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Big Win for Marketplace Fairness Act in the Tenth Circuit Court of Appeals.

On February 22, 2016, the Tenth Circuit United States Court of Appeals upheld a Colorado law requiring remote sellers to provide Colorado purchasers with an annual summary of their purchases, and to send the same information to the Colorado Department of Revenue. Broadly, this important step taken by the Tenth Circuit upholds the constitutionality of use tax reporting requirements in any state. Reporting requirements are a step in the right direction until Congress acts on legislation that would allow states to enforce the collection of sales taxes on remote online vendors.

Since 2010, the State of Colorado has required remote sellers to provide Colorado purchasers with an annual summary of their purchases and to send the same information to the Colorado Department of Revenue. The Direct Marketing Association (DMA) sued Colorado in federal court, claiming the law was unconstitutional. In *Direct Marketing Association v. Brohl*, the Tenth Circuit disagreed. The court concluded the Colorado law doesn't discriminate against interstate commerce because DMA was unable to show that the notice and reporting requirements imposed on out-o--state retailers are more burdensome than the sales tax collection and administration requirements imposed on in-state retailers.

GFOA, along with "Big Seven" members of the State and Local Legal Center (SLLC), have filed amicus briefs in every stage of *DMA v. Brohl*, citing the devastating impact that the 1992 *Quill Corp. v. North Dakota Supreme Court* ruling has had on state and local governments in light of the rise of Internet purchases, Congress's failure to pass the Marketplace Fairness Act, and states' need to improve use tax collection through statutes like Colorado's. Justice Anthony Kennedy wrote a concurring opinion, upon considering DMA, which appeared to rely on the SLLC's brief; it stated that the "legal system should find an appropriate case for this court to reexamine Quill," the Tenth Circuit's opinion actually cited the SLLC's amicus brief, which provided an estimate of the very low rate of use tax compliance and also quoted Justice Kennedy's recent criticism of *Quill.*

GFOA continues to work with the SLLC to help communicate the necessity of states' ability to enforce the collection of use taxes already due to the Courts. We will continue to keep members up to date on any developments of this case, as well as the keeping the success of the Marketplace Fairness Act a priority in our legislative activities.

Government Finance Officers of America

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