Written Testimony
of
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Hearing on H.R. 1643, the "Digital Goods and Services Tax Fairness Act of 2015"

House Committee on the Judiciary
Subcommittee on Regulatory Reform, Commercial and Antitrust Law

June 2, 2015

Chairman Marino, Ranking Member Johnson, and members of the Subcommittee, thank you for the opportunity to be here today to testify in support of H.R. 1643, the "Digital Goods and Services Tax Fairness Act of 2015 (DGSTFA)." My name is Jot Carpenter and I am the Vice President of Government Affairs for CTIA – The Wireless Association®, though I am here today on behalf of the Download Fairness Coalition (DFC). CTIA is a member of the DFC, a coalition of 29 companies and organizations whose unifying principle is the belief that the Internet economy requires a consistent national framework to guide the way that states and localities exercise their right to tax digital products and services.

For the past four years, DFC has worked with various stakeholders, including state and local taxing authorities, to achieve that objective. H.R. 1643, the product of that effort, is built upon basic principles of fairness for consumers and those that serve as the agents of the various states. Critically, this framework does not mandate any new taxes, and it respects each state's determination for its citizens on how, or if, to tax a digital product. It is a national framework that only Congress can enact, and it will provide the certainty, stability and safeguards needed to keep the digital marketplace a thriving part of our economy.

I would like to commend the bill's lead sponsors, Congressmen Lamar Smith and Steve Cohen, for their continued leadership in working with us to pursue enactment of this legislation.

At its core, H.R. 1643 seeks to accomplish two major objectives. First, it seeks to preclude multiple jurisdictions from claiming the right to tax the same transaction by clearly

identifying one jurisdiction – the customer's home jurisdiction – with the authority to impose taxes on such transaction if it so chooses. Second, it seeks to preclude discriminatory taxation of such commerce to ensure that digital goods and services are taxed at the same rates and under the same rules applicable to other goods and services.

Mobile commerce is transforming the way we conduct business and live our everyday lives. Each of you and your staff is well-versed in the use of the electronic devices that we all carry around each day, including our smart phones, Kindles, iPads, watches and other wearables, and other similar digital devices. As a society, we have become accustomed to downloading and installing "apps" on all of our mobile devices.

Millions of songs, movies, books, apps, and other digital goods are downloaded to our devices every day. In fact, recent statistics show that Apple has received $25 billion in sales from downloaded apps and games since 2008[1] and that over 100 billion apps have been downloaded from the Android and Apple stores since their initial launch.[2] It has also been estimated that the mobile app economy will eclipse $77B by 2017[3], driving significant benefit to our overall economy. America's wireless industry is at the forefront of this multi-billion dollar digital marketplace.

Given the changing nature of the 21st century economy, states and local taxing authorities are in the process of "modernizing" their existing tax structures to reflect these changes by incorporating some or all aspects of the digital economy in their state and local tax base. In fact, there are currently 25 states as well as the District of Columbia and Puerto Rico[4] that are currently taxing some form of the digital economy. However, given the very nature of how digital commerce is transacted over global broadband networks, these goods and services often transcend numerous state and local boundaries and as such are highly susceptible to multiple

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[1] https://www.apple.com/pr/library/2015/01/08App-Store-Rings-in-2015-with-New-Records.html.

[2] http://www.statista.com/statistics/263794/number-of-downloads-from-the-apple-app-store/ and http://www.statista.com/statistics/281106/number-of-android-app-downloads-from-google-play/.

[3] http://www.gartner.com/newsroom/id/2654115.

[4] See Appendix 1.

jurisdictions claiming the right to tax the same transaction. Consequently, consumers may be at risk for several different taxing jurisdictions competing for the right to tax the same transaction, at several different tax rates depending upon where the consumer lives, where the consumer was when the digital good was actually purchased, or where the entity that sold the digital good houses its servers. This uncertainty has the potential to adversely impact both consumers and a fast-growing segment of the U.S. economy, which is why a consistent national framework is needed to establish a fair and rational state and local tax structure applicable to digital commerce.

Fortunately, a solution exists, and it is modeled after the "Mobile Telecommunications Sourcing Act" ("MTSA")[5] enacted by Congress in 2000 after originating in this committee. The MTSA created a national framework establishing how state and local jurisdictions may tax wireless voice services, eliminating the chance of double taxation and simplifying end-user billing statements. The law has been in effect for almost 15 years and has provided significant benefits to wireless consumers, providers and revenue authorities by establishing a uniform, fair and simple system guiding the state and local taxation of wireless services. The DGSTFA offers a similar national framework guiding how generally applicable state and local taxes may be imposed on digital goods and services in a uniform, fair and simple manner. States and localities have neither the ability nor the Constitutional authority to create such a framework on their own; only Congress can establish a national framework providing the protection that consumers and businesses deserve and the guidance that state and local governments need as we continue to evolve toward an Internet-centric economy.

The second part of the legislation seeks to ensure that digital goods and services are taxed no differently than similar, non-digital goods and services through a non-discrimination provision. Unfortunately, the legacy taxation regimes applicable to today's core communication services, often dating back to the rate-regulated utility days of "Ma Bell," impose taxes on these services at rates that are often double the tax rates imposed on other goods and services, making inclusion of the non-discrimination provision critical. These legacy tax structures are cumbersome, regressive, and fail to recognize that communications connectivity is an essential input for every enterprise, large or small, private or public, as well as for every individual that is

[5] P.L. 106-252.

reliant on this technology to always be connected in today's mobile, digital economy. Tax regimes that continue to impose excessive levels of taxation on communications inputs or by extension seek to impose multiple and discriminatory levies on the digital goods and services being delivered over those networks will stifle innovation, limit growth, and thus have no place in today's broadband economy. Had we had the foresight back in 2000 to know how legacy, utility-style communication taxes would extend to wireless services we may have tried to include a similar provision in the MTSA. Unfortunately we did not do that, which is why Reps. Lofgren and Franks continue their dedicated quest to pursue enactment of the Wireless Tax Fairness Act, hoping to prevent further expansion of these onerous legacy taxes to wireless services and, ultimately, those who rely on wireless services. However, we like to think that we live and learn from our experiences and that is why inclusion of this provision in H.R. 1643 is essential.

Importantly, H.R. 1643 will not impose any new taxes or fees on digital transactions. Rather, it simply would establish the "rules of the road" for how state and local taxes may be imposed on digital goods and services, ensuring any such taxes are imposed in a fair and rational manner. The decision to tax or not tax any segment of the digital economy is a decision that is left solely to the discretion of each state, preserving state sovereignty within our Federalist system.

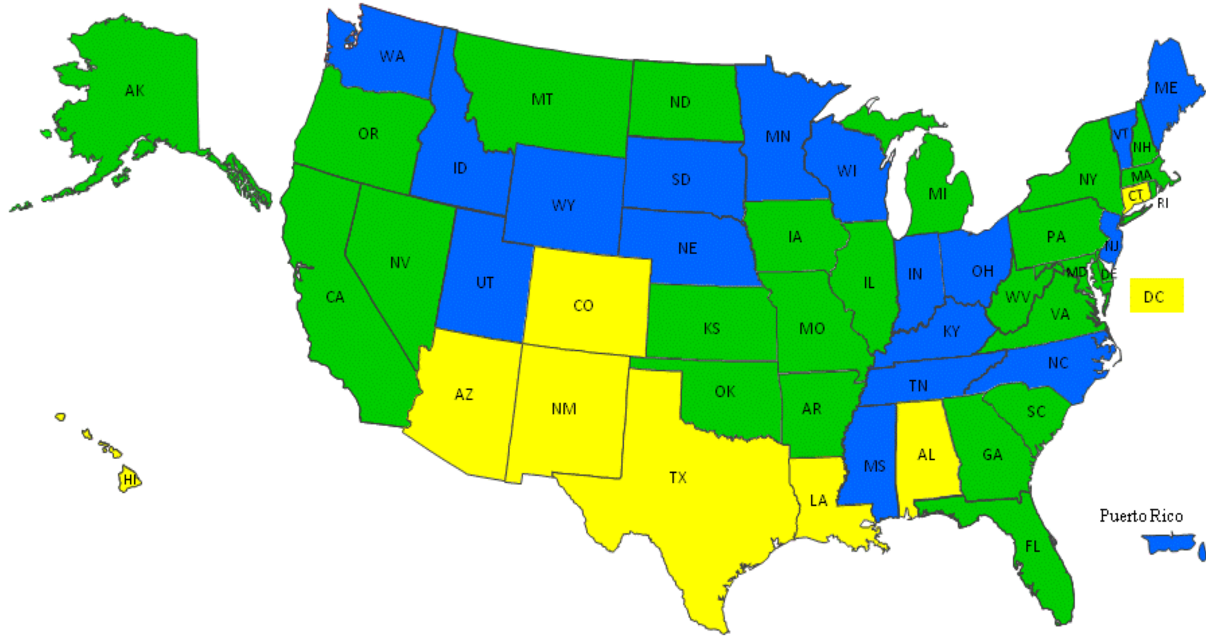
H.R. 1643 is common sense legislation that also complements the policies embodied in the Permanent Internet Tax Freedom Act (H.R. 235) by setting forth the specific framework needed to ensure that multiple or discriminatory taxation of electronic (digital) commerce does not occur. This measure also strikes the right balance in our Federalist system, providing a Congressional solution that is clearly needed to resolve some of the complexities that surface in imposing state and local taxes on transactions taking place in today's Internet-based economy.

Chairman Marino, Ranking Member Johnson and members of the Subcommittee, thank you again for holding this hearing and allowing me to testify in support of H.R. 1643. I hope that the Committee will mark-up this legislation soon. Thank you, and I look forward to any questions you may have.

Appendix 1

Digital Goods – Legislative Activity

Taxability as of 2014 under generally applied sales taxes



Digital Goods Non-Taxable (25) Includes non sales tax states

Digital Goods Taxed by DOR Interpretation or case law (9, including DC)

Digital Goods Taxed by Statute (18, including PR)