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## 1 House Memorial

2 A memorial to the Congress of the United States,  
3 urging the United States House of Representatives to  
4 support passage of the Marketplace Fairness Act of  
5 2013.

6  
7 WHEREAS, in 1967, the Supreme Court of the United States  
8 ruled in *National Bellas Hess v. Illinois Department of Revenue*,  
9 386 U.S. 753 (1967), that a state may not require collection of  
10 a sales and use tax on the sale of goods by out-of-state sellers  
11 that have no physical presence in the taxing state, and

12 WHEREAS, states have consequently been unsuccessful at  
13 enforcing their own sales and use tax laws on sales by out-of-  
14 state, catalog, and online sellers, and

15 WHEREAS, in 1992, the Supreme Court of the United States  
16 acknowledged in *Quill Corp. v. North Dakota*, 504 U.S. 298  
17 (1992), that the United States Congress may confer upon the  
18 states the authority to require out-of-state sellers to collect  
19 sales and use taxes on these remote sales, effectively  
20 overruling *Bellas Hess*, stating that "Congress is now free to  
21 decide whether, when, and to what extent the states may burden  
22 interstate [commerce] with a duty to collect use taxes," and

23 WHEREAS, the United States Congress has been debating  
24 solutions for more than two decades, forcing some states to take  
25 action, leading to greater confusion and distortion of the  
26 marketplace, and

27 WHEREAS, since 1999, state legislators, governors, local  
28 elected officials, state tax administrators, and representatives

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29 | of the private sector have worked to modernize tax collections,  
30 | promote e-fairness, and develop a Streamlined Sales and Use Tax  
31 | Collection System for the 21st Century, and

32 |       WHEREAS, between 2001 and 2002, 35 states, including  
33 | Florida, enacted legislation expressing the intent of the state  
34 | to simplify its sales and use tax collection system and to  
35 | participate in multistate discussions to finalize and ratify an  
36 | interstate agreement to streamline the collection of state sales  
37 | and use taxes, and

38 |       WHEREAS, on November 12, 2002, these states unanimously  
39 | ratified the Streamlined Sales and Use Tax Agreement, which  
40 | substantially simplifies state and local sales tax systems,  
41 | removes the burdens to interstate commerce which were of concern  
42 | to the Supreme Court, and protects state sovereignty, and

43 |       WHEREAS, this agreement, resulting from a cooperative  
44 | effort of 44 states, the District of Columbia, local  
45 | governments, and the business community to simplify sales and  
46 | use tax collection and administration by retailers and states,  
47 | minimizes costs and administrative burdens on retailers,  
48 | particularly retailers operating in multiple states; encourages  
49 | "remote sellers" selling over the Internet and by mail order to  
50 | collect tax on sales to customers living in states that have  
51 | ratified the agreement; levels the playing field so that local  
52 | "brick-and-mortar" stores and remote sellers are able to operate  
53 | under the same rules; and ensures that all retailers can conduct  
54 | their business in a fair, competitive environment, and

55 |       WHEREAS, the Streamlined Sales and Use Tax Agreement  
56 | provides the states with a blueprint to create a simplified

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57 sales and use tax collection system that, when implemented,  
58 allows justification for the United States Congress to overrule  
59 *Bellas Hess* under its federal Commerce Clause powers, and

60 WHEREAS, Arkansas, Georgia, Indiana, Iowa, Kansas,  
61 Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey,  
62 North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island,  
63 South Dakota, Tennessee, Utah, Vermont, Washington, West  
64 Virginia, Wisconsin, and Wyoming have passed legislation to  
65 conform to the Streamlined Sales and Use Tax Agreement, and  
66 conforming legislation has been recently introduced in Texas,  
67 Massachusetts, Florida, Illinois, Virginia, Missouri, Maine,  
68 California, and Hawaii, and

69 WHEREAS, of the 44 states engaged in the effort to simplify  
70 sales and use tax collection and administration, 24 states, with  
71 a total population of 92,781,860 and representing 33 percent of  
72 the country's population, have passed conforming legislation,  
73 and

74 WHEREAS, on average, states depend on sales and use taxes  
75 for 20 percent of their annual revenue, and, therefore, at a  
76 time when state budgets are increasingly under pressure,  
77 Congress should give states the ability to enforce their own  
78 laws, and

79 WHEREAS, computing capabilities have advanced significantly  
80 in recent years, thereby relieving some state merchants of the  
81 otherwise overwhelming burden of assessing the taxes owed to  
82 individual states and local jurisdictions, and

83 WHEREAS, the need for modernization is evidenced by the  
84 exponential growth of total e-commerce sales by an estimated 300

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85 percent from \$1 trillion in 1999 to \$4 trillion in 2012, and  
86 WHEREAS, the nationwide total revenue loss to the states,  
87 which is expected to rise while states lack the authority to  
88 require out-of-state sellers to collect sales and use taxes on  
89 remote sales, is estimated to have been as much as \$56.3 billion  
90 from 2007 to 2012, and

91 WHEREAS, this estimated revenue loss may have cost Florida  
92 hundreds of millions of dollars to several billions of dollars  
93 per year in lost tax revenue, with some estimates indicating  
94 losses to the state of as much as \$3.9 billion from 2007 to  
95 2012, and

96 WHEREAS, local Florida retailers who make sales at their  
97 Florida stores experience a tax inequity under the de facto  
98 sales tax exemption for Internet and mail order sales because  
99 these traditional "brick and mortar" businesses on our "main  
100 streets" must apply and collect sales tax, while out-of-state  
101 sellers having no physical presence in this state do not, and

102 WHEREAS, there exists an unfair "digital divide" under  
103 which higher-income households are much more likely to have the  
104 resources to own a computer, have Internet access, and have a  
105 credit card to make de facto exempt, remote purchases, while  
106 low-income consumers without the resources to shop online or by  
107 mail, who are consigned to shopping in local stores, bear more  
108 than their fair share of state sales tax collections, and

109 WHEREAS, thousands of businesses are forced to do business  
110 at a competitive disadvantage because they have to collect taxes  
111 that online sellers do not, which in some states can mean a 5 to  
112 10 percent price advantage, and

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113 WHEREAS, consumers are required under state laws to pay  
114 sales and use taxes on the goods they purchase, but online  
115 sellers simply are not required to collect the tax in the same  
116 way that local businesses do, which more often than not puts  
117 local businesses at a disadvantage and can lead to consumers  
118 being audited and charged with penalties for failing to pay  
119 sales and use taxes, and

120 WHEREAS, all too often states are unable to enforce this  
121 tax collection requirement or unwilling to enforce such  
122 requirement due to policy considerations concerning the privacy  
123 of individuals, and

124 WHEREAS, small-volume sellers should be protected from any  
125 new collection requirements and accorded an exemption if they  
126 sell less than \$500,000 in online sales annually, and

127 WHEREAS, on April 16, 2013, the Marketplace Fairness Act,  
128 filed as S.743, was introduced in the 113th Congress by Senator  
129 Michael B. Enzi of Wyoming to authorize each member state under  
130 the Streamlined Sales and Use Tax Agreement to require all  
131 sellers not qualifying for a small-seller exception to collect  
132 and remit sales and use taxes with respect to remote sales and  
133 allow a state that is not a member state under the agreement to  
134 require sellers to collect and remit sales and use taxes with  
135 respect to remote sales sourced to such state if the state  
136 adopts and implements certain minimum simplification  
137 requirements, and

138 WHEREAS, the United States Senate passed the Marketplace  
139 Fairness Act on May 6, 2013, by a vote of 69-27, and the  
140 President has indicated that he would sign the legislation, and

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141 WHEREAS, the United States House of Representatives should  
 142 pass legislation allowing states to enforce their existing sales  
 143 and use tax laws and to treat similar sales transactions  
 144 equally, without regard to the manner in which the sale is  
 145 transacted, and the right to collect or decide not to collect  
 146 taxes already owed under state law, and

147 WHEREAS, the present lack of state authority threatens the  
 148 continued ability of states that are dependent on such revenue  
 149 to rely on sales and use taxes as a stable revenue source for  
 150 state and local governments, and

151 WHEREAS, Florida is resolved to modernize and address the  
 152 complexities of the current sales and use tax collection system,  
 153 and

154 WHEREAS, Internet-based commerce continues to grow, and  
 155 states will be unable to collect billions in revenue unless the  
 156 United States House of Representatives acts, NOW, THEREFORE,

157  
 158 Be It Resolved by the Legislature of the State of Florida:

159  
 160 That the United States House of Representatives is urged to  
 161 pass the Marketplace Fairness Act of 2013 or similar legislation  
 162 that allows each state to enforce its existing sales and use tax  
 163 laws, treating similar sales transactions equally without regard  
 164 to the manner in which the sales are transacted; permits each  
 165 state to collect or forfeit the collection of taxes already owed  
 166 under state law; and authorizes each state that ratifies the  
 167 Streamlined Sales and Use Tax Agreement to require out-of-state  
 168 sellers to collect and remit its sales and use tax.

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169 | BE IT FURTHER RESOLVED that copies of this memorial be  
170 | dispatched to the President of the United States, to the  
171 | President of the United States Senate, to the Speaker of the  
172 | United States House of Representatives, and to each member of  
173 | the Florida delegation to the United States Congress.