

1 House Memorial

2 A memorial to the Congress of the United States,
3 urging Congress to enact legislation to allow states
4 to enforce existing sales and use tax laws, treat
5 similar sales transactions equally, without regard to
6 the manner in which the sale was transacted, give
7 states the right to collect or forfeit the right to
8 collect taxes already owed under state law, and
9 authorize states that have complied with the
10 Streamlined Sales and Use Tax Agreement to require
11 out-of-state sellers to collect each such state's
12 sales and use tax.

13
14 WHEREAS, in 1967, the Supreme Court of the United States
15 ruled in *National Bellas Hess v. Illinois Department of Revenue*,
16 386 U.S. 753 (1967), that a state may not require collection of
17 a sales and use tax on the sale of goods by out-of-state sellers
18 that have no physical presence in the taxing state, and

19 WHEREAS, states have consequently been unsuccessful at
20 enforcing their own sales and use tax laws on sales by out-of-
21 state, catalog, and online sellers, and

22 WHEREAS, in 1992, the Supreme Court of the United States
23 acknowledged in *Quill Corp. v. North Dakota*, 504 U.S. 298
24 (1992), that the United States Congress may confer upon the
25 states the authority to require out-of-state sellers to collect
26 sales and use taxes on these remote sales, effectively
27 overruling *Bellas Hess*, stating that "Congress is now free to
28 decide whether, when, and to what extent the States may burden

HM 1293

2013

29 interstate [commerce] with a duty to collect use taxes," and

30 WHEREAS, the United States Congress has been debating
31 solutions for more than two decades, forcing some states to take
32 action, leading to greater confusion and distortion of the
33 marketplace, and

34 WHEREAS, since 1999, state legislators, governors, local
35 elected officials, state tax administrators, and representatives
36 of the private sector have worked to modernize tax collections,
37 promote e-fairness, and develop a Streamlined Sales and Use Tax
38 Collection System for the 21st Century, and

39 WHEREAS, between 2001 and 2002, 35 states, including
40 Florida, enacted legislation expressing the intent of the state
41 to simplify its sales and use tax collection system and to
42 participate in multistate discussions to finalize and ratify an
43 interstate agreement to streamline the collection of state sales
44 and use taxes, and

45 WHEREAS, on November 12, 2002, these states unanimously
46 ratified the Streamlined Sales and Use Tax Agreement, which
47 substantially simplifies state and local sales tax systems,
48 removes the burdens to interstate commerce which were of concern
49 to the Supreme Court, and protects state sovereignty, and

50 WHEREAS, this agreement, resulting from a cooperative
51 effort of 44 states, the District of Columbia, local
52 governments, and the business community to simplify sales and
53 use tax collection and administration by retailers and states,
54 minimizes costs and administrative burdens on retailers,
55 particularly retailers operating in multiple states; encourages
56 "remote sellers" selling over the Internet and by mail order to

HM 1293

2013

57 collect tax on sales to customers living in states that have
58 ratified the agreement; levels the playing field so that local
59 "brick-and-mortar" stores and remote sellers are able to operate
60 under the same rules; and ensures that all retailers can conduct
61 their business in a fair, competitive environment, and

62 WHEREAS, the Streamlined Sales and Use Tax Agreement
63 provides the states with a blueprint to create a simplified
64 sales and use tax collection system that, when implemented,
65 allows justification for the United States Congress to overrule
66 *Bellas Hess* under its federal Commerce Clause powers, and

67 WHEREAS, Arkansas, Georgia, Indiana, Iowa, Kansas,
68 Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey,
69 North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island,
70 South Dakota, Tennessee, Utah, Vermont, Washington, West
71 Virginia, Wisconsin, and Wyoming have passed legislation to
72 conform to the Streamlined Sales and Use Tax Agreement, and
73 conforming legislation has been recently introduced in Texas,
74 Massachusetts, Florida, Illinois, Virginia, Missouri, Maine,
75 California, and Hawaii, and

76 WHEREAS, of the 44 states engaged in the effort to simplify
77 sales and use tax collection and administration, 24 states, with
78 a total population of 92,781,860 and representing 33 percent of
79 the country's population, have passed conforming legislation,
80 and

81 WHEREAS, on average, states depend on sales and use taxes
82 for 20 percent of their annual revenue, and, therefore, at a
83 time when state budgets are increasingly under pressure,
84 Congress should give states the ability to enforce their own

HM 1293

2013

85 laws, and

86 WHEREAS, computing capabilities have advanced significantly
87 in recent years, thereby relieving some state merchants of the
88 otherwise overwhelming burden of assessing the taxes owed to
89 individual states and local jurisdictions, and

90 WHEREAS, the need for modernization is evidenced by the
91 exponential growth of total e-commerce sales by an estimated 300
92 percent from \$1 trillion in 1999 to \$4 trillion in 2012, and

93 WHEREAS, the estimated nationwide total revenue loss to the
94 states, which is expected to rise while states lack the
95 authority to require out-of-state sellers to collect sales and
96 use taxes on remote sales, may have been as much as \$56.3
97 billion from 2007 to 2012 and \$12.6 billion in 2012, and

98 WHEREAS, this estimated revenue loss may have cost Florida
99 hundreds of millions of dollars to several billions of dollars
100 per year in lost tax revenue, with some estimates indicating
101 losses to the state of as much as \$3.9 billion from 2007 to 2012
102 and \$892.5 million in 2012, and

103 WHEREAS, local Florida retailers who make sales at their
104 Florida stores experience a tax inequity under the de facto
105 sales tax exemption for Internet and mail order sales because
106 these traditional "bricks and mortar" businesses on our "main
107 streets" must apply and collect sales tax, while out-of-state
108 sellers having no physical presence in this state do not, and

109 WHEREAS, there exists an unfair "digital divide" under
110 which higher-income households are much more likely to have the
111 resources to own a computer, have Internet access, and have a
112 credit card to make de facto exempt, remote purchases, while

HM 1293

2013

113 low-income consumers without the resources to shop online or by
114 mail, who are consigned to shopping in local stores, bear more
115 than their fair share of state sales tax collections, and

116 WHEREAS, thousands of businesses are forced to do business
117 at a competitive disadvantage because they have to collect taxes
118 that online sellers do not, which in some states can mean a 5 to
119 10 percent price advantage, and

120 WHEREAS, consumers are required under state laws to pay
121 sales and use taxes on the goods they purchase, but online
122 sellers simply are not required to collect the tax in the same
123 way that local businesses do, which more often than not puts
124 local businesses at a disadvantage and can lead to consumers
125 being audited and charged with penalties for failing to pay
126 sales and use taxes, and

127 WHEREAS, all too often states are unable to enforce this
128 tax collection requirement or unwilling to enforce such
129 requirement due to policy considerations concerning the privacy
130 of individuals, and

131 WHEREAS, small-volume sellers should be protected from any
132 new collection requirements and accorded an exemption if they
133 sell less than \$500,000 in online sales annually, and

134 WHEREAS, on November 9, 2011, Senators Michael B. Enzi,
135 Richard J. Durbin, Lamar Alexander, Tim Johnson, John Boozman,
136 Jack Reed, Roy Blunt, Sheldon Whitehouse, Bob Corker, and Mark
137 L. Pryor introduced the Marketplace Fairness Act, and

138 WHEREAS, the Main Street Fairness Act, filed as S.1452 by
139 Senator Richard Durban of Illinois and H.R.2701 by
140 Representative John Conyers, Jr., of Michigan, was introduced in

HM 1293

2013

141 the 112th Congress to grant those states that comply with the
142 agreement the authority to require all sellers, regardless of
143 whether they have a physical presence in the taxing state, to
144 collect those states' sales and use taxes, and

145 WHEREAS, Congressman Roy Blunt of Missouri has termed this
146 federal legislation to be "fiscal relief for the states that
147 does not cost the Federal Government a single cent" and ensures
148 the viability of the sales and use tax as a state revenue
149 source, and

150 WHEREAS, the United States Congress should pass legislation
151 allowing states to enforce their existing sales and use tax laws
152 and to treat similar sales transactions equally, without regard
153 to the manner in which the sale is transacted, and the right to
154 collect or decide not to collect taxes already owed under state
155 law, and

156 WHEREAS, the present lack of state authority threatens the
157 continued ability of states that are dependent on such revenue
158 to rely on sales and use taxes as a stable revenue source for
159 state and local governments, and

160 WHEREAS, Florida is resolved to modernize and address the
161 complexities of the current sales and use tax collection system,
162 and

163 WHEREAS, Internet-based commerce continues to grow, and
164 states will be unable to collect as much as \$23 billion in
165 revenue in 2012 unless Congress acts, NOW, THEREFORE,

166
167 Be It Resolved by the Legislature of the State of Florida:
168

HM 1293

2013

169 | That the Congress of the United States is urged to enact
170 | legislation that allows each state to enforce its existing sales
171 | and use tax laws, treating similar sales transactions equally
172 | without regard to the manner in which the sales are transacted;
173 | permits each state to collect or forfeit the collection of taxes
174 | already owed under state law; and authorizes each state that
175 | ratifies the Streamlined Sales and Use Tax Agreement to require
176 | out-of-state sellers to collect and remit its sales and use tax.

177 | BE IT FURTHER RESOLVED that copies of this memorial be
178 | dispatched to the President of the United States, to the
179 | President of the United States Senate, to the Speaker of the
180 | United States House of Representatives, and to each member of
181 | the Florida delegation to the United States Congress.