



World Floor Covering Association
2211 E. Howell Avenue
Anaheim, CA 92806
800-624-6880 / 714-978-6440 X17
Fax: 714-978-6066

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For further information contact:
D. Christopher Davis
President/Chief Executive Officer
World Floor Covering Association
800-624-6880

WFCA Endorses “Main Street Fairness Act” Bills in Senate and House

Anaheim, CA. August 16, 2011. The World Floor Covering Association (WFCA) has endorsed and is in full support of Senate Bill 1452, “The Main Street Fairness Act” introduced by Senator Dick Durbin (D-IL), and its identical companion legislation introduced in the House of Representatives by Congressmen John Conyers (D-MI) and Peter Welch (D-VT).

The “Main Street Fairness Act” addresses a fundamental unfairness that allows out-of-state Internet and mail order companies to avoid collecting and remitting state and local sales taxes while local brick and mortar stores are obligated to collect these taxes. The “Main Street Fairness Act” would create a program that would require Internet and mail order sellers to collect and remit sales taxes to states that elect to participate in the federal program.

The WFCA’s endorsement came after a unanimous vote by the organization’s Executive Committee. “This legislation is long overdue and aptly named,” said Jim Walters, Chairman of the Board, WFCA and president of Macco’s Floor Covering, Green Bay, WI. “In some states Internet sellers enjoy as much as a 10% price advantage over local brick and mortar retailers who are mandated by law to collect and remit sales tax to local and state governments. This legislation would make the playing field a little more level,” he concluded.

(more)

The WFCA views the legislation as helping small business interests. “This bill is crafted in such a way that it is not anti-Internet based companies, but does seek to address the fundamental unfairness in the marketplace as Internet commerce takes an ever increasing slice of the retail pie,” said Chris Davis, President & CEO, WFCA. “This is not a Republican or Democrat issue. It impacts all Americans. And it’s not a new tax. It’s one every purchaser is supposed to pay, but isn’t. The WFCA is joining coalitions to support this legislation and we are going to encourage everyone we can to back these bills and write their representatives in Washington to urge them to support their passage.”

The WFCA, official sponsor of Surfaces, is the floor covering industry’s largest advocacy organization representing floor covering retailers, contractors, manufacturers, distributors and allied service providers throughout North America and the world.

The association is a recognized leader in marketing research and industry certification programs and operates the premier consumer flooring website, wfca.org, providing unbiased information about every type of floor covering and connecting customers to member retail stores. The WFCA also influences public policy affecting the floor covering industry and consumers. For more information about the WFCA, visit WWW.WFCA.ORG and WWW.WFCA-PRO.ORG.

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1001 Pennsylvania Avenue,
NW, Washington, DC 20004
202 624-2500 Fax 202 628-5116



2211 East Howell Avenue,
Anaheim, CA 92806
800 624-6880 Fax 714 978-6066

“Main Street Fairness Act” Taxing Internet And Mail Order Sales

The Need For Federal Legislation

Generally, companies that sell their products on the internet or through mail order are not required to collect state and local sales taxes unless they have a facility in the state. This gives the internet sellers a perceived price advantage over local retailers with local brick and mortar stores who are obligated to collect these taxes. States generally require consumers pay sales and use taxes, but mandate local businesses collect the tax or face penalties. For internet sales, the states have been unsuccessful in requiring out-of-state internet and mail order companies to collect and remit the taxes to the states and localities. States that have attempted to impose an obligation on out-of-state sellers to collect local taxes have been blocked by court rulings. The United States Supreme Court has ruled that only Congress can regulate interstate commerce, and thus states cannot require out-of-state businesses to collect sales taxes. Thus online retailers without a “physical presence” in a state can avoid any obligation to collect and remit sales taxes.

In recent years, states have sought other ways of collecting the sales tax for such internet sales. Many states already require consumers to report online purchases when they file their taxes and remit the sales tax if the retailer does not collect it. There are few ways in which the state, however, can verify whether consumers have appropriately reported it. For example, when North Carolina attempted to figure out what state residents should owe for sales taxes on online purchases, they requested data from Amazon on all sales shipped to the state. Both Amazon and the American Civil Liberty Union opposed the release of the data as an invasion of privacy.

A number of states, such as Texas, California and Illinois, have required companies to collect sales tax on internet sales if the company has any presence, such as a distributor, within the state. These attempts have often backfired. Amazon, for example, simply closed its in state distributor facility when Illinois sought to collect taxes. All these attempts have fallen far short of leveling the playing field between the traditional brick and mortar stores and their out of state internet competitors.

Streamlined Sales And Use Tax Agreement

To avoid losing billions of dollars in uncollected sales tax revenue, 44 states, the District of Columbia, local government and the business community created a voluntary program called the “Streamlined Sales And Use Tax Agreement.” This agreement requires states to simplify their sales tax requirements by adhering to uniform product definitions, adopting uniform requirements for filing sales tax returns, administering both state and local sales tax collections

through a single state office, and allowing retailers to register through a centralized one-stop multi-state registration system. So far 24 states have signed on to and have implemented the necessary legislation to effectuate the Streamlined Sales And Use Tax Agreement. These states are: Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin and Wyoming. This program, however, is voluntary and states cannot require internet sellers to register and collect the taxes.

Main Street Fairness Act

Given the impracticability of collecting the sales tax directly from the consumer, the failure of many large internet companies to agree to the Streamlined Sales And Use Tax Agreement and the determination that only Congress can regulate interstate taxes, Senator Dick Durbin from Illinois has introduced the “Main Street Fairness Act.” The proposed legislation would create a federal program designed to facilitate the state’s collection of sales taxes on internet and mail order sales.

The fundamental aspect of the proposed Main Street Fairness Act is to make the existing “Streamlined Sales And Use Tax Agreement” a federally approved program with some additional requirements and safeguards. The Act would establish a Governing Board to implement the Act and to determine whether a state meets the standards for simplifying their sales tax rules and administrative requirements. The proposed legislation does not create a new tax, but creates a program for states to collect existing sales taxes on internet and mail order sales that are shipped into the state.

For a state to use the federal authority to collect sales taxes on internet and mail order sales it will have to meet the standards for simplifying their sales tax rules and administrative requirements as set forth in the Streamlined Sales and Use Tax Agreement as modified by the proposed Act. States that voluntarily enter the program and adequately simplify their tax systems should be authorized to collect taxes on sales of goods or services delivered in-state, without regard to the location of the internet and mail order seller. The Act would require the states to release consumers from tax remittance obligations to participate in the program.

Under the proposed legislation, internet and mail order sellers can elect to register with the “one stop” system covering all participating states or can register directly with each state—but these sellers are obligated to collect and remit the sales taxes on all sales shipped to states participating in the program regardless of how they register. To compensate retailers for any startup administrative costs associated with collecting sales taxes, the Governing Board will establish compensation for all sellers required to collect sales taxes.

The Act would exempt small online and catalog retailers from having to collect sales tax. The threshold of what constitutes "small" is not defined by the bill, but will be set by a Governing Board established under the Act to oversee the program. Earlier legislative proposals to tax internet sales had defined small as under \$5 million in internet or mail order sales per year. This may provide some guidance on the definition of small retailer.

Conclusion

The bill was introduced at the end of July and has not received any bipartisan support. The bill was characterized by some as “anti-internet sales”, yet Amazon.com and Sears Holdings both announced support for the legislation as it was introduced. While many changes can be expected in the drafting, the basic concept of the bill provides states with a means of requiring all companies that sell products into their state to collect sales taxes. Only through congressional action authorizing states to collect sales tax can the traditional brick and mortar stores compete fairly with out-of-state internet and mail order companies. It is therefore key for all those interested in creating this level playing field to contact their congressmen and senators and request that they support this legislation. It is a vital piece of legislation in a time when states are facing budget crises and the brick and mortar stores, the backbone of America’s economy, are faced with declining sales and unfair competition from competitors that do not collect sales taxes.

Jeffrey King is a partner in the Washington, DC office of Crowell & Moring LLP. Mr. King has more than thirty years of experience in complex litigation, with a focus on contracts, construction, antitrust, intellectual property and health care. He serves as general counsel for WFCA and other trade associations, and is a LEED Certified Professional. For more information, contact Mr. King at 202.624.2745 or jking@crowell.com.

Crowell & Moring is a full service law firm with offices in Washington, DC, Los Angeles, San Francisco, Irvine, New York, London and Brussels. Visit us at www.crowell.com.

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Date

Dear <__Senator's Name__> <__House of Representatives Member Name__>

Re: "Main Street Fairness Act"

I am writing to urge you to vote in support of <Senate Bill 1452, The "Main Street Fairness Act" introduced by Dick Durbin (D-IL)> <The "Main Street Fairness Act introduced by Representatives John Conyers (D-MI) and Peter Welch (D-VT)>

This bill is a federal resolution to the unfair situation local brick and mortar retailers face in that they are required to collect and remit taxes to state taxing authorities while out-of-state Internet and mail order retailers are not required to collect or remit those taxes. In some states this gives Internet and mail order retailers as much as a 10% price advantage over local retailers.

I am not in opposition to Internet or mail order dealers. I do strongly believe the playing field should be leveled as much as possible and that Internet and mail order retailers should have an equal opportunity as well as similar requirements that local bricks and mortar retailers must abide by. It is only fair!

I urge your support of this legislation.

Respectfully yours,

(s) _____
