

Federal marketplace fairness legislation introduced

February 15, 2013

In brief

Congressional leaders on February 14 announced a new federal Marketplace Fairness Act of 2013, providing that full member states of the Streamlined Sales and Use Tax Agreement and non-member states that meet certain minimum simplification requirements may require remote sales tax collection. [[S. 336](#) and [H.R. 684](#), introduced 2/14/13]

In detail

The bill is substantially similar to [S. 1832](#), introduced in the last Congress, with some notable exceptions, including those outlined below.

- Requires the SSUTA to include the same minimum simplification requirements as required for non-member states. Such requirements for remote sellers making remote sales include: (1) state-level tax administration; (2) a state-wide audit for all state and local taxing jurisdictions; (3) a single sales and use tax return filed with a single entity; (4) a uniform tax base among state and local taxing jurisdictions; (5) free compliance software that provides relief from liability for incorrect collection or remittance; and (6) a

sourcing methodology for remote sales as outlined in the legislation.

- Obligates states to specify the taxability of products and services to which the Act will apply and the products and services exempted from the Act in implementing legislation.
- Requires states to provide a rates and boundary database (which is not defined in the legislation), along with free software that calculates the sales and use tax due on each transaction at the time the transaction is completed, files sales and use tax returns and that is updated to reflect rate changes.
- Provides relief from liability provisions to apply to remote sellers and certified software providers. Certified software providers are relieved from liability if the harm is the result of misleading or inaccurate information provided by the remote seller or if the harm is the result of incorrect information or software provided by the State.
- Increases to 90 from 30 days the period for which States must provide remote sellers and certified software providers notice of a rate change and relieves any remote seller or certified software provider from liability for collecting sales and use taxes at the immediately preceding effective rate during the 90 day notice period if the required notice isn't provided.

- Sets the small seller exception for remote sellers whose annual remote sales are less than \$1 million. The bill provides that ownership relationships will be aggregated for purposes of determining whether the person falls under the small seller exemption if the principal purpose is to avoid application of the Act.
- Removes termination of authority language.
- Provides that nothing in the Act would alter or preempt the Mobile Telecommunications Sourcing Act.
- Adds a definition for 'certified software provider,' removes references to *Quill* from the definition of 'remote sale,' and

deletes the definition of 'single and consolidated provider' from prior bill versions

The takeaway

The Marketplace Fairness Act of 2013, introduced early in the legislative session, has significant bipartisan support and incorporates new concepts that address some of the concerns expressed about legislation considered by prior Congresses. There are, however a few questionable provisions within the legislation that warrant noting.

For one, the legislation provides that each state may certify the software providers. The software must be capable of calculating and filing sales tax in all states. At issue is how the

certification by one state applies to transactions that occur in all states.

Another provision in the legislation appears to require the listing of taxable and exempt products and services. Questions as to how this will be accomplished arise from such specific requirements. Further, the legislation provides that state and local jurisdictions must have a uniform tax base. However, because of certain carve out language, there may be an issue as to the extent of such uniformity.

Finally, the legislation appears to be silent on procedures to challenge whether a state is in compliance with the Act and the consequences to a state's collection authority while the challenge is being considered.

Let's talk

If you have any questions regarding the Marketplace Fairness Act of 2013, please contact:

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