

# MARKETPLACE FAIRNESS ACT

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## Summary

- The purpose of the legislation is to provide States with the ability to enforce their existing state and local sales and use tax laws in a way that does not unduly burden e-commerce.
- No State is required to collect sales and use taxes by this legislation. The legislation simply gives States the right to collect – or decide not to collect – sales and use taxes that are already owed under State law by adopting one of the following options.
  - Become a Member State of the Streamlined Sales and Use Tax Agreement
  - Adopt Minimum Simplification Requirements
- The legislation recognizes the importance of the Streamlined Sales and Use Tax Agreement and the years of work invested by the States who are currently members.
  - Any State may collect sales and use taxes if they become a Member State of the Streamlined Sales and Use Tax Agreement.
  - Associate Members cannot collect until they become full Member States.
  - States must remain in compliance with the requirements of the Streamlined Sales and Use Tax Agreement.
  - Authority to collect begins on the first day of the calendar quarter that is at least 90 days after enactment.
- The legislation also recognizes that States should not be required to conform to a one-size-fits-all model.
  - Any State may collect sales and use taxes if they adopt minimum simplification requirements.
  - Authority to collect begins on the first day of the calendar quarter that is at least 6 months after the State enacts legislation to implement the minimum simplification requirements to provide sellers with additional notice of the collection requirement.
- State sovereignty is preserved. Intrastate sales and intrastate sourcing rules are not impacted by this legislation.
- Small sellers should not be unduly burdened by sales and use tax collection requirements. The legislation requires States to exempt sellers with less than \$500,000 in gross remote sales from collection requirements. This requirement seeks to balance a state's right to collect sales and use tax laws with the need to protect small businesses and e-commerce.

- Sellers need assurance that sales and use tax collection authority will not affect other aspects of their business. The legislation includes a comprehensive section to strictly limit the authority to the collection of sales and use taxes. States may not subject sellers to other forms or taxes, registration, licensing or regulatory requirements. Nexus cannot be asserted for anything other than sales and use taxes.
- The minimum simplification requirements that must be adopted by States not collecting under the Streamlined Sales and Use Tax Agreement are designed to ease the administrative burden on both sellers and States.

At a minimum, States must provide the following:

- A single state-level agency to administer all sales and use tax laws, a single audit, and a single return.
  - A uniform sales and use tax base among the State and local taxing jurisdictions.
  - Require all sales and use taxes to be collected according to the destination rate.
  - States must provide software and services to remote sellers to facilitate collection, and states must adopt certification procedures for single and consolidated providers to broaden collection software and service options for sellers.
  - Relieve sellers from liability for incorrect tax collection if errors are made in reliance on information provided by the State, and hold sellers harmless for any errors or omissions made by a single or consolidated provider.
  - Provide 30 days notice of local rate changes, and require that changes become effective only on the first day of a calendar quarter. If a State fails to provide notice then it must hold the sellers harmless for a 30 day period.
- The legislation requires States to provide certification procedures for both single providers and consolidated providers to make software and services available to remote sellers. Providers are relieved from liability for errors and omissions due to reliance on information provided by the State. The goal is to ensure that remote sellers have the greatest number of software and service options, increase competition among providers, and ease the administrative burden on States.
- The authority to collect sales and use taxes terminates on the day that the highest court of competent jurisdiction makes a final determination that the State no longer meets the requirements of the legislation, and the court's determination is no longer subject to appeal. The legislation does not require challenges to be filed in any particular court.
- The legislation explicitly defines all substantive terms, and includes specific sourcing rules for the calculation of sales and use taxes when a delivery address is not known.
- The legislation includes language to ensure that if any provision of the Act is held unconstitutional the remaining provisions are not affected.
- No federal rulemaking is required by this legislation and there is no cost to the Federal government.