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Floor Statement of Senator Max Baucus (D-Mont.)
Regarding the Problems with the Internet Sales Tax Bill
As prepared for delivery

This bill will hurt small businesses – not just in Montana, New Hampshire, and Oregon, but all across the country.

This bill will let one state go after businesses in another state. This bill could give any state the right to make businesses across the country collect sales taxes for that state when selling products online. Therefore, businesses could be forced to spend their time and money collecting taxes for states across the country with no benefit to them.

And I am again repeating here that this bill has not been through regular order. The Finance Committee has not had a chance to improve this bill or address the many unanswered questions about this provision. The floor is no place to make this bill work.

Years of work have been put into the issue of state sales taxes. I commend Senators Durbin and Enzi for that. But, unfortunately, that work is not reflected in the bill on the floor today.

For years, the concept of allowing states to require out-of-state sellers to collect sales taxes on their behalf was done through a compact known as the Streamlined Sales and Use Tax Agreement.

After over a decade of work on Streamline, only 24 states adopted the required simplification measures. The remaining states refused to join the compact because they didn't want to meet the requirements for simplification.

To break the log jam, Senator Enzi introduced the Marketplace Fairness Act in November 2011. This new bill is nothing like Streamline.

This new bill says that a state can require out-of-state sellers to collect sales taxes on their behalf simply by meeting six or so "simplification" requirements. But these simplification requirements were ones chosen that the states could easily – or already – meet. They are window dressing.

First, the bill says that a state must provide software free of charge that calculates sales taxes due.

What that means to the business owner is 45 different pieces of software. What kind of software is it going to be? Could it be a single Microsoft excel file buried deep in a state's website? How would a business make this software workable? The bill does not say.

Let's say a business thinks that the software provided by a state isn't good enough -- that it isn't workable. Well, now this business will be forced to go to court in that state and prove that the state didn't meet the simplification requirements! What kind of fees, not to mention time, is that going to take?

A business will have to purchase software or services from a private company to collect sales taxes owed for multiple states. This won't be free. Businesses will also have to pay for the ongoing service of collecting and filing taxes.

Second, one of the most confusing issues a business ever faces with state tax issues is whether it has what is called "nexus." In tax jargon, that means sufficient connection to the state. If the business has nexus, it has to collect sales taxes on sales into the state right now -- whether or not the Marketplace Fairness Act is passed.

This bill does nothing to solve the confusion on nexus. Even if it passes, businesses will still grapple with the issue of whether they have nexus or not in other states. Why does this matter? This matters because the bill sets up rules only for those out-of-state sellers with no nexus, termed the "remote sellers."

Does this sound complicated yet? That's because it is!

This bill creates one set of rules for sellers that have nexus prior to the Marketplace Fairness Act, and one set of rules for remote sellers. What does the small business owner do who isn't sure where her business falls? Get it wrong, and that business may be exposed to additional penalties.

Third, even if the business is clearly a "remote seller," the so-called simplification requirements are in no way simple. Streamline, the compact that was worked out between the 24 states, was book-length. Here, instead, the bill is 11 pages long. The bill sponsors have thoroughly compromised with a hundred different factions on this, and what they come up with may look simple on the outside, but it's total chaos underneath.

Remember, too, that a business still could be forced to file sales tax returns in 50 different jurisdictions. Some of these returns are due monthly. And a business will be subject to all those different jurisdictions' definitions of what is or is not taxable. In addition, small businesses will be exposed to audit, collection, and enforcement by 50 different states.

This bill carves out businesses with less than \$1 million in remote sales. That threshold is too low. Retailers have notoriously low profit margins and small businesses can easily surpass that threshold with sales.

In committee, we could actually look at data to see what makes sense. We could bring experts in to talk about what a real small seller exception should look like -- rather than arbitrarily pick a low number.

I know that Senator Durbin has invited Senators to come down to the floor and offer amendments. Other Senators are offering amendments on different state tax issues, such as the Internet Freedom Act.

The floor is not the right place to mark up a complicated statute, let alone tack additional legislation onto the bill. This bill needs to be reviewed in a comprehensive, thoughtful manner through regular order.

I repeat: this bill is not thought through. It is bad for Montana. It is bad for small businesses.

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