

# *Federal Marketplace Fairness Act of 2015 legislation introduced*

March 13, 2015

## ***In brief***

On March 10 2015, a bipartisan group of senators introduced the Marketplace Fairness Act of 2015, 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. 698, introduced 3/10/15]

## ***In detail***

The bill is substantially similar to [S.743](#), which passed the Senate in the last Congress. The one notable amendment is an added provision defining when a state may begin to collect sales and use taxes from remote sales under the Act. The bill provides that a state may not begin to exercise the remote seller collection authority:

- before the date following one year after the date of enactment; and
- during the period beginning October 1 and ending on December 31 of the first calendar year beginning after the date of enactment.

The bill provides: states that are not Streamlined members must enact minimum simplification requirements to receive remote seller collection authority, including the provision of a single entity within the state for

administration, a single audit of a remote seller for all state and local taxing jurisdictions within that state, and a single sales and use tax return for remote sellers to file with a single entity. Additional simplification requirements include the provision of: a uniform sales and use tax base among the state and the local taxing jurisdictions; taxability, exemption, and rates and boundaries information for products and services; and free software to calculate sales taxes due and file returns, among other items. The legislation contains a small seller exception for remote sellers with nationwide gross annual receipts of \$1 million or less.

## ***The takeaway***

The Marketplace Fairness Act (MFA) of 2015 was introduced in nearly identical form to the 2013 version, which passed the Senate 69-27, but later stalled in

the House. During the interim there have been a number of other notable developments:

- A handful of states enacted legislation directly related to MFA enactment. For more information, see PwC's [Colorado – Sales tax remote seller provisions enacted, contingent on passage of federal Marketplace Fairness Act](#).
- US House Judiciary Chair Bob Goodlatte responded to the MFA of 2013 with a [release](#) addressing seven basic principles on remote sales tax, which were intended to spark creative solutions.
- On March 12, 2014, a panel of interested members of the tax community presented testimony and answered

questions before the US House Judiciary Committee relating to state sales taxation of internet transactions. The panelists proposed myriad alternative solutions for collecting tax from remote sellers. See PwC's [US House Judiciary Committee hears tax community panelists' testimony on internet sales tax issues](#).

- On July 15, 2014, the Marketplace and Internet Tax Fairness Act (MITFA) was introduced, which combined the MFA of 2013 and the Internet Tax Freedom Act (ITFA). The bill increased the possibility of tying MFA legislation to other state-related legislation.
- On December 10, 2014, US Rep. Jason Chaffetz announced plans to introduce a separate bill, the Remote Transaction Parity Act (RTPA), to replace the MFA. This bill would also authorize states to require remote sellers to collect taxes. A bill has not yet been introduced.
- On January 13, 2015, House Judiciary Chair Bob Goodlatte released a discussion draft of The Online Sales Simplification Act of

2015, setting forth a framework for the collection of sales, use, or similar tax on remote sales of products and services. Unlike the MFA, the Online Sales Simplification Act adopts an origin-based approach that allows sellers to use their location for determining tax rules, rates, and filing tax returns. The Act then requires the seller's home state to distribute tax collected back to the purchaser's state. A tax commission would be created to oversee how tax is collected and distributed among party states. See PwC's [Discussion draft of origin-based Online Sales Simplification Act released](#).

The MFA legislation has received national attention and bipartisan support, however, a few provisions warrant noting. Specifically, there remain concerns regarding the implementation and certification of the necessary software, the identification of taxable and exempt products and services, audit burdens, the small seller threshold amount, and the lack of guidance regarding enforcement and procedural remedies.

In addition to federal legislative developments there has been notable federal judicial activity as well. In a recent US Supreme Court decision, *Direct Marketing Assoc. v. Brohl*, US Sup. Ct. No. 13-1032 (3/3/15), Justice Kennedy wrote in his concurring opinion that the Court should reevaluate the sales and use tax nexus physical presence requirement "in view of the dramatic technological and social changes that [have] taken place in our increasingly interconnected economy. There is a powerful case to be made that a retailer doing extensive business within a State has a sufficient 'substantial nexus' to justify imposing some minor tax-collection duty, even if that business is done through mail or the Internet." For more information, see PwC's [US Supreme Court – Federal Tax Injunction Act does not bar federal court review of Colorado's sales and use tax notice and reporting law](#).

Whether the sales and use tax nexus physical presence standard is addressed congressionally through legislation or judicially by the US Supreme Court, interest in requiring remote sellers to collect tax in all states remains high. In the meantime, states may continue to introduce sales and use tax nexus expansion laws.

## Let's talk

If you have any questions regarding the Marketplace Fairness Act of 2015, please contact:

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