

To: House (and Senate) Republicans

From: The Marketplace Fairness Coalition

Subject: What eBay, Heritage & ATR Aren't Telling You Today

Date: May 22, 2013

There they go again....in the last 24 hours, eBay CEO John Donahoe and his surrogates at [The Heritage Foundation](#) and [Americans for Tax Reform](#) have once again cherry-picked information and withheld key facts regarding the *Marketplace Fairness Act*.

Interestingly, none of these organizations have disputed the three recent facts check documents that our Coalition has issued in response to their many irresponsible claims. You can read each of them [here](#), [here](#) and [here](#).

Instead, Heritage last night attacked [four well-known conservative organizations](#) that support passage of MFA and a level playing field for all businesses. The crux of Heritage's argument stands on the 1992 Quill Supreme Court decision, which they claim "*has worked well.*"

Unfortunately, Heritage once again ignores the key fact that in it's opinion the Court made clear that only Congress – and not the courts – can establish the rules of interstate commerce. Moreover, the Quill decision involved old-fashioned pen- and-paper catalog sales -- not Internet sales -- so today's multi-billion dollar online markets were not under consideration in Quill.

That is why no less a conservative authority than the late William F. Buckley [wrote](#) in 2001, "*If the advantage of tax-free Internet commerce marginally closes out local industry, reforms are required.*"

Heritage also echoed the rhetoric from eBay CEO John Donahoe who, in a blast email to all eBay customers this week, claimed that the *Marketplace Fairness Act* would create "*an unfair tax burden*" for small businesses, which, in turn, "*will impact online shoppers.*"

Yet, both Heritage and eBay purposefully withheld the key fact that more than 99 percent of all online sellers will not be affected by this legislation in any way because of the small business exemption included in the bill.

The continued refusal by both eBay and Heritage to acknowledge this basic fact should cause everyone to wonder why they continue to scare and mislead the 99 percent at the expense of protecting the top one percent — and eBay's own bottom line.

eBay and Heritage also repeat their false claims that the legislation would increase small business costs, including potential audits.

Either they're not familiar with the language of the MFA themselves, or, more likely, they're hoping you're not.

The legislation specifically requires states to provide sellers with free software that calculates the sales tax due at the time of filing and files sales tax returns. And, the bill specifically limits the liability of sellers using the state-provided software. As Donahoe himself [admitted](#) to the *Wall Street Journal* in a moment of unguarded candor recently, "*levying and collecting the taxes would be a matter of software upgrades.*"

Finally, Americans for Tax Reform is out with a blog post this morning that takes issue with a May 20th *Wall Street Journal* article, "[States Bank on Online Sales Tax.](#)"

Not surprisingly, ATR only focuses its response on the plans put forward by Virginia and Maryland, and leaves out the plans proposed by Wisconsin and Missouri, which were also cited by the *Wall Street Journal*.

It's clear ATR is hoping you will ignore Governor Scott Walker's strong support for closing this online tax loophole because it undercuts a key red herring argument that ATR and others have put forward.

Contrary to ATR's claims that states just want to spend this money, Governor Walker [made clear last week](#) that he'd like to use it to cut the income taxes of Wisconsin families. And Missouri lawmakers also recently approved a budget that includes a half-percentage point income-tax cut -- if Congress approves the online sales-tax measure -- that would return to taxpayers an estimated \$300 million to \$350 million.

Needless to say, it's odd to watch a self-described pro-taxpayer organization like ATR vehemently oppose a measure that would lead to tax cuts for families in states like Wisconsin and Missouri.

Regardless, this is the bizarre and unfortunate situation we find ourselves in today where organizations like Heritage and ATR are doing eBay's bidding and misleading the public on this issue.

Fortunately, a broad coalition of sellers, states, and municipalities from across the country, as well as a strong bipartisan majority in the U.S. Senate and Governors in both parties, recognize that the time has come to pass this bipartisan compromise legislation that would level the playing field and restore fairness to the marketplace.

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