

House Resolution 1089

By: Representatives Powell of the 171st, England of the 116th, Harrell of the 106th, Blackmon of the 146th, Kelley of the 16th, and others

A RESOLUTION

1 Urging the United States Congress to pass the federal "Marketplace Fairness Act" in support
2 of equity and sales tax fairness; and for other purposes.

3 WHEREAS, United States Supreme Court decisions in *National Bellas Hess v. Department*
4 *of Revenue*, 386 U.S. 753 (1967), and *Quill Corp. v. North Dakota*, 504 U.S. 298 42 (1992),
5 require a seller to have physical presence in a taxing state before the state may require the
6 seller to collect and remit sales and use taxes on transactions that occur within that state; and

7 WHEREAS, the United States Supreme Court also declared in the *Quill Corp. v. North*
8 *Dakota* decision that Congress could exercise its authority under the commerce clause of the
9 United States Constitution to decide "whether, when, and to what extent" the states may
10 require sales and use tax collection and remittance on remote sales; and

11 WHEREAS, states and localities that use sales and use taxes as a revenue source may not
12 collect revenue from some portion of remote sales commerce; and

13 WHEREAS, since 1999, various state legislators, governors, local elected officials, state tax
14 administrators, and representatives of the private sector have worked together to develop a
15 streamlined sales and use tax system currently adopted in some form in 24 states, including
16 the State of Georgia, under the Streamlined Sales and Use Tax Agreement; and

17 WHEREAS, between 2001 and 2002, 40 states enacted legislation expressing their intent to
18 simplify the states' sales and use tax collection systems and to participate in discussions to
19 allow for the collection of states' sales and use taxes; and

20 WHEREAS, the actions of these states provide justification for Congress to enact legislation
21 to allow states to require remote sellers to collect the states' sales and use taxes; and

22 WHEREAS, any federal legislation should be fair to both in-state and remote sellers and
23 purchasers, whether such legislation requires sales and use taxes to be collected on a point
24 of sale or point of destination basis; and

25 WHEREAS, Congress, in considering federal legislation, should consider the following
26 principles and ideas: tax audit accountability to a single state tax audit authority, elimination
27 of interstate tax complexity by streamlining taxable good categories, and fair compensation
28 to the tax collecting retailer; and

29 WHEREAS, the Georgia General Assembly and other state legislatures have acknowledged
30 the complexities of the current sales and use tax system, formulated varied alternative
31 collection systems, and shown the political will to make changes in their respective sales and
32 use tax systems; and

33 WHEREAS, the enactment of legislation by Congress that allows states to require remote
34 sellers to collect the states' sales and use taxes will facilitate the states' ability to enforce their
35 current laws for collecting sales and use taxes on remote sales; and

36 WHEREAS, requiring remote sellers to collect sales and use taxes will surely broaden
37 Georgia's sales and use tax base and potentially enable the Georgia General Assembly to
38 lower Georgia income taxes for Georgia citizens; and

39 WHEREAS, empowering states to collect sales and use taxes on in-state and remote sales
40 is consistent with the Tenth Amendment to the United States Constitution and is a states'
41 rights issue; and

42 WHEREAS, adoption of hybrid origin sourcing provisions in legislation enacted by Congress
43 will accomplish the following: create an uneven playing field between in-state and remote
44 sellers by giving an advantage to those remote sellers located in the lowest rate state, result
45 in a tax increase on all purchasers who make purchases from remote sellers located in any
46 taxing jurisdiction with a rate higher than the rate in the purchaser's jurisdiction, require
47 purchasers to pay sales or use tax on certain purchases from remote sellers that are currently
48 exempt from sales and use tax, require sellers that make both remote and nonremote sales to
49 have two tax calculation systems operating simultaneously, put the sales and use tax revenues
50 of a state that are generated by remote sales into the hands of the other states, and likely
51 cause the sales and use revenues to decline as sellers and purchasers develop methods to
52 legally circumvent paying sales and use taxes.

53 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES that
54 the members of this body urge the United States Congress to pass, without delay, and the
55 President of the United States to sign the federal "Marketplace Fairness Act" to provide for
56 the fair and constitutional collection of state and local sales and use taxes; encourage that,
57 in the passage of this federal legislation, Congress consider the following principles and
58 ideas: tax audit accountability to a single state tax audit authority, elimination of interstate
59 tax complexity by streamlining taxable good categories, and fair compensation to the tax
60 collecting retailer; and affirm that, through passage of this legislation, the United States
61 Congress will foster consistent standards for in-state and remote sellers that are obligated to
62 collect state and local sales and use taxes, providing equal, consistent, and fair treatment
63 among traditional brick and mortar retailers, brick and click retailers, catalogue retailers, and
64 exclusively internet based retailers, and require similarly situated purchasers to pay the same
65 sales and use tax rates, regardless of which type of retailer they make their purchases from
66 and regardless of where that retailer is located.

67 BE IT FURTHER RESOLVED that the Clerk of the House of Representatives is authorized
68 and directed to make appropriate copies of this resolution available for distribution to the
69 Majority Leader of the United States Senate, the Speaker of the United States House of
70 Representatives, the chair and co-chair of the Finance Committee of the United States
71 Senate, the chair and co-chair of the Committee on Judiciary of the United States House of
72 Representatives, and each member from the State of Georgia in the United States Senate and
73 the United States House of Representatives.