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A Washington National Tax Services (WNTS) Publication

August 3, 2011

Long-awaited streamlined sales tax bills introduced in U.S. House and Senate

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After months of anticipation, Streamlined Sales Tax legislation titled the "Main Street Fairness Act" was introduced in the U.S. House and Senate on July 29, 2011. The lead sponsor of H.R. 2701 is Rep. John Conyers (D-MI), the Ranking Member of the House Judiciary Committee, and the lead sponsor of S. 1452 is Sen. Richard Durbin (D-IL). As with prior versions, the legislation generally would grant states that are members of the Streamlined Sales and Use Tax Agreement the authority to require remote sellers to collect and remit state and local sales and use taxes. The bills, which are identical, have been referred to the House Judiciary Committee and the Senate Finance Committee, respectively.

Under the legislation, states would be granted sales tax collection authority over remote sales once at least ten states comprising at least 20 percent of the total population of all states imposing a sales tax become member states under the Agreement. [The Agreement's Governing Board currently has 21 full member states, which exceed the population threshold, as well as three associate member states.] The legislation requires that certain necessary operational aspects of the Agreement be implemented by the Governing Board, and that each member state meet tax rate and boundary database and taxability matrix requirements provided in the Agreement, before remote sales authority would be granted. Further, the Agreement must meet a list of minimum simplification requirements. Certain Governing Board actions would be subject to review by the U.S. Court of Federal Claims, which is granted exclusive jurisdiction for review of Governing Board determinations.

While the legislation is substantially the same as legislation introduced in the prior session (H.R. 5660), there are some differences. (Click here for an analysis of H.R. 5660.) Among the differences are:

- **No telecommunications simplification provisions.** H.R. 5660 contained "placeholder" language regarding telecommunications tax simplification. The current bills do not address telecommunications taxes, and, under the terms of the legislation, only provide states with a grant of authority with respect to "sales and use taxes." Telecommunications are currently addressed in the Agreement in the context of sales and use taxes, although discussions continue regarding expanding the Agreement to other taxes on telecommunications services in anticipation that the federal legislation ultimately may include such taxes.

- **Vendor compensation set by Agreement.** H.R. 5660 provided that the states must pay "reasonable compensation" for expenses incurred "by all sellers." The current bills provide that states must provide "compensation for expenses incurred by a seller," with the minimum amount of such compensation being set "under the terms of the Agreement, as in effect on the enactment of this Act[.]" The bills provide a mechanism for modification of such minimum compensation, including changes "in relationship to changes in the size of the small business exemption adopted by the Governing Board." As with H.R. 5660, the bills defer to the Governing Board in establishing this small seller exception to sales and use tax collection and remittance.

- **No tribal government provisions.** H.R. 5660 contained a section addressing membership in the Agreement and remote sales tax collection authority for federally recognized Indian tribes. The current bills remove this section and therefore do not address tribal participation in the Agreement.

- **One rate per jurisdiction?** In general, the Agreement requires one rate per taxing jurisdiction (not per state). For unclear reasons, the bills remove a provision from the "minimum simplification requirements" for the Agreement that there be "[a] single sales and use tax rate per taxing jurisdiction" -- even though this requirement is found in the Agreement.

PwC observes

"Introduction of these bills comes after several months of announcements that the legislation was imminent," observes Ferdinand Hogroian, Washington National Tax Services Director with PwC in Washington, DC. "A comparison of the legislation with the previous version reveals very little in the way of differences, except for adoption of some of the provisions -- such as with respect to compensation -- that have been debated and adopted at the Governing Board level in the interim. Although the bills do not address telecommunications tax simplification, last session's version did so only in a cursory manner, with 'placeholder' language."

"Given the national debt limit debate and August recess, it may take some time before the bills are considered in committee. Neither of the bills have Republican cosponsors, unlike some of the other bills impacting state taxation that enjoy bipartisan sponsorship. Clearly, the push over the coming months by supporters of the legislation will be to add cosponsors from the other side of the aisle. Meanwhile, we can expect continued efforts to pass sales tax nexus expansion and 'notice and reporting' requirements in the states."

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