

RESOLUTION 2021-2

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 was introduced in both the House and Senate regularly, but none was 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.

Between 2013 and 2018, House committee leadership was publicly adamant that it would not consider the Marketplace Fairness Act. The House instead floated vague proposals, occasionally offered draft language and only rarely introduced a bill. In every form, the proposals were unadministrable. At worst, they would have expanded preemptions of state tax authority and severely affected 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* was 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 taken steps to ensure that their remote seller collection laws are consistent with the Constitution.

Resolution

Decades of good-faith effort 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. Any federal legislation that addresses a desire for remote seller uniformity would necessarily limit state taxing authority. Following the example set by the U.S. Supreme Court in *Quill*, 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 the Annual Business Meeting at which it is adopted, unless reaffirmed or replaced in the normal policy process. Passed by unanimous voice vote by the membership on June 25, 2021, with abstentions by Alaska and New Hampshire.