

PROPOSED AMENDMENTS TO MAINSTREET FAIRNESS ACT
December 2, 2010

To promote simplification and fairness in the administration and collection of sales and use taxes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

A BILL

To promote simplification and fairness in the administration and collection of sales and use taxes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title- This Act may be cited as the 'Main Street Fairness Act'.

(b) Table of Contents- The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Consent of Congress.

Sec. 3. Findings.

Sec. 4. Authorization to require collection of sales and use taxes.

Sec. 5. Tribal governments.

Sec. 6. Determinations by governing board and judicial review of such determinations.

Sec. 7. Minimum simplification requirements.

Sec. 8. Limitation.

Sec. 9. Expedited judicial review.

Sec. 10. Definitions.

Sec. 11. Sense of Congress on digital goods and services.

SEC. 2. CONSENT OF CONGRESS.

Congress consents to the Streamlined Sales and Use Tax Agreement.

SEC. 3. FINDINGS.

Congress makes the following findings:

- (1) States should be encouraged to simplify their sales and use tax systems.
- (2) As a matter of economic policy and basic fairness, similar sales transactions should be treated equally, without regard to the manner in which sales are transacted, whether in person, through the mail, over the telephone, on the Internet, or by other means.
- (3) Congress may facilitate such equal taxation consistent with the United States Supreme Court's decision in *Quill Corp. v. North Dakota*.
- (4) States that voluntarily and adequately simplify their tax systems should be authorized to correct the present inequities in taxation through requiring sellers to collect taxes on sales of goods or services delivered in-state, without regard to the location of the seller.
- (5) The States have experience, expertise, and a vital interest in the collection of sales and use taxes, and thus should take the lead in developing and implementing sales and use tax collection systems that are fair, efficient, and non-discriminatory in their application and that will simplify the process for both sellers and buyers.
- (6) Online consumer privacy is of paramount importance to the growth of electronic commerce and must be protected.

SEC. 4. AUTHORIZATION TO REQUIRE COLLECTION OF SALES AND USE TAXES.

(a) Grant of Authority-

- (1) IN GENERAL- Each Member State under the Streamlined Sales and Use Tax Agreement is authorized, subject to the requirements of this section, to require all sellers not qualifying for the small seller exception to collect and remit sales and use taxes with respect to remote sales sourced to that Member State under the Agreement.
- (2) REQUIREMENTS FOR AUTHORITY- The authorization provided under paragraph (1) shall be granted once all of the following have occurred:
 - (A) Ten States comprising at least 20 percent of the total population of all States imposing a sales tax, as determined by the most recent Federal census, have petitioned for membership and have become Member States under the Agreement.
 - (B) The following necessary operational aspects of the Agreement have been implemented by the Governing Board:

- (i) Provider and system certification.
- (ii) Setting of monetary allowance by contract with providers.
- (iii) Implementation of an online multistate registration system.
- (iv) Adoption of a standard form for claiming exemptions electronically.
- (v) Establishment of advisory councils.
- (vi) Promulgation of rules and procedures for dispute resolution.
- (vii) Promulgation of rules and procedures for audits.
- (viii) Provisions for funding and staffing the Governing Board.

(C) Each Member State has met the requirements to provide and maintain the databases for sales and use taxes and the taxability matrix described in the Agreement, pursuant to requirements of the Governing Board.

(3) LIMITATION OF AUTHORITY- The authorization provided under paragraph (1)--

(A) shall be granted notwithstanding any other provision of law; and

(B) is dependent upon the Agreement, as amended, meeting the minimum simplification requirements of section 7.

(b) Termination of Authority-

(1) IN GENERAL- The authorization provided under subsection (a) shall terminate for all States if--

(A) the requirements contained in subsection (a) cease to be satisfied; or

(B) any amendment adopted to the Agreement after the date of the enactment of this Act is--

(i) not within the scope of the administration of sales and use taxes or taxes on communications services by the Member States; or

(ii) inconsistent with the provisions of this Act.

(2) LOSS OF MEMBER STATE STATUS- The authorization provided under subsection (a) shall terminate for a Member State, if such Member State no longer meets the requirements for Member State status under the terms of the Agreement or the provisions of this Act.

(c) Determination of Status-

(1) IN GENERAL- The Governing Board shall determine if Member States are in compliance with the requirements of subsections (a) and (b) and whether each Member State meets the minimum simplification requirements of section 7, and shall reevaluate such determination on an annual basis.

(2) COMPLIANCE DETERMINATION- Upon the determination of the Governing Board that all the requirements of subsection (a) have been satisfied, the authority to require a seller to collect and remit sales and use taxes shall commence on the first day of a calendar quarter at least 6 months after the date the Governing Board makes its determination.

(3) NONCOMPLIANCE DETERMINATION- Upon a final determination by the Governing Board that a Member State is not in compliance with the minimum simplification requirements of section 7 or is otherwise not in compliance with the Agreement, that Member State shall lose its remote seller collection authority on the earlier of--

(A) the date specified by the Governing Board; or

(B) the later of--

(i) the first day of January at least 2 years after the Governing Board finally determined the State was not compliant; or

(ii) the first day of a calendar quarter following the end of one full session of the State's legislature beginning after the Governing Board finally determined the State was not compliant.

For purposes of this section, the terms 'final determination' or 'finally determined' shall mean that all appeals processes provided for in the Agreement have been exhausted or the time for pursuing such appeals has expired. An action before the Federal Court of Claims pursuant to section 6 shall not operate to stay a State's loss of collection authority.

(4) RESTORATION OF AUTHORITY- Any Member State that loses its collection authority under this section must comply with all provisions of this section to have its remote seller collection authority restored.

SEC. 5. TRIBAL GOVERNMENTS.

(a) Status as Member State-

(1) IN GENERAL- Any federally recognized Indian tribe that imposes a generally applicable sales tax may, if such tribe complies with the terms of this Act--

(A) petition to become a Member State under the Agreement; and

(B) if granted Member State status pursuant to paragraph (2), exercise the authority provided under section 4.

(2) DECISION OF THE GOVERNING BOARD-

(A) IN GENERAL- If the effect of any federally recognized Indian tribe's laws, rules, regulations, and policies is compliant with each of the terms of the Agreement, and the Indian tribe has entered into an agreement with the primary State where such tribe is located, the Governing Board shall consider such tribe for admission as a Member State to the Agreement on the same basis as States.

(B) NO STATE-TRIBAL AGREEMENT PRESENT- If a petitioning Indian tribe and the primary State in which such tribe is located have attempted to negotiate, but have not reached, an agreement as described in subparagraph (A) within 2 years after the date of the submission of such petition, the Governing Board shall consider such tribe for admission as a Member State to the Agreement on the same basis as States without regard to the presence of a State-tribal agreement.

(3) MEMBERSHIP ON THE GOVERNING BOARD-

(A) IN GENERAL- If any federally recognized Indian tribe is accorded Member State status under the Agreement under this section, such tribe shall be represented on the Governing Board by at least 1 member.

(B) MULTIPLE TRIBES- If 2 or more federally recognized Indian tribes are accorded Member State status under the Agreement under this section, additional representation of such tribes on the Governing Board shall be determined by the Governing Board, in consultation with those tribes that are Member States.

(b) Rule of Construction- Nothing in this Act or the Agreement shall be construed as--

(1) diminishing an Indian tribe's sovereignty or characterizing an Indian tribe as a State for other purposes;

(2) affecting existing tax agreements between Indian tribal governments and States;

(3) preventing Indian tribal governments and States from entering into bilateral agreements for the collection and allocation of sales taxes (whether or not such bodies are admitted as Member States to the Agreement); or

(4) overriding established principles of Federal law governing--

(A) the taxing jurisdiction of Indian tribal governments; and

(B) the immunities of Indian tribal governments and their members from State taxation with respect to on-reservation transactions.

SEC. 6. DETERMINATIONS BY GOVERNING BOARD AND JUDICIAL REVIEW OF SUCH DETERMINATIONS.

(a) Petition- At any time after the Governing Board has made the determinations required under section 4(c), any person who may be affected by the Agreement may petition the Governing Board for a determination on any issue related to the implementation of the Agreement or on a Member State's compliance with this Act or the Agreement.

(b) Review in Court of Federal Claims- Any person who submits a petition under subsection (a) may bring an action against the Governing Board in the United States Court of Federal Claims for judicial review of the action of the Governing Board on that petition if--

(1) the petition relates to an issue of whether--

(A) a Member State has satisfied or continues to satisfy the requirements for Member State status under the Agreement;

(B) the Governing Board has performed a nondiscretionary duty of the Governing Board under the Agreement;

(C) the Agreement--

(i) continues to satisfy the minimum simplification requirements of section 7; or

(ii) otherwise continues to be consistent with the provisions of this Act; or

(D) any other requirement of section 4 has been satisfied; and

(2) the petition is denied by the Governing Board in whole or in part with respect to that issue, or the Governing Board fails to act on the petition

with respect to that issue not later than the 6-month period beginning on the day after the date on which the petition was submitted.

(c) Timing of Action for Review- An action for review under this section shall be initiated not later than 60 days after the denial of the petition by the Governing Board, or, if the Governing Board fails to act on the petition, not later than 60 days after the end of the 6-month period beginning on the day after the date on which the petition was submitted.

(d) Standard of Review-

(1) IN GENERAL- In any action for review under this section, the court shall set aside the actions, findings, and conclusions of the Governing Board found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(2) REMAND- If the court sets aside any action, finding, or conclusion of the Governing Board under paragraph (1), the court shall remand the case to the Governing Board for further action consistent with the decision of the court.

(3) NONMONETARY RELIEF- In connection with any remand under paragraph (2), the court may not award monetary relief, but may award declaratory and injunctive relief.

(e) Jurisdiction-

(1) GENERALLY- Chapter 91 of title 28, United States Code, is amended by adding at the end the following new section:

‘SEC. 1510. JURISDICTION REGARDING THE STREAMLINED SALES AND USE TAX AGREEMENT.

‘The United States Court of Federal Claims shall have exclusive jurisdiction over actions for judicial review of determinations of the Governing Board of the Streamlined Sales and Use Tax Agreement under the terms and conditions provided in section 6 of the Main Street Fairness Act.’.

(2) CONFORMING AMENDMENT TO TABLE OF SECTIONS- The table of sections for chapter 91 of title 28, United States Code, is amended by adding at the end the following new item:

‘1510. Jurisdiction regarding the streamlined sales and use tax agreement.’.

SEC. 7. MINIMUM SIMPLIFICATION REQUIREMENTS.

(a) In General- The minimum simplification requirements for the Agreement are as follows:

(1) A centralized, one-stop, multistate registration system that a seller may elect to use to register with the Member States, provided a seller may also elect to register directly with a Member State, and further provided that privacy and confidentiality controls shall be placed on the multistate registration system so that it may not be used for any purpose other than the administration of sales and use taxes. Furthermore, no taxing authority within a Member State or a Member State that has withdrawn or been expelled from the Agreement may use registration with the centralized registration system for the purpose of, or as a factor in determining, whether a seller has a nexus with that Member State for any tax at any time.

(2) Uniform definitions of products and product-based exemptions from which a Member State may choose its individual tax base, provided, however, that all local jurisdictions in that Member State with respect to which a tax is imposed or collected, shall have a common tax base identical to the State tax base of that Member State. A Member State may enact product-based exemptions without restriction if the Agreement does not have a definition for the product or for a term that includes the product. A Member State shall relax the good faith requirement for acceptance of exemption certificates in accordance with section 317 of the Agreement, as in effect on the date of the enactment of this Act.

(3) Uniform rules for sourcing and attributing transactions to particular taxing jurisdictions.

(4) Uniform procedures for the certification of service providers and software on which a seller may elect to rely in order to determine Member State sales and use tax rates and taxability.

(5) Uniform rules for bad debts and rounding.

(6) Uniform requirements for tax returns and remittances.

(7) Consistent electronic filing and remittance methods.

(8) Single, State-level administration of all Member State and local sales and use taxes, including a requirement for a State-level filing of tax returns in each Member State.

(9) A single sales and use tax rate per taxing jurisdiction, except as provided in section 308 of the Agreement.

(10) A provision requiring the elimination by each Member State of caps and thresholds on the application of sales and use tax rates and exemptions based on value, provided that this limitation does not apply to the items identified in sections 308C, 322, and 323 of the Agreement, as in effect on the date of the enactment of this Act.

(11) A provision requiring each Member State to complete a taxability matrix, as adopted by the Governing Board. The matrix shall include information regarding terms defined by the Agreement in the Library of Definitions. The matrix shall also include, pursuant to the requirements of the Governing Board, information on use-, entity-, and product-based exemptions.

(12) A provision requiring that each Member State relieves a seller or service provider from liability to that Member State and local jurisdiction for collection of the incorrect amount of sales or use tax, and relieves the purchaser from penalties stemming from such liability, provided that collection of the improper amount is the result of relying on information provided by that Member State regarding tax rates, boundaries, or taxing jurisdiction assignments, or in the taxability matrix regarding terms defined by the Agreement in the Library of Definitions.

(13) Audit procedures for sellers, including an option under which a seller not qualifying for the small business exception may request, by notifying the Governing Board, to be subject to a single audit on behalf of all Member States for sales and use taxes. The Governing Board, in its discretion, may authorize such a single audit.

~~(14) Effective on the date authority to require collection commences under section 4, each Member State shall provide reasonable compensation for expenses incurred by all sellers in administering, collecting, and remitting sales and use taxes (other than use taxes on goods and services purchased for the consumption of the seller) to that Member State. Such compensation may vary in each Member State depending on the complexity of the sales and use tax laws in that Member State and may vary by the characteristics of sellers in order to reflect differences in collection costs. Such compensation may be provided to a seller or a third-party service provider whom a seller has contracted with to perform all the sales and use tax responsibilities of a seller.~~

A. In order for a Member State to require collection with respect to remote sales under section 4, the Member State shall provide compensation for expenses incurred by a seller directly in administering, collecting, and remitting sales and use taxes to that Member State. Such compensation may vary in each Member State as provided in the Agreement.

B. Congress hereby finds that the compensation required of member states under the terms of the Agreement as it exists on (placeholder for a date before federal bill is passed but after Agreement is amended) is the minimum compensation necessary, when considered in connection with the simplification requirements contained in the Agreement on the effective date of this Act, to satisfy the requirement of this Act for compensation for expenses incurred by sellers.

C. The minimum compensation required of a Member State by this section may be modified as follows:

(i) Be adjusted in relationship to changes in the size of the small business exemption adopted by the Governing Board;

(ii) Be decreased as additional simplifications and improvements in technology reduce collection costs;

(iii) Be increased if provisions of the Agreement are adopted that increase collection costs;

Any such change in the minimum required compensation must be based on an independent review of the expenses incurred by sellers in administering, collecting and remitting sales and use taxes and shall consider all changes impacting such expenses and take into account and be proportional to the increase or decrease in the expenses incurred by sellers in administering, collecting and remitting sales and use taxes.

D. The compensation required by this section shall be provided pursuant to the implementation schedule set out in the Agreement. Nothing in this Act shall prohibit a Member State from providing compensation greater than the amount required by this Act or the Agreement or on a date earlier than required by this Act or the Agreement.

E. Compensation necessary to meet the requirement of this section may be provided to a seller or a third party service provider whom a seller has contracted with to perform the sales and use tax responsibilities of a seller.

(15) Appropriate protections for consumer privacy.

(16) Governance procedures and mechanisms to ensure timely, consistent, and uniform implementation and adherence to the principles of the streamlined system and the terms of the Agreement.

(17) A uniform rule to establish a small seller exception to a requirement to collect authorized by this Act.

(18) Uniform rules and procedures for sales tax holidays.

(19) Uniform rules and procedures to address refunds and credits for sales taxes relating to customer returns, restocking fees, discounts and coupons, and rules to address allocations of shipping and handling and discounts applied to multiple item and multiple seller orders.

(b) Application of Minimum Simplification Requirements to Taxes on Communications Services- Each Member State shall apply the The minimum simplification requirements of subsection (a) to sales and use for the Agreement related to taxes on communications services are as follows: -

(1) A provision requiring each Member State to apply the simplification requirements of subsection (a) to sales and use taxes on communications services pursuant to the Agreement provisions on what shall be considered a sales and use tax and how those provisions are applied to communications services.

(2) A provision requiring each Member State to apply the simplification requirements of subsections (a)(11) and (a)(12) and provide uniform rules and procedures for customer refunds to taxes on communications services.

(c) Grant of Authority for Taxes on communications Services

(1) Each Member State which applies the simplification requirements set forth in Section 315.2 of the Agreement which relate to taxes on communications services, other than sales and use taxes, to one or more types of taxes on communications services is authorized to require all sellers to collect and remit such taxes on communications services with respect to remote sales sourced to that state under the Agreement. Collection authority for such remote sales shall begin on the first day of a calendar quarter at least 6 months after the date the Governing Board certifies such state's compliance with the provisions of the Agreement relating to taxes on communications services. Simplification requirements and the grant of authority to require collection and remittance of such taxes with respect to remote sales shall be applied separately to each type of tax on communications services within a State.

(2) Congress hereby finds that the simplification provisions of Section 315.2 of the Agreement which relate to taxes on communications services under the terms of the Agreement as it exists on (placeholder for a date before federal bill is passed but after Agreement is amended) are the minimum requirements necessary to satisfy the requirement of this Act for remote collection authority for taxes on communications services to be granted to states which apply such simplification requirements.

(d) Jurisdiction with respect to communications services transactions –

For each member state, taxes on communications services transactions sourced consistent with Section 314 of the Agreement, when also consistent with state law, shall be deemed to be validly applied by the jurisdiction to which the sale is

sourced. A provider of communications services shall be held harmless from liability to said state and the local jurisdictions within that state or purchasers of communications services resulting solely from the sourcing of communications services in accordance with this subsection. Any state or local jurisdiction shall be held harmless from liability to purchasers of communications services resulting solely from the sourcing of communications services in accordance with this subsection.

~~(e)~~ (e) Requirement To Provide Simplified Tax Systems-

(1) IN GENERAL- The requirements of this section are intended to ensure that each Member State provides and maintains the necessary simplification to its sales and use tax system to warrant the collection authority granted to such Member State in section 4.

(2) REDUCTION OF ADMINISTRATIVE BURDENS- The requirements of this section should be construed--

(A) to require each Member State to substantially reduce the administrative burdens associated with sales and use taxes; and

(B) as allowing each Member State to exercise flexibility in how these requirements are satisfied.

(3) EXCEPTION- In instances where exceptions to the requirements of this section can be exercised in a manner that does not materially increase the administrative burden on a seller obligated to collect or pay the taxes, such exceptions are permissible.

~~(d)~~ (f) No Requirement To Exempt From or Impose Tax- Nothing in this Act or the Agreement shall require any Member State or any local taxing jurisdiction to exempt, or to impose a tax on any product, or to adopt any particular type of tax, or to impose the same rate of tax as any other taxing jurisdiction.

SEC. 8. LIMITATION.

(a) In General- Nothing in this Act shall be construed as--

(1) subjecting a seller to franchise taxes, income taxes, or licensing requirements of a Member State or political subdivision thereof; or

(2) affecting the application of such taxes or requirements or enlarging or reducing the authority of any Member State to impose such taxes or requirements.

(b) No Effect on Nexus, etc-

(1) IN GENERAL- No obligation imposed by virtue of the authority granted by section 4 shall be considered in determining whether a seller has a nexus with any Member State for any other tax purpose.

(2) PERMISSIBLE MEMBER STATE AUTHORITY- Except as provided in subsection (a), and in section 4, nothing in this Act permits or prohibits a Member State from--

(A) licensing or regulating any person;

(B) requiring any person to qualify to transact intrastate business;

(C) subjecting any person to State taxes not related to the sale of goods or services; or

(D) exercising authority over matters of interstate commerce.

SEC. 9. EXPEDITED JUDICIAL REVIEW.

(a) Three-Judge District Court Hearing- Notwithstanding any other provision of law, any civil action challenging the constitutionality of this Act, or any provision thereof, shall be heard by a district court of 3 judges convened pursuant to the provisions of section 2284 of title 28, United States Code.

(b) Appellate Review-

(1) IN GENERAL- Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of 3 judges in an action under subsection (a) holding this Act, or any provision thereof, unconstitutional shall be reviewable as a matter of right by direct appeal to the United States Supreme Court.

(2) 30-day TIME LIMIT- Any appeal under paragraph (1) shall be filed not more than 30 days after the date of entry of such judgment, decree, or order.

SEC. 10. DEFINITIONS.

For the purposes of this Act the following definitions apply:

(1) GOVERNING BOARD- The term ‘Governing Board’ means the governing board established by the Streamlined Sales and Use Tax Agreement.

(2) MEMBER STATE- The term ‘Member State’--

(A) means a Member State as that term is used under the Streamlined Sales and Use Tax Agreement as in effect on the date of the enactment of this Act;

(B) does not include associate members under the Agreement; and

(C) includes any federally recognized Indian Tribe that is accorded Member State status under the Agreement pursuant to section 5.

(3) **NONDISCRETIONARY DUTY OF THE GOVERNING BOARD-** The term ‘nondiscretionary duty of the Governing Board’ means any duty of the Governing Board specified in the Agreement as a requirement for action by use of the term ‘shall’, ‘will’, or ‘is required to’.

(4) **PERSON-** The term ‘person’ means an individual, trust, estate, fiduciary, partnership, corporation, limited liability company, or any other legal entity, and includes a State or local government.

(5) **REMOTE SALE-** The term ‘remote sale’ refers to a sale of goods or services attributed to a particular Member State with respect to which a seller does not have adequate physical presence to establish nexus under the law existing on the day before the date of the enactment of this Act so as to allow such Member State to require, without regard to the authority granted by this Act, the seller to collect and remit taxes covered by this Act with respect to such sale.

(6) **REMOTE SELLER-** The term ‘remote seller’ means any seller who makes a remote sale.

(7) **STATE-** The term ‘State’ means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

(8) **STREAMLINED SALES AND USE TAX AGREEMENT-** The term ‘Streamlined Sales and Use Tax Agreement’ (or ‘the Agreement’) means the multistate agreement with that title adopted on November 12, 2002, as in effect on the date of the enactment of this Act and unless the context otherwise indicates as further amended from time to time.

(9) COMMUNICATIONS SERVICES – The term “communications services” means “Ancillary services” and “Telecommunications services” as defined in the Agreement.

(10) TAX ON COMMUNICATIONS SERVICES – The specific levies to be considered a “tax on communications services” shall be as provided in the Agreement and interpretive rules of the Agreement.

SEC. 11. SENSE OF CONGRESS ON DIGITAL GOODS AND SERVICES.

It is the sense of Congress that each Member State that is a party to the Agreement should work with other Member States that are also parties to the Agreement to prevent double taxation in situations where a foreign country has imposed a transaction tax on a digital good or service.

SEC. 12. NO INFERENCE REGARDING EXISTING STATE AUTHORITY

No inference of legislative construction or intent shall be drawn from the provisions of this act, including the requirements for authorization to require collection of taxes on remote sales, regarding the existence of authority under any other federal or state law, including the Constitution of the United States, for any state or local taxing jurisdiction to require collection of taxes on remote sales.