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CONGRESS CONSIDERS LEGISLATIVE SOLUTIONS TO INTERNET SALES TAX WAR

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Several states have enacted or proposed laws related to the collection of sales tax from online retailers without a physical presence in those states, as required by United States Supreme Court case *Quill v. North Dakota*. South Dakota's current lawsuit against several internet retailers was specifically brought by the state to force reconsideration of Supreme Court precedent.

However, there is a small change that Congress may decide the issue before it reaches the Supreme Court, with three bills having been introduced and a fourth pending.

One of the three bills, cited as the "No Regulation Without Representation Act of 2016", is more or less a proposal to codify the decision in *Quill*. Needless to say, the states who have challenged *Quill* are highly opposed to this bill.

The other two bills, the "Marketplace Fairness Act of 2015" and the "Remote Transactions Parity Act of 2015", both similarly propose a destination-based sales tax system which will allow states the authority to require the collection of sales tax from out-of-state retailers. Among a few differences, the former provides an exception for sellers who have \$1,000,000 or less in gross annual sales while the latter does not.

A fourth proposal not yet formally introduced would base the taxability of purchases on the law of the seller's location but at the tax rate of the buyer's location. The "Online Sales Simplification Act" would require the seller to collect and remit sales tax to its own state taxing authority, which would then transfer said taxes to a clearinghouse for distribution to the buyer's state. This seems to simply the collections process on the retailer's end because they would no longer have the burden of figuring out what items to tax, and they would simply remit the collected taxes to their own home-state taxing authority the same way they do for their sales to in-state residents. The proposal - still in draft form - seems promising, as it has the support of a the [National Retail Federation](#), as well as, a number of retailers, including Amazon.

Unfortunately, the fact that there are so many options on the table coupled with the approaching end of the Congressional session and the upcoming elections means that a legislative solution is

not imminent. Nonetheless, it is still possible that by the time the South Dakota case makes it way to the Supreme Court, *Quill* may be obsolete.

MEET THE TEAM



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