



**Testimony of the
National Retail Federation**

**By Robert Benham
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**Before the
United States Senate
Subcommittee on International Trade
Senate Finance Committee
Hearing Regarding: "How Much Should Borders Matter?: Tax
Jurisdiction and the New Economy,"
In Support of S. 2152, the
Sales Tax Fairness and Simplification Act
Room 215 Dirksen Senate Office Building
July 25, 2006
10:30 A.M.**

Good morning Subcommittee Chairman Thomas, Ranking Member Bingaman and members of the Committee. My name is Robert Benham. I am the owner/proprietor of Balliet's, L.L.C., an independent full-line women's specialty shop operating a single store in Oklahoma City, Oklahoma. I am here today on behalf of my business and other small businesses like mine, as well as on behalf of the National Retail Federation (NRF) as a representative of the NRF Board of Directors that I have served on for 25 years. I am here to comment as a small business owner and to share my unified position with NRF's in support of S. 2152, the Sales Tax Fairness and Simplification Act, introduced this session by Senator Michael Enzi (R-WY), and to urge action by Congress in 2006 to authorize the states to require sales tax collection by all channels of sellers – big, small, brick and mortar, catalogue and online.

Retailer Background:

As a lifelong retailer, I purchased Balliet's in 1991, after first holding corporate management positions in three major department store chains. Balliet's is this year celebrating its 70th year in business, opening its doors first in 1936. I am proud to afford to employ 32 people, and provide them with health care and dental benefits, life insurance and a 401K saving and investment plan. These workers are like family to me; these benefits are necessary to hire and retain quality employees.

Likewise, the committee should know that today I also speak as a member of the Board of Directors of the National Retail Federation, the world's largest retail trade association, with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalog, Internet, independent stores, chain restaurants, drug stores and grocery stores as well as the industry's key trading partners of retail goods and services. NRF represents an industry with more than 1.4 million U.S. retail establishments, more than 23 million employees - about one in five American workers - and 2005 sales of \$4.4 trillion. As the industry umbrella group, NRF also represents more than 100 state, national and international retail associations.

As a member of the NRF Board, I voted with the majority of our Board back in January 2000 to adopt a policy to support the streamlined sales tax initiative in the states, and today urge you to pass S. 2152, federal legislation to transition this voluntary, cooperative state venture into a nationwide sales and use tax collection system, mandatory for all sellers.

History of Sales Tax Fairness: The Retail Perspective.

According to the rulings in two relevant United States Supreme Court decisions, *Bellas Hess* and *Quill*, the court ruled that state and local sales tax systems were complicated and placed an undue burden on interstate commerce. Because of this burden, remote, out-of-state sellers have been excused from collection of sales or use tax on sales made to remote buyers except in instances where the seller has nexus within the state of the buyer. The advent of the

Internet and growth of e-commerce retail sales established a situation where traditional “main street” sellers, with no e-commerce or remote sales activity, were both losing sales to competitors on the Internet, while also suffering a non-negotiable price disadvantage of an average of 6% (the average state sales tax rate) for selling the same goods. Considering that most retailer profit margins are on the scale of 3-4%, a non-negotiable price disadvantage of 6% on top of the cost of the goods being sold is clearly a significant discrimination against main street sellers. “Non-negotiable price” -- the sales tax rate mandated for collection by retail on taxable items at storefront -- is a relevant distinction, as the shipping, handling and related delivery costs to a remote seller with no nexus in a state are ALL negotiable fees for completing a transaction with a remote buyer.

Small retailers like me readily agree that we benefit from and use services provided by state and local government, and thus we should be obligated to help support those services through collection of state and local sales taxes. But it is also true that services provided for by state and local government such as roads, fire and police are used every day by out-of-state sellers to facilitate the delivery and in-route protection of merchandise to in-state buyers. Why then should some collect and some not? The answer is there should be no distinction, and Congress is specifically empowered to take action under its Commerce Clause authority to eliminate this marketplace barrier.

Why Do Small Retailers Care about S. 2152?

NRF participation in the development of streamlined sales tax agreement (or “SSTA”) among the states and our active involvement in the drafting of S. 2152 is based on many justifications, and I want to highlight four in particular:

- 1) **Sales tax is here to stay.** Of the tax revenue sources relied upon in states – property, income and/or sales – a consumption tax such as the sales tax has been found in numerous polls and public opinion surveys to be the least offensive to taxpayers, as taxpayers can “choose” to pay the tax based on how much they consume;
- 2) **Compensation for Retailer Costs:** Pre-SSTA, state and local sales tax systems were complicated and costly for retailers to administer. Seventeen (17) states today pay their in-state retailers a nominal fee for the cost of sales tax collection, and this number of states is dwindling. Today, the state Governing Board of the SSTA continues to work toward certification of tax software that will be available to me as a small retailer, for free. Likewise, S. 2152 ensures that the costs of collection are greatly reduced, and where costs still exist, retailers will be compensated for that cost – both nexus and non-nexus sellers (see Section 6(a)(14));
- 3) **Small Business Exception:** Pre-SSTA, small retailers looking to grow their business outside their state had no certainty in tax planning. 7,600 different state and local taxing jurisdictions have varying rates, varying definitions and varying rules, often forcing retailers to guess about taxability. S. 2152 provided a small business exception that exempts

small sellers from the obligation to collect use tax. A small seller is one who sells less than \$5 million in gross remote annual sales – that is \$5 million outside their home state. Balliet's today is selling approximately \$350,000 in goods outside of Oklahoma, amounting to about 5% of our total annual sales. Remote sales are an important part of our overall business strategy; we are a player in remote commerce, and I expect growth in this new channel to continue. As long as retailers are compensated for the cost of collection, as a small retailer, I see no reason for a small business exception – but I understand the politics which supports having an exception, at least at the beginning of the new system (see Section 4(d));

- 4) **Retailers Can Outsource Sales Tax Collection:** Under the SSTA, I can opt to have all my sales and use tax collected for me by a certified service provider (CSP), who will essentially remove me from the hassle, headache and responsibility of collection. Under this arrangement, the CSP as my collection agent will receive the compensation for collection of my sales and use tax from the states. (see Section 6(a)(4) and (14)).

It is also worth noting that S. 2152 provides other administrative simplifications that will greatly reduce collection burdens on me and other retailers – both big and small – such as a uniform sourcing rule (tax sourced to the destination of the buyer (Section 6(a)(3)); and a hold-harmless provision for good faith errors in collection (Section 6(a)(12)) to name but two more of 19 guarantees in the federal bill. S. 2152 establishes a road map for retailers to know what is taxable,

and at what rate – thus providing retailers with certainty in administration, while preserving the sovereign rights of states on political issues of taxability

Why S. 2152 Should Be Passed by the Congress:

(1) All Sellers Should be Compensated for the Costs of Collection:

Sales tax is a consumption tax. Customers that live in a state with sales and use taxes are individually responsible for payment of that tax to their home state.

Legally, the in-state merchant collects the sales tax for the customer; typically, the out-of-state merchant without nexus to the buyer's state does not collect use tax for the customer. NRF believes that the appropriate place to collect a consumption tax – owed by customers – is at the selling site. NRF's interest, supported by the NRF Board as far back as January 2000, is in ensuring that the cost of collection for retailers be eliminated altogether, or minimized, and that the obligation to collect must apply equitably across all channels of sale. Likewise, for remote sellers that currently have no legal obligation to collect tax for their remote buyers, the remote seller's costs of collection should be paid for by the states. Senator Enzi's S. 2152 addresses this along with eighteen (18) other minimum simplifications that the states must adopt in order to be granted the authority to mandate collection of their use tax, and the SSTA bill also represents the necessary first step for equal collection responsibility for all sellers.

(2) Congress Should Legislate, So Business Does not have to Litigate:

Small retailers need Congress to act, because only through passage of S. 2152

will small retailers get the advantages – and protections – of a mandatory collection system. After so many years into the streamlining of state sales tax systems, some states may assert that they have overcome the *Quill* restriction on their right to collect from out-of-state sellers. After investing years in supporting the effort of the streamlined process, retailers deserve the CERTAINTY and RULES that only an Act of Congress can provide to ensure a free flow of goods and fair tax collection across state lines.

(3) State Borders Should Not Matter for Sales and Use Tax Collection:

If S.2152 becomes law, states still decide what they tax and at what rate, but definitions are uniform and complicated rules and procedures are eliminated. For small retailers like me, I can then grow my business with certainty about the limited rules that vary among the states, I can choose to completely outsource my tax collection responsibilities, or I can finally get reimbursed for my costs of collection. States and business both win.

Conclusion.

As a small retailer and member of the National Retail Federation Board of Directors, I support S. 2152, and urge this subcommittee and the full Senate Finance Committee to pass this important business legislation in 2006. As retail assumes that the sales tax is both a significant, viable and the least offensive source of state and local government revenue, the administrative rules for sales and use tax collectors should be the same. The most feasible collector of this

consumption tax is the retailer, who with the help of modern technology, will now know with certainty what is taxed, and at what rate, regardless of which venue is used to complete the sale. Likewise, retailers believe the numerous benefits of S. 2152 can better be provided by a uniform legislative solution rather than the narrow interpretation of some courts. Small retailers need legislative certainty and the same set of tax collection rules across state lines if we hope to have a chance to compete with both big and small, catalogue and online sellers.

Mr. Chairman, I appreciate the invitation to come and address you and the committee members on the merits of S. 2152, and to specifically endorse action by Congress to modernize state sales tax systems.

Thank you for your kind attention.

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