

# 2013 Federal Legislation – Marketplace Fairness Act of 2013

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Senate Bill 743 (referred to as “bill” or bills” herein)			
	Streamlined States	Non-Streamlined States	Comments/Questions
<b>Section 1: Short Title “Marketplace Fairness Act of 2013”</b>			
<b>Section 2: Authorization to Require Collection of Sales/Use Taxes</b>			
<b>1. Who Gets Collection Authority?</b> <i>Sec. 2(a) &amp; (b)</i>	Yes, if... <ul style="list-style-type: none"> <li>• A SSUTA “Member state”; and</li> <li>• The SSUTA is not subsequently amended such that it conflicts with the federal minimum simplification requirements (“FMSRs”) in the bill.</li> </ul> <p><i>See Item 4 directly below for more information on the FMSRs.</i></p>	Yes, if the state... <ul style="list-style-type: none"> <li>• Implements the FMSRs in the bill;</li> <li>• Enacts legislation specifying the tax or taxes subject to the FMSRs; and</li> <li>• Specifies the products and services otherwise subject to the identified taxes and to which the bill will not apply.</li> </ul> <p><i>See Item 4 directly below for more information on the FMSRs.</i></p>	<ul style="list-style-type: none"> <li>• The revised Bill authorizes collection authority for SSUTA member states.</li> <li>• How does a SSUTA member’s compliance with the SSUTA impact collection authority?</li> </ul>
<b>2. Earliest Date to Exercise Authority</b> <i>Sec. 2(a) &amp; (b)</i>	180 days after state publishes notice of intent to exercise authority under this Act, but no earlier than first day of calendar quarter at least 180 days after Act is enacted. <i>Example: if enacted May 1, 2013 with State notice on May 15, 2013, then January 1, 2014 is the earliest that</i>	First day of calendar quarter that is at least 6 months after state complies with the requirements in Item 1 directly above.	Streamlined member states must publish notice; what constitutes a notice? <i>See Marketplace Equity of 2011 for background on notice as previously contemplated.</i>

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	<i>collection could commence.</i>		
<b>3. Small Seller Exception</b> <i>Sec. 2(c)</i>	<p>Up to \$1,000,000 in gross annual receipts in total remote sales in U.S. for preceding calendar year.</p> <p>For purposes of determining whether the retailer meets the threshold, the gross annual receipts from remote sales of 2 or more persons shall be aggregated if :</p> <p>(a) Such persons are related persons within the meaning of IRC Section 267(b) and (c) or IRC Section 707(b)(1)</p> <p><b>OR</b></p> <p>(b) Such persons have 1 or more ownership relationships and such relationships were designed with a principal purpose of avoiding the application of these rules.</p>	Same	<ul style="list-style-type: none"> <li>• States could set higher thresholds.</li> <li>• If higher thresholds are set, the information should be reflected in the SSUTA resources for businesses.</li> </ul>
<b>4. What are the Federal Minimum Simplification Requirements</b> <i>Sec. 2(b)(2)(A) – (H)</i>			
(2)(A)(i) Single entity within the State to administer tax, process	Streamlined member states' obligations are met through conformance with the SSUTA per Bill	Defer to non-SST states	

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returns and conduct audits of remote sales sourced to State	Section 2(a)  Obligation also met by SSUTA Section 301		
(2)(A)(ii) Single audit of remote sellers for all State and Local taxing jurisdictions within State	Streamlined member states' obligations are met through conformance with the SSUTA per Bill Section 2(a)  Obligation also met by SSUTA Section 301	Defer to non-SST states	
(2)(A)(iii) Single return to be used by remote sellers and filed with single entity responsible for administration	Streamlined member states' obligations are met through conformance with the SSUTA per Bill Section 2(a)  Obligation also met by SSUTA Section 318	Defer to non-SST states	The single return is the Simplified Electronic Return - effectively required for all sellers January 1, 2013.
(2)(A)(iii) State may not require returns be filed more frequently for remote sellers than for nonremote sellers	Streamlined member states' obligations are met through conformance with the SSUTA per Bill Section 2(a)  Obligation also likely met, but not expressly addressed in the SSUTA  <i>Note: Individual states will need to review their laws for filing frequency requirements of nonremote sellers – SSUTA Section 318</i>	Defer to non-SST states	

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	<i>to confirm this is happening in practice.</i>	
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<p>(2)(A)(iii) State may not impose any other requirement on remote sellers that the state does not impose on non-remote sellers with respect to the collection of sales and use tax.</p>	<p>Streamlined member states' obligations are met through conformance with the SSUTA per Bill Section 2(a)</p> <p>Obligation also likely met, but not expressly addressed in SSUTA</p>		
<p>(2)(A)(iii) No Local jurisdiction may require remote seller to submit return or collect taxes except as described above</p>	<p>Streamlined member states' obligations are met through conformance with the SSUTA per Bill Section 2(a)</p> <p>Obligation also met by SSUTA Sections 301 and 318</p>	<p>Defer to non-SST states</p>	
<p>(2)(B) Uniform tax base among State and Local taxing jurisdictions within the State (<i>the bills do not make clear this applies only to remote sales</i>)</p>	<p>Streamlined member states' obligations are met through conformance with the SSUTA per Bill Section 2(a)</p> <p>Obligation also met by SSUTA Section 302</p>	<p>Defer to non-SST states</p>	<ul style="list-style-type: none"> <li>Does Section 2(b)(1)(B) allow a state to carve out specific products/services from being subject to the bill?</li> </ul>

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<p>(2)(C)Uniform sourcing of all remote sales:</p> <p>(a) Where item is received by purchaser based on instructions furnished by purchaser;</p> <p>(b) If (a) does not apply, then based on customer’s address known by seller;</p> <p>(c) If address not known by seller in advance, address obtained during consummation of the transaction, including address on payment instrument if no other address available; or</p> <p>(d) If (a), (b) and (c) do not apply, then based on address of the seller from which the remote sale was made.</p>	<p>Streamlined member states’ obligations are met through conformance with the SSUTA per Bill Section 2(a)</p> <p>Although this FMSR is not required for SSUTA states as follows: “A State granted authority under section 2(a) shall comply with the sourcing provisions of the [SSUTA].”, the obligation is still met by SSUTA Sections 309, 310, 310.1, 311, 313, and 314</p>	<p style="text-align: center;">Defer to non-SST states</p>	<ul style="list-style-type: none"> <li>• How will the FMSR for sourcing in non-SST states be interpreted going forward and what are the implications for tax administrators?</li> </ul>
<p>(2)(D)(i) Provide information indicating the taxability of products and services along with product and service exemptions</p>	<p>Streamlined member states’ obligations are met through conformance with the SSUTA per Bill Section 2(a)</p> <p>Obligation also met by SSUTA Section 328</p>	<p style="text-align: center;">Defer to non-SST states</p>	

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<p>(2)(D)(i) Provide rates and boundary database</p>	<p>Streamlined member states' obligations are met through conformance with the SSUTA per Bill Section 2(a)</p> <p>Obligation also met by SSUTA Section 305</p>	<p>Defer to non-SST states</p>	<p>SSUTA 305 requires rate and boundary databases only for states with local jurisdictions. Some "member states" have no local jurisdictions - is this acceptable under the bill?</p>
<p>(2)(D)(ii) Provide software free of charge for remote sellers that:</p> <p>(a) Calculates tax dues on each transaction at time the transaction is completed</p> <p>(b) Files sales and use tax returns</p> <p>(c) Updated to provide rate changes</p>	<p>Streamlined member states' obligations are met through conformance with the SSUTA per Bill Section 2(a)</p> <p>Discussion, input is needed from SST CSPs. See SSUTA Sections 203, 205, 328, 501, 502 and 601</p>	<p>Defer to non-SST states</p>	<ul style="list-style-type: none"> <li>• Possibly covered by CSPs under contract – rate change notifications different than SSUTA currently requires</li> <li>• Would CSPs be free to all remote sellers?</li> <li>• The bill requires "software" be provided free of charge. What if a remote seller just wants "software" and no CSP interaction/involvement? Are any SSUTA states prepared to provide this and is this even required by the bill separate from CSP service?</li> </ul>
<p>(2)(D)(iii) Provide certification procedures for certified software providers. The software must be able to calculate and files sales and use taxes in all the States qualified under the Act</p>	<p>Streamlined member states' obligations are met through conformance with the SSUTA per Bill Section 2(a)</p> <p>Discussion, input is needed from SST</p>	<p>Defer to non-SST states</p>	<p>Who determines which states are qualified under this Act"? It appears the bill gives states flexibility in this regard.</p>

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	CSPs. See SSUTA Sections 203, 205, 328, 501, 502 and 601		
(2)(E) Relieve remote sellers from liability to state (tax, interest and penalties) if error is result of error or omission made by certified software provider	Streamlined member states' obligations are met through conformance with the SSUTA per Bill Section 2(a)  Discussion, input is needed from SST CSPs.	Defer to non-SST states	Some SST states provide that sellers using a CSP are not liable to the state for sales or use tax due on transactions processed by the CSP unless the seller <b><u>misrepresented</u></b> the type of items it sells or committed <b><u>fraud</u></b> or if using a CAS and the seller/CSP misclassified a transaction. See CSP Contract for basis.
(2)(F) Relieve certified software providers from liability (tax, interest and penalty) if error is result of misleading or inaccurate information provided by remote seller	Streamlined member states' obligations are met through conformance with the SSUTA per Bill Section 2(a)  Discussion, input is needed from SST CSPs.	Defer to non-SST states	
(2)(G) Relieve remote sellers and certified software providers from liability (tax, interest and penalty) if error is result of incorrect information or software provided by the State	Streamlined member states' obligations are met through conformance with the SSUTA per Bill Section 2(a)  Obligation also met by SSUTA Sections 306, 328, and 502	Defer to non-SST states	SST member states must confirm CSPs meet the requirement of free software provided by the state.

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<p>(2)(H) Provide remote sellers and certified software providers with 90 days notice of rate changes by State or Local government and relieve remote sellers and certified software providers from liability for collecting the tax at the immediately preceding effective rate during a 90-day notice period if 90 days notice is not provided</p>	<p>Streamlined member states' obligations are met through conformance with the SSUTA per Bill Section 2(a)</p> <p><b>Discussion</b></p>	<p>Defer to non-SST states</p>	<ul style="list-style-type: none"> <li>• Currently 30 days for State and 60/120 for Local changes</li> </ul>
<p><b>Section 3: Limitations Sec. 3(a)</b></p>			
<p>Nothing in the Act shall be construed as:</p> <p>(a) subjecting sellers to franchise, income, occupation, or any other type of taxes other than sales and use taxes</p> <p>(b) affecting the application of such other taxes</p> <p>(c) enlarging or reducing State authority to impose taxes</p>	<p>No change needed</p>	<p>No change needed</p>	<p>May be important information to be disseminated as implementation proceeds.</p>

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<b>Nexus Sec. 3(b)</b>			
No effect on nexus – the bill shall not be construed to create any nexus or alter the standards for determining nexus	No known impact.	No known impact.	<ul style="list-style-type: none"> <li>Query impact on current state statutes, case law and/or administrative practices.</li> </ul>
<b>Seller Choice Sec. 3(c)</b>			
No Effect on Seller Choice – The Act shall not be construed to deny the ability of a remote seller to deploy and utilize a software provider of their choice.	No change needed.	Defer to non-SST states	

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<b>Licensing and Regulatory Requirements Sec. 3(d)</b>			
<p>Nothing permits or prohibits a State from:</p> <p>(a) licensing or regulating any person</p> <p>(b) requiring a person to qualify to transact intrastate business</p> <p>(c) subjecting a person to State or Local taxes not related to the sale of products or services</p> <p>(d) exercising authority over matters of interstate commerce</p>	<p>No change needed</p>	<p>No change needed</p>	<p>May be important information to be disseminated as implementation proceeds.</p>
<b>No New Taxes Sec. 3(e)</b>			
<p>Nothing should be construed to encourage a State to impose taxes on products or services not subject to taxation prior to this Act</p>	<p>No change needed</p>	<p>No change needed</p>	

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<b>Effect on INTRASTATE sales Sec. 3(f)</b>			
Act does not apply to INTRASTATE sales or INTRASTATE sourcing rules, but Streamlined Member States shall comply with all INTRASTATE sourcing rules of SSUTA	No change needed “State granted authority under section 2(a) shall comply with all interstate provisions of the [SSUTA].	Defer to non-SST states	
<b>Effect on Mobile Telecommunications Sourcing Act Sec. 3(g)</b>			
Nothing shall be construed as altering or preempting the Mobile Telecommunications Sourcing Act	No change needed	No change needed	
<b>Section 4: Definitions</b>			
Certified Software Provider	No change needed to SSUTA	Defer to non-SST states	<ul style="list-style-type: none"> <li>• SST states call them Certified Service Providers</li> </ul>
Locality/Local	No change needed to SSUTA	Defer to non-SST states	

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Member State	No change needed to SSUTA	Defer to non-SST states	<ul style="list-style-type: none"> <li>We have interpreted “member state” to mean “full member state”.</li> <li>It appears the bill applies the SSUTA definition of “member state” as it exists on the date the bill is enacted, (i.e., the definition cannot be amended going forward).</li> </ul>
Person	No change needed to SSUTA	Defer to non-SST states	The bill’s definition of “person” includes “State or local government”. However, SST definition includes the phrase “or any other legal entity.”
Remote Sale	Not defined in SSUTA. <i>States should confirm that their existing law allows for imposition on “remote sales” as defined.</i>	Defer to non-SST states	
Remote Seller	Not defined in SSUTA. <i>States should confirm that their existing law allows for imposition on “remote seller” as defined.</i>	Defer to non-SST states	
Sourced	No change needed to SSUTA	Defer to non-SST states	

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State	No change needed to SSUTA	Defer to non-SST states	Changes needed if the SSUTA admits “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, and any tribal organization (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)).”
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Streamlined Sales and Use Tax Agreement	No change needed to SSUTA	Defer to non-SST states	
<b>Section 5: Severability</b>			
If any provision is held to be unconstitutional, the remainder of this Act shall not be affected.	No change needed	No change needed	
<b>Section 6: Preemption</b>			
This Act shall not be construed to preempt or limit any power exercised by a State or local jurisdiction.	No change needed	No change needed	

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