

**H.R. 3396**  
**Main Street Fairness Act**  
**(As of April 15, 2009)**  
**Selected Sections**

**PROPOSED EDITS – March 22, 2010**

**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) 10 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 on-line 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 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 enactment of this Act is (a) not within the scope of the administration of sales and use taxes or taxes on communications services by the Member States, or (b) 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.

(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 shall reevaluate such determinations on 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.

(d) Indian Tribal Governments—

(1) Each Indian tribal government that petitions to be treated as a Member State under the Streamlined Sales and Use Tax Agreement and is granted treatment as a member state under the Agreement, is delegated the right, 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 regard to transactions between the seller and the Indian tribal government or between the seller and any member of the tribe, with respect to remote sales sourced to the Indian country (as defined by 18 U.S.C. 1151) associated with the Indian tribal government.

(2) Each Indian tribal government that petitions to be treated as a Member State under the Streamlined Sales and Use Tax Agreement and is granted treatment as a member state under the Agreement, must comply with all the provisions of this Act that apply to Member States. No Indian tribal government may exercise the right delegated to the Indian tribal government under paragraph (d)(1) until the requirements for authority in paragraph (a)(2) and all other requirements of this Act have been met, and the Indian tribal government petitions to be treated as a Member State under the Streamlined Sales and Use Tax Agreement and is granted treatment as a member state under the Agreement.

## **SEC. 5. TRIBAL GOVERNMENTS.**

(a) Treatment as 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 be treated as a ~~become a~~ Member State under the Agreement; and

(B) if granted treatment as a member state status pursuant 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 an agreement with the primary State where it is located, the Governing Board shall consider such Tribe for admission ~~as a Member State~~ to the Agreement to be treated as a member state on the same basis as States.

(B) No state-tribal agreement present.—If a petitioning Indian Tribe and the primary State in which it is located have attempted to negotiate, but have not reached, an agreement as described in subparagraph (A) within 5 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 to be treated as a member state 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 treatment as a 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 treatment as a 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 treated as Member States.

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

(1) diminishing a State's sovereignty;

(2) overriding established principles of Federal law governing the taxing jurisdiction of a State;

(3) diminishing an Indian Tribe's sovereignty; ~~or~~

(4) characterizing an Indian Tribe as a State for any other purposes;

(5) affecting existing tax agreements between Indian Tribal Governments and States;

(6) 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 a Member State to the Agreement or are treated as a

Member State under the Agreement); or

(~~7~~ -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-Indian country (as defined by 18 U.S.C. 1151) ~~on-reservation~~ transactions.