

STATE SUPPORT OF FEDERAL ACTION

There are several recent examples of states supporting federal action in the state tax arena. These include the Mobile Telecommunications Sourcing Act, the Prevent All Cigarette Trafficking Act, and the Marketplace Fairness Act.

Covered	Legislation or Code Section	Date Enacted
Wireless telecommunications services	Mobile Telecommunications Sourcing Act; Pub. L. 106-252.	1983 (withholding); 2000 (liability)
Remote sellers of cigarettes and smokeless tobacco	Prevent All Cigarette Trafficking Act (PACT Act); 15 USCA §§ 375, 376a, 377, 378; 18 USCA § 1716e.	1994, formerly Sec. 1512
Remote sales	Marketplace Fairness Act of 2013 (S. 743)	Passed Senate, currently pending in House Judiciary Committee

Mobile Telecommunications Sourcing Act

The Act was the direct result of a collaborative effort between state and local organizations and the wireless telecommunications industry to simplify the taxation of wireless telecommunications services. The Act implemented a method assuming all wireless calls are sourced to a subscriber's place of primary use (either residential or business address), allowing such place to be the tax jurisdiction for the calls regardless of where they originate, terminate or pass through. This Act simplified the administrative burden caused by the "two-out-of-three test" in *Goldberg v. Sweet* (origination, termination, and in-state service address).¹

The House Judiciary Committee deemed the sourcing provisions in the Act appropriate, finding that the "substantial nexus" prong of the analysis is satisfied because the taxing jurisdiction is the place where the contractual obligation arises which allows the customer to make the call which originates and terminates elsewhere."² **The Committee found constitutional authority for the legislation under the Commerce Clause.**³

The National Governors Association has cited the Mobile Telecommunications Sourcing Act as "the model for states and industry working together to solve complex state tax issues . . . to resolve the questions of when and how states could tax mobile phone service."⁴

Prevent All Cigarette Trafficking Act (PACT) Act

The PACT Act requires, among other things, for Internet and other mail-order sellers of cigarettes and smokeless tobacco to pay all applicable federal, state, and local taxes and affix related tax stamps before delivering cigarettes or smokeless tobacco to any customer. The National Conference of State Legislatures supported the PACT Act because “[i]llegal interstate, tribal and internet sale of tobacco products . . . has a particularly negative effect on state revenues.”⁵ Tenth Amendment constitutional claims against this Act have been raised and dismissed.⁶

Marketplace Fairness Act of 2013

If a state is a member of the Streamlined Sales and Use Tax Agreement or meets certain minimum simplification requirements, this Act would grant the state the authority to compel remote sellers to collect sales tax, as a state may currently require retailers with an in-state presence. Numerous state and local government bodies and their representatives have stated their support for this legislation. For example, the National Governors Association has voiced its support, stating that it is committed to the “goal of ensuring that Main Street retailers compete on a level playing field with remote vendors,”⁹ and that this legislation “is simply about the collection of sales and use taxes already owed.”¹⁰ Likewise, the National Conference of State Legislatures has endorsed the Marketplace Fairness Act of 2013.¹¹ The Multistate Tax Commission supports federal legislative action in this area, as well as other state efforts to address remote sales tax collection.¹²

Notes & Citations

¹ 488 U.S. 252 (1989).

² H.R. REP. NO. 106-719, at 9 (1990).

³ *Id.* at 12.

⁴ Letter from Dan Crippen, NGA to Lamar S. Smith, Chairman, Committee of Judiciary, U.S. House of Representatives and John Conyers, Jr., Ranking Member, Committee on the Judiciary, U.S. House of Representatives (June 28, 2012), available at <http://nga.org/cms/sites/NGA/home/federal-relations/ngaletters/executive-committee-letters/col2-content/main-content-list/june-28-2012-letter---digital-go.html>.

⁵ Committee on Health, National Conference of State Legislatures, http://www.ncsl.org/documents/standcomm/schealth/InterstateandInternetTobaccoSales_July2012.pdf.

⁶ See *Gordon v. Holder*, 826 F.Supp.2d 279 (D.C. Dist. Ct. 2011).

⁷ Letter from Raymond C. Scheppach, NGA to Commissioner Jerry Johnson, Chair, Streamlined Sales Tax Governing Board (March 1, 2010), available at http://nga.org/cms/sites/NGA/home/federalrelations/nga-letters/executive-committee-letters/col2-content/main-content-list/title_march-1-2010-1.html.

⁸ Press Release, National Governors Association, Marketplace Fairness Does Not Violate Tax Pledge (April 25, 2013), available at <http://nga.org/cms/sites/NGA/home/news-room/news-releases/2013-newsreleases/col2-content/marketplace-fairness-does-not-vi.html>.

⁹ Press Release, National Conference of State Legislatures, NCSL Announces Support for Marketplace Fairness Act of 2013, Calls on Congress to Pass, available at <http://www.ncsl.org/press-room/ncslsupport-for-marketplace-fairness-act.aspx>.

¹⁰ Multistate Tax Commission, 2012 Statement of Application to Legislative Activity of the 112th Congress, available at http://www.mtc.gov/uploadedFiles/Multistate_Tax_Commission/Committees/Executive_Committee/Scheduled_Events/45th_Annual_Meetings/2012StatementofApp.pdf.