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Cyber Monday renews push for online sales tax

By Brian LaSorsa - November 26th, 2012

Washington - A handful of politicians are using Black Friday's digital companion as an excuse to renew the push for an online sales tax that many voters oppose.

U.S. Reps. Steve Womack (R-Ark.) and Jackie Speier (D-Calif.) penned an op-ed in Politico Monday calling for voters to support the Marketplace Equity Act of 2011, which corrects an "outdated Supreme Court decision [that] is killing our Main Street businesses."

"Businesses' bottom lines often depend on Black Friday and the retail holidays that follow to provide a boost," they write. "Today, this relic of a Supreme Court decision allows online-only retailers to avoid collecting and remitting sales taxes. These online sellers are given up to a 10 percent price advantage, instead of competing on the price of the product itself."

This implicit acknowledgement that tax breaks benefit Internet retailers, though, has free market economists questioning why the government's solution is upping the rate. Daniel J. Mitchell, a senior fellow at the Cato Institute, is one of those people. "The debate over the Marketplace Fairness Act is not about a level playing field," Mitchell said of similar legislation. "It is an attempt by politicians to grab more tax revenue to facilitate bigger government."

I reported on the details of the MFA back in August and explaining how politicians were able to get away with argumentation based upon states' rights and faulty arithmetic. The latter argument involves the notion that an online sales tax isn't really a new tax because, as Sen. Michael Enzi (R-Wyo.) said at the time, "We are talking about an existing state tax that purchasers already owe."

It's impossible to ignore the fact that government revenue would grow under these plans, though.

"His sentiment . . . is technically true," I wrote. "The MFA adds no new taxes into written law, but, since the proposed legislation would expand the government's enforcement powers, companies and their customers would most certainly be forced to pay more in sales tax."

The Marketplace Equity Act is the same way. And, regarding the recipient of the new-tax-that-isn't, Sens. Womack and Speier believes it's a matter of federalism.

“Small businesses and states alike are suffering, and only Congress has the power to close this loophole,” they write. “By granting states the power to enforce their own laws, MEA levels the playing field between brick-and-mortar businesses and online-only retailers and allows customers, rather than the federal government, to pick marketplace winners and losers.”

However, states’ rights are typically defined as each state’s ability to nullify unconstitutional regulations at the federal level. The MEA, on the other hand, permits states to override each other’s sales tax laws.

“To understand why this is a radical step,” Mitchell added about the MFA, “imagine if you took a trip to Las Vegas and played blackjack, but then got arrested when you returned home because your state doesn't allow gambling.”

I’m not sure if that’s what the U.S. founders had in mind.

Another online sales tax bill, the Main Street Fairness Act, is under debate in the House.