

(Commentary, May 6, 2014)

IT'S TIME TO LEVEL THE PLAYING FIELD FOR  
MAIN STREET BUSINESSES

(By Donnie Eatherly)

Small-business owners like myself have for years urged Congress to create a level playing field that will allow us to compete with our online-only competitors. One year ago this week, the Senate overwhelmingly passed legislation that would accomplish this goal, and we're counting on the Republican-led House of Representatives to do the same.

Thanks to an antiquated tax loophole, large out-of-state online retailers can avoid collecting state sales tax on purchases made by residents in my state, which gives them a significant 9.75 percent competitive advantage over traditional brick-and-mortar shops that follow the law and collect those taxes.

To fix this unfair system, a bipartisan group of 69 senators last year passed the Marketplace Fairness Act, a common-sense reform that would ensure all businesses play by the same rules. Unfortunately, the legislation has stalled in the House.

As each week passes with no action, brick-and-mortar businesses continue losing sales to a common practice known as "showrooming," in which customers browse and test items at local stores and then head home to buy them online knowing they will not have to pay state sales tax.

For many small businesses such as mine, every sale counts and losing this revenue hurts our ability to grow our businesses and hire new employees. We cannot wait any longer for a federal solution to this problem.

Main Street business owners are not asking for a handout, and we're certainly not afraid of competition from the big guys. But it simply does not make sense for out-of-state online retailers to enjoy such a big competitive edge over local businesses that give back to their communities.

Despite what some have said about the Marketplace Fairness Act, this is not a new tax, nor does it create any taxes. These taxes are already on the books, and the legislation would simply give states the necessary tools to collect them. As conservative Republican Rep. Steve Womack of Arkansas has said, "It's not new, it's due!"

Not only does this level the playing field for all businesses, but it would also put additional revenues in state coffers to fund vital services such as education and public safety. Importantly, the legislation also includes a \$1 million exemption on remote sales so to put that into perspective, over 99 percent of all online sellers will not be affected by this legislation in any way. In other words, all the mom and pop stores who do business on the Internet don't have to worry about it.

Additionally, for the less than 1 percent of online sellers who will be subject to collecting sales and use taxes under this bill, the legislation requires each participating state to provide free tax software that will allow them to quickly and efficiently calculate, collect and remit sales tax. The proposal also includes liability protections for sellers and limits against audits.

This reform is long overdue, and Main Street businesses cannot wait any longer for help. For those who believe in state's rights and the basic principle of limited government, we should all agree that Washington, D.C., should no longer be in the business of picking winners and losers in the marketplace.

It's time for the House of Representatives to stand up for the small businesses in their districts, follow the Senate's lead and finally pass marketplace fairness.

Mr. DURBIN. So let's get together. We did it in the Senate on a bipartisan

basis, with a big vote—some 69 votes. We can do it in the House of Representatives. Let's get something done this year that is going to help businesses across America be profitable and hire more people, put more folks to work across the United States.

At this time, I yield the floor to my friend from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I want to thank the Senator from Illinois for his excellent explanation. I have been joining him and watching him do that for several years. It would be nice to get this finished.

There are a few things we may not have mentioned that are sometimes raised when people ask me about marketplace fairness. One of them is from small towns. They say: We have to go on the Internet because there is not enough selection in our town and we can get things we cannot buy in town and some of the things we can get at a lower price by going out of town.

I always ask them, when they are figuring that lower price, are they figuring it without sales tax or with sales tax, because it is not truly a lower price if what you are doing is just cheating your local merchant out of the right to collect the sales tax—which he does not get paid for anyway—and submitting it, when the out-of-State retailer does not have to do that.

As to the revenue that companies are voluntarily collecting now—and there are a number of them that recognize it is difficult for everybody to keep track of their purchases, so they voluntarily collect it—the question I have had is, Does that money they voluntarily collect go back to the States? Yes, it absolutely does, and it will work that way under the bill as well. It is not money that you are just sending to wherever you ordered it from. You are sending it to where it was ordered from, and then they are sending it back to States.

That is what these programs the Senator from Illinois mentioned do. They keep track of what State all the purchases were from. Here is how difficult that is. When you call in your order or you do it online, at some point you have to put in an address with a ZIP Code. That ZIP Code is all the program needs in order to be able to assess your tax. That is how those programs are designed. So if you have to give an address, you have to give the ZIP Code. If you have to give the ZIP Code, they already know what the tax is going to be. So there is no difficulty for any size retailer to be able to figure out what the tax is they are supposed to be doing.

Another argument I hear is the online place provides free shipping. I want you to know your local retailer provides free shipping and immediate pickup. Somebody had to pay the shipping on it. It got to the store, and you can pick it up right there, instantly. You do not have to wait 2 or 3 days or

pay a special rate to get it overnight. You can get it right then.

One of the things that is discouraging for retailers is, if you waited on somebody and they got the barcode and they ordered it online and it came in and it was not exactly what they wanted, then they come to you and say: Well, this is the brand you are selling. Won't you take it back?

Let's see, they did not make anything on it, they used a whole bunch of time, and now they want you to put it in your inventory. That is very discouraging.

So think about those local clerks. They are your friends and neighbors who are being hired locally who really depend on a job. If everything gets ordered online, they will not have a job. Your friends will have to move, and you will not have as much selection as you have right now in your local store.

Again, I wish to thank all those who voted for it, all those who have worked on it, and all those who are considering voting for it the next time they get it because I know we have picked up some momentum since we did it last time. There are people who have heard from their communities now who say: Well, I did not vote right last time, but I will get it right next time. I am looking forward to that, and I am looking for the House to finish it and send it to the President.

Thanks again, I say to Senator DURBIN, for his tremendous effort.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

#### MORNING BUSINESS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### CONGRATULATING KEN DUGAN

Mr. REID. Mr. President, I rise today to honor and recognize the career of Ken Dugan, center director of the Sierra Nevada Job Corps. Ken is retiring this month after spending 39 years in the Job Corps program, 36 of which as a center director. Throughout this time, Ken has worked tirelessly to help improve the lives of at-risk teenagers and young adults through vocational and academic training.

When Ken started his first assignment with the San Jose Job Corps in 1975, he never envisioned that almost 4 decades later he would be retiring with the organization. However, Job Corps and its mission soon became a way of life for him. After stints as center director at the San Jose and Hawaii Job Corps centers, we in Nevada were extremely fortunate to have Ken take over as center director for the Sierra Nevada Job Corps, the only Job Corps center in the State. During his 19 years