



**AMERICAN CATALOG
MAILERS ASSOCIATION**

**Written Testimony Before the United States House
of Representatives Committee on the Judiciary**

**Hearing:
*Exploring Alternative Solutions on the Internet
Sales Tax Issue***

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Chairman Goodlatte, Ranking Member Conyers and Members of the Committee, the American Catalog Mailers Association (ACMA) thanks you for the opportunity to submit this written testimony on the impact of remote sales tax policies. All written with the Chairman's Seven Basic Principles on Remote Sales Tax and the Senate-passed Marketplace Fairness Act (MFA) in mind, ACMA respectfully requests that this written testimony be formally entered into the hearing record.

ACMA is an advocacy group for catalog companies and their key suppliers that use the mail to solicit orders or to gather new customers. Through catalogs, ACMA members make a wide range of goods and services available, many of which are difficult to find or otherwise unavailable. Although plenty of national brick-and-mortar retailers mail catalogs, the majority of ACMA's members are non-store retailers who generally operate out of one or two states. ACMA is also a member of TruST, the coalition for True Simplification of Taxation, a coalition of trade associations with common interests. More information on TruST can be found at www.TrueSimplification.org.

1. BACKGROUND & OVERVIEW

ACMA finds nothing in MFA that can achieve Chairman Goodlatte's principles. MFA represents neither federal nor state tax reform, but merely states seeking to impose a 1930s tax regime on 21st Century commerce rather than reforming their tax regimes and seeking Congressional help. Effectively, states impose business activity taxes on companies with no physical presence, no employees, and no political voice in the state. Such a move is bad for the economy, hurtful to the affected companies, moves the marketplace toward less equity, and fails to solve acute revenue issues for states and municipalities.

The U.S. Supreme Court in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), ruled that without specific authorization from Congress, states could not impose tax collection burdens upon remote sellers that have no "physical presence" as this would interfere with interstate commerce. Moreover, if allowed by Congress, the myriad of state tax jurisdictions with resulting variance in rates, definitions, and audits would create a complex and administratively costly nationwide sales tax collection system. The costs of that collection are a tax on the out-of-state business.

MFA presents a serious threat to catalog, online, and other direct marketers because it would require the collection of sales taxes in more than 9,600 state and local tax jurisdictions, with differing rates, taxable product categories, definitions, sales tax holidays, and reporting and audit requirements. If enacted, it would result in lost sales, confused customers, daunting administrative burdens, repetitive audits, and expensive assessments without impartial recourse. The market value of direct marketing businesses would be similarly affected.¹

The argument that current nexus standards result in an "uneven playing field" is patently false. National retail chains receive many state and local tax benefits and other incentives to locate stores in particular areas. These include rebates of property and sales tax (TIFs), subsidies for utility lines, training allowances and tax deductions for new

¹ Abe Garver, Focus Investment Bankers, as originally published on Seeking Alpha on October 9, 2011 and also found at http://www.focusbankers.com/publications/articles/Valuations/articles_webonlyretailers.asp

hires, etc. Employees of business located within a jurisdiction use education and public services. Remote catalog sellers get none of these government benefits yet would be burdened with collection of the tax to fund these subsidies. In fact, remote sellers are obliged to pay these taxes whether or not they collect them from customers, effectively making this a new tax on remote marketers.

2. HARDSHIP ON BUSINESSES

Consider the potential situation of one ACMA member, National Wholesale, which is based in Lexington, N.C. This 60-year-old, family-owned and operated company is very much the catalog mail order equivalent of a main street store. National Wholesale provides a full line of clothing, undergarments and shoes tailored to meet the special needs of mature female customers from across the country. A sizable number of National Wholesale's customers are in their 70s, 80s and even their 90s and rely on mail order purchases of products from National Wholesale that are simply not available locally or because they cannot get to a traditional retail store. More than one-third of the company's orders still come mailed in an envelope with check enclosed as these customers either are not comfortable using a computer or the internet to order due to security or technical reasons, or do not have access to a high speed connection.

Like many catalog marketers that operate out of a single state, on the order form of all National Wholesale catalogs is a note indicating "North Carolina residents please add 6.75% sales tax." Despite this simple directive, many of National Wholesale's customers still get this wrong either by paying the wrong rate or not paying the tax at all. Imagine if the company's catalog order form had to have a list with the tax rates from more than 9,600 taxing jurisdictions for customers to decipher. It would be impossible for National Wholesale to explain the taxing across all the different jurisdictions in the limited space available on a printed order form. And even if the company figures out how to communicate the applicable tax, since so many of the orders come via mail with a check included, it is clear the older consumers the company serves may not be able to figure out how to calculate the tax properly, or which rate(s) should apply to various products. The additional consumer complexity creates a very good chance they simply won't order at all.

For the elderly ladies who are confused with what's going on with sales tax, National Wholesale would end up absorbing the unpaid tax rather than chasing after customers for the unpaid or under-paid tax. Those consumers that have overpaid the tax due will need communication and a refund. The significant harm to their business in chasing after customers on unpaid or incorrectly remitted sales tax would be multiple: the cost burden of refunding overpayments or collecting underpayments from their customers would be substantial and unsustainable, and the confusion, irritation and negative feelings National Wholesale customers would have toward the company over their shipments being held up pending payment of sales taxes would cost the company many of its customers.

As a small company, National Wholesale would also face the tremendous burdens of trying to figure out whether the tax is correct or not, remitting it to all these jurisdictions, and being subject to sales tax audits from all those different taxing jurisdictions.

Also consider the hardship another ACMA member, the Miles Kimball catalog, based in Oshkosh, WI, would face. Nearly two-thirds of this company's customers are 65 years of age or older; in fact, almost half its customers are 70 or older. Among all its customers,

one-third of them still make their catalog purchases by mailed-in orders using personal checks. Needless to say, Miles Kimball faces the same impossible task of having to explain the assorted taxing jurisdictions as National Wholesale does.

Although a majority of catalog customers pay by credit card and many customers do order online, all remote marketers still would incur greater administrative costs and much consumer confusion. The education and conversion processes for collecting from so many taxing jurisdictions around the country for most remote marketers would be almost as difficult as the two ACMA members referenced here.

Some seeking to overturn the *Quill* precedent legislatively claim that this matter can be handled quickly and efficiently with “free” look up software, or that concerns of complexity and cost are overstated. This simply is not the case. Each remote marketer has invested substantial resources to build enterprise software and web systems that run their businesses. Everything that touches or relates to the order flow or the revenue flow of the business is affected including those modules that track inventory, take orders and maintain order history, and bill customers to collect revenues. All company legacy systems need to be modified to account for this change, imposing a significant conversion burden on remote marketers. Also required are ongoing maintenance costs to keep descriptions and tax requirements up to date, ongoing training of customer service personnel, and additional financial reporting and compliance. For more detail on the challenges of integrating “free” software with legacy operating systems, please see TruST's [cost of collection study](#).

Proponents of MFA claim that it will help level the playing field for independent small retailers on Main Street. Ironically, many of these small retailers have established a remote marketing presence as a solution to encroaching “big box” retailers. The internet allows these small retailers to access a national audience for their products. These businesses would also be severely burdened by MFA, disadvantaging them vis-à-vis the very large chains who are calling for a “level playing field.”

Remote marketing also supports a large supply chain of “mom & pop” businesses, including the inventors, artists and artisans, manufacturers, distributors and importers or others who often lack the scale necessary to distribute via large national retail chains. For some of these companies, remote marketing is the only effective means to the consumer. Moreover, remote marketers necessarily draw on a large variety of vendors and supply chain partners in the creating of catalogs, design of websites, and operation of businesses that would also be adversely affected by MFA unless the Goodlatte Principles were properly and thoroughly applied.

Should MFA be put into law as currently written, many smaller catalogers will find it almost impossible to compete as already thin profit margins erode further. Putting an entire sector of the economy and the many jobs they represent at risk for such a small change in tax collections simply is not cost justifiable. The reality is that forcing remote marketers to collect and remit sales and use taxes will add less than 1% to the total current tax collections for states and municipalities nationwide.

3. IMPACT ON CONSUMERS

In addition to catalog retailers’ positive impact on the national economy, it should be noted that they also play an important role in meeting distinct consumer needs and requirements, which are not generally met by large, sophisticated retail chains.

Catalog and internet retailers allow consumers to efficiently select goods that may not be readily available in their local markets. They allow convenient shopping for single parent households or dual income families where the adults have precious little free time during typical store hours. They bring a variety of hard to get or unique products to the market that do not have large enough demand to be stocked in traditional “brick and mortar” retail stores. They provide privacy to purchase merchandise that is embarrassing or uncomfortable to purchase in a retail shopping environment. They also cater to the needs of rural Americans, disabled consumers, and older shoppers who may have difficulty driving or walking. In fact, there are many social and cultural benefits to Americans available only due to remote marketers that should be protected.²

4. CONCLUSION

If the physical presence requirement from the *Quill* law is to be changed for the collection of sales and use taxes, it must be done with significant statutorily-mandated simplification and reform of state sales tax regimes including the establishment of a fair and impartial dispute resolution mechanism. ACMA supports Chairman Goodlatte’s principles as the foundation of meaningful discussions on the issue. Unless these principles are properly applied to a bill, our national economy is in no position to afford the burden presented in MFA and the destruction to many small companies that will result. ACMA urges Congress to further investigate all implications on all remote marketers prior to making any change to the existing laws.

² For a more complete description of the social and cultural benefits from catalog and remote marketing, please see The American Catalog Experience: *Catalog Marketing’s Social Importance to American Consumers & Culture*, found at <http://www.catalogmailers.org/clubportal/clubdocs/2129/Social%20Benefits%20of%20Cataloging%20-%2020100516.pdf>