of my concerns is that this conference report could be used to pass a reconciliation bill that would increase the debt ceiling without sufficient input from the minority party and without addressing the fundamental structural spending problems we have in the Federal Government that are leading to our unsustainable debt. I believe this concern is well founded in history in that reconciliation bills have been used to increase the debt ceiling at least three times—in 1986, 1990, and in 1993. So for that reason, reserving the right to object, I ask consent that the leader modify his request so that it not be in order for the Senate to consider a conference report that includes tax increases or reconciliation instructions to increase taxes or to raise the debt limit.

The PRESIDING OFFICER. Is there objection to the modified request?

Mr. REID. I would make a comment before making a decision on that.

The PRESIDING OFFICER. The majority leader.

Mr. REID. The Senate considered the budget—and that is an understatement. We voted on more than 100 amendments, as I mentioned a few minutes ago. It was hard. The votes were hard. The Senate passed its budget. It should now go to conference, that which the Senate passed. It is our year and a half years of work on the report, of which I am a cosponsor. This bill rectifies a fundamental unfairness in our current system. Right now, out-of-State Internet sellers, so-called remote sellers, have an advantage over Main Street businesses. Many Main Street businesses have to collect sales taxes on every transaction. But remote sellers don’t have to charge this tax, they enjoy a price advantage over the mom-and-pop businesses that form the backbone of our communities. This bill allows States to collect sales taxes on remote sales, thereby leveling the playing field with Main Street businesses.

The PRESIDING OFFICER. The clerk will read the bill for a third time. The bill was ordered to be engrossed for a third reading and was read the third time.

IMPLEMENTATION

Ms. COLLINS. Mr. President, I rise to speak on the Marketplace Fairness Act. I applaud Senator Enzi for his many years of work on this legislation, of which I am a cosponsor. This bill rectifies a fundamental unfairness in our current system. Right now, out-of-State Internet sellers, so-called remote sellers, have an advantage over Main Street businesses. Many Main Street businesses have to collect sales taxes on every transaction. But remote sellers don’t have to charge this tax, they enjoy a price advantage over the mom-and-pop businesses that form the backbone of our communities. This bill allows States to collect sales taxes on remote sales, thereby leveling the playing field with Main Street businesses.
It is important to recognize that this bill does not authorize any new or higher tax, nor does it impose an Internet tax. It simply helps ensure that taxes already owed are paid. I would like to engage Senator ENZI in a dialogue regarding the manner in which the bill is to be implemented. As introduced, the bill would require some businesses to start collecting sales taxes in as little as 90 days. I hope that my colleague from Wyoming would agree to take this up at a later time, and I appreciate the fact that he has offered an amendment that includes a 6-month delay. I believe, however, that a delay of at least 1 year is needed to allow businesses time to implement the new systems and software necessary for compliance. I do appreciate that the Senator from Wyoming exempted small businesses with sales under $1 million, as I had urged.

Nevertheless, from a covered seller's perspective, complying with the Marketplace Fairness Act requires more than just installing new software. Multichannel retailers—those who sell online, through catalogs, over the phones, and in stores—have their own unique order processing systems. Tax collection software must be programmed to link to each component of their order processing systems. This step alone could involve considerable programming time for each online retailer.

Each retailer's tax department, or outsourcer, will be required to research and develop a comprehensive understanding of the unique sales and use tax policies in every State where their online customers reside to make sure the programming for their tax collection software is correct. That involves answering a number of questions for each State.

The differing treatment of athletic apparel provides a great example of the complexity involved. In some States, clothing and footwear are exempt from tax. In others, they are exempt only up to a certain price level. Yet other States make a distinction between clothing and footwear used for athletic purposes—which they tax—and clothing and footwear used for general purposes—which they do not tax. In those States, systems must be programmed to correctly treat articles that can be viewed as either athletic apparel or general clothing, depending on the user. Board shorts, sneakers, and windbreakers are just a few examples of common items that give rise to substantial complexity.

Retailers will need to invest additional hours in tax analyst and programmer time to ensure their systems are able to address these issues seamlessly. Even with a 1-year delay, retailers will have to begin early, and move quickly, to implement the Marketplace Fairness Act.

Mr. ENZI. I thank my friend from Maine, and wholeheartedly agree with her conclusion that we must ensure that the Marketplace Fairness Act is correctly implemented. I have spent many years working on this legislation and strongly believe that leveling the playing field for Main Street businesses is the right thing to do. We must implement the solution to that problem in a reasonable manner, and I agree with the Senator that the 1-year delay she proposes is appropriate to do this.

Ms. COLLINS. I would also like to note that the collection of sales taxes online will be new not only for many retailers, but also for consumers who are used to the current system. It is important to implement the new law correctly, from the outset, for these retailers and their customers.

In this regard, I believe that it is also important to make sure that the implementation of the new law does not disrupt the busy holiday season. For this reason, I believe that States should be prohibited from exercising their new authority under the Marketplace Fairness Act during the last quarter of the first year after enactment.

Mr. ENZI. I think both the proposals made by my friend from Maine are commonsense items that will improve the Marketplace Fairness Act. As this bill moves through the legislative process, I suggest my colleagues on both sides of the aisle—and in both Chambers—adopt a 1-year delay in implementing and prohibit States from beginning to exercise their new authority to require the collection of sales taxes during the holiday season.

The PRESIDING OFFICER. Under the previous order, the question is on passage of S. 743, as amended.

Mr. REID. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The clerk will call the roll. The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Alaska (Mr. BEGICH) and the Senator from New Jersey (Mr. LAUTENBERG) are necessarily absent.

Mr. THUNE. The following Senators are necessarily absent: the Senator from Texas (Mr. CORNYN) and the Senator from Kansas (Mr. MORAN).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 69, nays 27, as follows: 

[Rollcall Vote No. 113 Leg.]

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The bill (S. 743), as amended, was passed, as follows: S. 743

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘Marketplace Fairness Act of 2013’.

SEC. 2. AUTHORIZATION TO REQUIRE COLLECTION OF SALES AND USE TAXES.

(a) STREAMLINED SALES AND USE TAX AGREEMENT.—Each Member State under the Streamlined Sales and Use Tax Agreement is authorized to require the collection of sales and use taxes with respect to remote sales made after the date of the enactment of this Act, but no earlier than the first day of the calendar quarter that is at least 180 days after the date of the enactment of this Act.

(b) ALTERNATIVE.—A State that is not a Member State under the Streamlined Sales and Use Tax Agreement is authorized to not withstanding any other provision of law to require any seller not qualifying for the small seller exception described in subsection (c) to collect and remit sales and use taxes with respect to remote sales sourced to that State, but only if any changes made after the date of the enactment of this Act are not in conflict with the minimum simplification requirements in subsection (b)(2).

(c) COLLECTION OF SALES AND USE TAXES.—(1) A seller shall collect and remit sales and use taxes with respect to remote sales sourced to that State only if the requirements of paragraphs (1) and (2) are met.

(d) IMPOSITION OF TAXES.—(1) A State may impose and collect sales and use taxes on sales and use taxes on sales made after the date of the enactment of this Act, but no earlier than the first day of the calendar quarter that is at least 180 days after the date of the enactment of this Act.

(e) ADMINISTRATION.—The provisions of this Act and the regulations issued pursuant thereto shall be administered in accordance with the provisions of section 6001 of the Internal Revenue Code of 1986.
SEC. 3. LIMITATIONS.

(a) In General.—Nothing in this Act shall be construed as—

(1) subjecting a seller or any other person to franchise, income, occupation, or any other type of taxes, other than sales and use taxes;

(2) affecting the application of such taxes; or

(3) enlisting or reducing State authority to impose such taxes.

(b) No Effect on Nexus.—This Act shall not be construed to create any nexus or alter the standards for determining nexus between a person and a State or locality.

(c) No Effect on Seller Choice.—Nothing in this Act shall be construed to deny the ability of a remote seller to deploy and utilize a certified software provider of the seller’s choice.

(d) Licensing and Regulatory Requirements.—Nothing in this Act shall be construed as permitting or prohibiting a State from—

(1) licensing or regulating any person;

(2) requiring any person to qualify to transact intrastate business;

(3) subjecting any person to State or local taxes not related to the sale of products or services; or

(4) exercising authority over matters of interstate commerce.

(e) No Effect on Intrastate Sales.—The provisions of this Act shall be construed as encouraging a State to impose sales and use taxes on any products or services not subject to taxation prior to the date of the enactment of this Act.

(f) No Effect on Intragovernmental Sales.—The provisions of this Act shall apply only to sales to the Federal Government.

(g) No Effect on Mobile Telecommunications Sourcing Agreement.—Nothing in this Act shall be construed as altering in any manner or preempting the Mobile Telecommunications Sourcing Act (47 U.S.C. 151).

SEC. 4. DEFINITIONS AND SPECIAL RULES.

In this Act:

(1) CERTIFIED SOFTWARE PROVIDER.—The term “certified software provider” means a person that—

(A) provides software to remote sellers to facilitate State and local sales and use tax compliance pursuant to section 2(b)(2)(D)(ii); and

(B) is certified by a State to so provide such software.

(2) LOCALITY; LOCAL.—The terms “locality” and “local” refer to any political subdivision of a State.

(3) MEMORANDUM.—The term “memorandum State”—

(A) means a Member State as that term is used under the Streamlined Sales and Use Tax Agreement as in effect on the date of the enactment of this Act; and

(B) does not include any associate member under the Streamlined Sales and Use Tax Agreement.

(4) PERSON.—The term “person” means an individual, trust, estate, fiduciary, partnership, corporation, limited liability company, or other legal entity, and a State or local government.

(5) REMOTE SALE.—The term “remote sale” means a sale into a State, as determined under the sourcing rules under paragraph (7), in which the seller would not legally be required to pay, collect, or remit State or local sales and use taxes unless provided for by this Act.

SEC. 5. SEVERABILITY.

If any provision of this Act or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 6. PREEMPTION.

Except as otherwise provided in this Act, this Act shall not be construed to preempt or limit any power exercised or to be exercised by a State or local jurisdiction under the laws of such State or local jurisdiction or under any other Federal law.

The PRESIDING OFFICER. The major leader.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business, with Senators allowed to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNIZING SERVICE OF CHARLES HOUY

Mr. REID. President, today I rise to recognize one of Congress’ longest-serving and loyal staffers, Charlie Houy. After three decades of service under Senators Ted Stevens, John Stennis

CONGRESSIONAL RECORD — SENATE
May 6, 2013