

To: House (and Senate) Republicans

From: The Marketplace Fairness Coalition

Subject: Setting the Record Straight on the Marketplace Fairness Act

Date: May 21, 2013

As a coalition representing thousands of Americans businesses—both online and offline—in all 50 states and the District of Columbia, we have been committed to correcting the public record regarding the many misstatements from opponents of the Marketplace Fairness Act.

You can see our previous “fact checks” on eBay and Americans for Tax Reform, [here](#) and [here](#).

We remain open to any ideas for strengthening or otherwise improving this legislation so long as the ultimate goal of restoring states rights and leveling the playing field for all businesses is achieved.

As recent events have shown, the intellectual integrity that the Heritage Foundation has stood for has recently been put in question and as this legislation moves through regular order in the House, we wanted to provide you with our latest fact sheet regarding false claims made by the Heritage Foundation on MFA.

Setting the Record Straight On The Heritage Foundation

HERITAGE MYTH #1: MFA is Taxation Without Representation

- *Our nation was born from the idea of "no taxation without representation"—that citizens should not be taxed by governments in which they have no political voice. Yet now lawmakers in Washington want to overturn that bedrock principle in order to extract more revenues from American consumers.*
<http://online.wsj.com/article/SB10000872396390444226904577559414267708728.html>

THE FACTS:

- MFA would allow states to collect taxes currently owed from consumers at the point of purchase. Opponents often try to confuse the issue by making it seem like the business is paying the tax, when it is the consumer who actually owes and pays the sales tax.

- This tax is already owed so it actually alleviates the burden on consumers to calculate and remit this tax themselves – a backward and confusing process – but which they are already required to do by law.
- The non-partisan Congressional Budget Office (CBO) [reiterated last month](#) that this legislation will have zero effect on federal revenue.

HERITAGE MYTH #2: MFA Will Harm “Small Businesses”

- *“But not all businesses are signing on to this new scheme. Etsy, an e-commerce hub where individuals can sell handmade items such as arts and crafts, warned yesterday that the legislation would ‘unnecessarily burden small businesses.’ Most Etsy sellers work from home and don’t have the administrative resources to comply with the law.”* (<http://blog.heritage.org/2013/04/23/internet-sales-tax-overstock-ceo-explains/>)

THE FACTS:

- The MFA specifically protects truly small businesses by including a \$1 million exemption on remote sales. To put this in perspective, over 99 percent of all online sellers will not be affected by this legislation in any way. Not surprisingly, Heritage, eBay, Etsy and others who posit this red herring argument have not been able to dispute this fact. In contrast, every brick-and-mortar retailer must collect on the first dollars of sales as a basic part of doing business.
- Additionally, for the less-than-one-percent of online sellers who fall under MFA, the legislation requires each state to provide [free tax software](#) that will allow them to quickly and efficiently calculate, collect and remit sales tax. The MFA also includes liability protections for sellers and limits against audits.

HERITAGE MYTH #3: Collecting Sales Taxes Is Too Complex

- *According to the Tax Foundation, there are 9,646 tax jurisdictions in the United States, creating the kind of complexity that would frighten any small business. “How can we possibly know the tax rates in [those] jurisdictions?” said Overstock.com CEO Patrick Byrne. “In one jurisdiction, cotton candy is food; in another it’s entertainment or candy.”* (<http://blog.heritage.org/2013/04/23/internet-sales-tax-overstock-ceo-explains/>)

THE FACTS:

- You don't need to take our word on this one – as eBay CEO John Donahoe even admitted to the *Wall Street Journal* recently, *“levying and collecting the taxes would be a matter of software upgrades.”*
- Mr. Donahoe is correct - software is available in the marketplace today that makes it easy for sellers to calculate any state's sales tax with a simple click-of-the-button. And again, the *Marketplace Fairness Act* requires states to provide such software to businesses free-of-charge.

HERITAGE MYTH #4: MFA Will Threaten The Economy

- *Executive Director Steve DelBianco said NetChoice opposes the bill because of its incredibly complex sales tax regimes that threaten a fragile economic recovery.* (<http://blog.heritage.org/2013/04/23/internet-sales-tax-overstock-ceo-explains/>)

THE FACTS:

- Again, you don't need to take our word for it. In a recent op-ed for the *Wall Street Journal*, noted conservative economist Arthur Laffer predicted the exact opposite, writing that failure to level the playing field will hurt economic growth:
 - *“In-state retailers collect sales taxes at the time of purchase. When residents purchase from retailers out of state (including over the Internet) they are supposed to report these purchases and pay the sales taxes owed—which are typically referred to as a “use tax.” As you can imagine, few people do. The result is to narrow a state's sales-tax base. It also leads to several inefficiencies that, on net, diminish potential job and economic growth. Exempting Internet purchases from the sales tax naturally encourages consumers to buy goods over the Web; worse, the exemption incentivizes consumers to use in-state retailers as a showroom before they do so. This increases in-state retailers' overall costs and reduces their overall productivity.”* (Arthur B. Laffer, “Tax Internet Sales, Stimulate Growth,” *The Wall Street Journal*, 4/17/13)

HERITAGE MYTH #5: Small Businesses Will Be Audited

- *Small online retailers like the business that just wants to sell Virginia ham and peanuts to hungry customers around the country would be smothered by the*

cost of complying with so many sales taxes. Not to mention that they would be subject to time-consuming and expensive audits from 46 sales tax states, the District of Columbia, U.S. territories and possessions, Puerto Rico, and Native American tribes. (<http://blog.heritage.org/2013/05/07/senate-passes-marketplace-fairness-act-real-battle-to-be-in-the-house/>)

THE FACTS:

- Again, over 99 percent of all online sellers will not be affected by this legislation in any way. Beyond that, this false claim ignores the language of the bill. As we noted above, this legislation 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 also specifically limits the liability of sellers using the state-provided software.

HERITAGE MYTH #6: Conservatives Do Not Support MFA

- *“The Internet sales tax passed the Senate, but a growing chorus is pointing out that it would hurt many to help the tax man.” (<http://blog.heritage.org/2013/05/13/morning-bell-the-ugly-facts-about-the-internet-sales-tax/>)*

THE FACTS:

- Top Conservatives in both the House & Senate are on the record supporting the Marketplace Fairness Act including Senators Deb Fischer, Dan Coats, Richard Burr, Jeff Sessions, John Thune and Rob Portman are on record supporting the *Marketplace Fairness Act*, and it enjoys strong support from conservatives in the House including Mike Conaway (TX), Dennis Ross (FL), Austin Scott (GA), Scott Rigell (VA) Tim Griffin (AR), Mark Amodei (NV), Kristi Noem (SD), and Renee Elmers (NC).
- Additionally, this effort also enjoys support from leading conservative voices, including the American Conservative Union, The 60 Plus Association, columnist Charles Krauthammer, and economist Arthur Laffer who is the father of supply-side economics.
- Finally, it enjoys strong support from top Republican Governors across the country including Indiana’s Mike Pence, Iowa’s Terry Branstad, New Jersey’s Chris Christie and most recently, Wisconsin Governor Scott Walker [who pledged to](#) use sales tax money to help lower his state’s income tax.

HERITAGE MYTH #7: MFA Has Been “Rushed Through” Congress

- Yet the Senate rushed this bill through. Americans for Tax Reform’s Grover Norquist said the rush itself was one of the reasons the Internet sales tax made it this far. “It’s only passing the Senate because they took it out of regular order,” he said. “Why did they want to rush it through without amendments? Why did they do that? Because if people looked at it too long, it wouldn’t pass easily.” (<http://blog.heritage.org/2013/04/23/internet-sales-tax-overstock-ceo-explains/>)

THE FACTS:

- As the late William F. Buckley, editor-at-large of National Review, first wrote [almost a dozen years ago](#) in support of a fair and level retail playing field – “*If the advantage of tax-free Internet commerce marginally closes out local industry, reforms are required.*” And Republican Senator Mike Enzi (R-WY) has also noted repeatedly on the Senate floor that he has been working on this issue for a dozen years.
- Most recently, a bipartisan group of 10 Senators again introduced the MFA almost 18 months ago where it sat blocked in the Senate Finance Committee by Democrat Chairman Max Baucus who ignored several requests to hold a markup in 2012.
- Going back to 1997, the Marketplace Fairness Act and previous related legislation has had more than 30 hearings in both the House and Senate. Most recently, Senate hearings were held on April 25, 2012 in the Finance Committee and on August 1, 2012 in the Commerce, Science and Transportation Committee. The House Judiciary Committee held hearings on November 30, 2011 and again on July 24, 2012.
- Nonetheless, the Marketplace Fairness Coalition has expressed its support for regular order and a thorough review of this legislation beginning with another hearing in the House Judiciary Committee.

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