

Federal Remote Seller Collection Authority FAQ Workgroup

Goals of Workgroup

- A. Develop questions and answers for Streamlined and non-Streamlined states , remote and non-remote sellers, consumers, legislators, local governments, and other interested persons, such as the media, to explain what the Marketplace Fairness Act (MFA) is and how it may impact those affected by it.
- B. Develop educational materials to make states, businesses, consumers, legislators and other interested persons aware of the passage of the MFA, the requirements that states must meet to obtain remote seller collection authority, the effect of a state meeting those requirements on businesses, and the impact on consumers who may start to see more out-of-state businesses collecting their states sales (or use) taxes on the purchases they make.

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Federal Remote Seller Collection Authority
Frequently Asked Questions

Note: The FAQs contained in this document are based on Senate Bill 743 passed by the Senate on May 6, 2013.

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I. Background

The purpose of this document is to provide answers to common questions surrounding the Marketplace Fairness Act (MFA) that may be asked by Streamlined and non-Streamlined States, remote and non-remote sellers, consumers, legislators, local governmental units, and other interested persons, such as the media.

General Disclaimer: These FAQs are intended to provide general guidance on issues related to the MFA. If you have any specific issues that are not addressed in these FAQs, you should contact the appropriate tax agency and/or consult with a tax advisor.

II. **Glossary of Abbreviations, Definitions and Acronyms**

Certified Service Provider (Streamlined States) – CSP SST – An agent certified under the Streamlined Sales and Use Tax Agreement (SSUTA) to perform all the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases.

Certified Software Provider – (Non-Streamlined States) –Non-SST CSP – A person certified by a non-SST State that provides software to remote sellers to facilitate state and local sales and use tax compliance (i.e., tax calculation and filing) in the state that exercises remote seller collection authority by adopting and implementing the federal minimum simplification requirements.

MFA – Marketplace Fairness Act of 2013 (Act (enter Act number when known))

Model 1 Seller – A seller registered under the SSUTA that has selected a CSP as its agent to perform all the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases.

Model 2 Seller – A seller registered under the SSUTA that has selected a CAS to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

Model 3 Seller – A seller registered under the SSUTA that has sales in at least five SST Member States, has total annual sales of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the SSST Member States that establishes a tax performance standard for the seller. A used in this definition, seller includes a group of affiliated sellers using the same proprietary system.

Model 4 Seller – A seller that registers under the SSUTA, but is not a Model 1, Model 2 or Model 3 seller.

Non-SST State – A state which is not an SST Member State.

Person – An individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation or any other legal entity.

Product – The term product as used throughout these FAQs includes tangible personal property, services and digital goods, as applicable under each state’s laws.

Remote Sale – A sale into a state based on the sourcing rules contained in the MFA in which the seller would not legally be required to pay, collect, or remit State or local sales and use taxes unless provided by MFA. See FAQ XXX for more information.

Remote Seller – A person that makes remote sales into a state. See FAQ XXX for more information.

SER – Simplified Electronic Return – A simplified return that all Model 1 Sellers are required to file in the SST Member States. The SER may also be filed by any other sellers in the SST Member States to report all of the state and local sales and use taxes due in those states that are covered by the SSUTA.

Small Seller – A seller that has gross annual receipts in total remote sales in the United States of less than \$1 million in the preceding calendar year. The gross annual receipts from total remote sales includes remote sales of persons (1) related to the remote seller within the meaning of subsections (b) and (c) of section 267 or section 707(b)(1) of the Internal Revenue Code of 1986 and (2) with whom the remote seller has 1 or more ownership relationships and such relationships were designed with the principal purpose of avoiding the application of these rules. See FAQ XXX for more information.

Sourced – The location to which a remote sale is sourced means the location where the sale was deemed to occur pursuant to the SSUTA for SST Member States or the MFA for non-SST States. See FAQ XXX.

SST – Streamlined Sales Tax

SSTGB – Streamlined Sales Tax Governing Board

SST Member State – Under the MFA, SST Member State means a state whose laws have been changed to be in substantial compliance with the requirements of the SSUTA and has been voted in as a full Member State. SST Member State does not include any associate, contingent, or advisor Member State. See FAQ XXX.

SSUTA – Streamlined Sales and Use Tax Agreement – This means the multi-state agreement with this title that was adopted on November 12, 2002, as in effect on the date of enactment of the MFA and as further amended from time to time. The SSUTA includes the interpretive rules, interpretive opinions and appendices approved by the SSTGB.

Volunteer Seller – A seller registered under the SSUTA who (i) has no fixed place of business for more than 30 days in the state, (ii) has less than \$50,000 in property in the state, (iii) has less than \$50,000 in payroll in the state, (iv) has less than 25% of its property or payroll in the state and (v) was not collecting sales or use tax in the state as a condition for the seller or an affiliate of the seller to qualify as a supplier of products to the state.

III. State Questions and Answers

HYPERLINK ALL DEFINED TERMS WHEN USED IN FAQs

A. Streamlined Member States (Full Member States - Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming; Associate Member State - Tennessee)

1. What is the Marketplace Fairness Act (MFA)?

Proposed Answer: The MFA is the name given to the federal legislation enacted by Congress on **XXXXX (Act #)**, which gives states the authority to require all sellers not qualifying for the small seller exception to collect their sales and use tax, but only if the state is either (a) a Member State under the SSUTA or (b) adopts and implements certain other minimum simplifications.

2. What does passage of the MFA mean for SST Member States?

Proposed Answer: Passage of the MFA means that SST Member States can require all sellers not qualifying for the small seller exception to collect sales and use tax on all sales sourced to their state pursuant to the SSUTA. However, the state cannot begin exercising this authority until the first day of the calendar quarter that is at least 180 days after the date of enactment of the MFA. See **FAQ XXXX** for information on what this means for non-SST states.

3. Which remote sellers can a state require to collect and remit its sales and use taxes under the MFA?

Proposed Answer: States that have complied with the requirements of the MFA can require every seller making remote sales into its state to collect and remit its state's

sales and use taxes, unless the seller qualifies for the small seller exception (i.e., the seller has gross annual receipts in total remote sales not exceeding \$1 million in the preceding calendar year). If a seller sells over \$1 million in products in the prior calendar year with those sales sourced to customers located in states where the seller does not have sufficient contacts to be required to collect and remit the tax (e.g., physical presence, see *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992)), the seller may be required to collect taxes as a remote seller on those sales. In determining the \$1 million threshold, it does not matter if the sales are taxable. There are also attribution rules that apply to aggregate receipts from persons based on: (i) the person being a related person pursuant to I.R.C. §§ 267(b) & (c) and 707(b)(1) or (ii) a relationship with a person designed to avoid the \$1 million threshold. See **FAQ XXX** for the states asserting remote seller collection authority under the MFA.

Example: A seller has retail stores (e.g., physical presence and a sales tax collection requirement) in Florida, Georgia and Alabama and only makes delivery sales using a common carrier to customers in Arkansas (an SST Member State) and Mississippi (a non-SST State). Absent the MFA, the seller has no requirement to collect tax in Arkansas or Mississippi. In determining whether the seller is over \$1 million in total remote sales, only the sales to Arkansas and Mississippi are taken into account. If the sales to customers in Arkansas and Mississippi are less than \$1 million in the preceding calendar year, the seller is still not required to collect the sales or use tax for Arkansas and Mississippi. If those sales are over a \$1 million in the preceding calendar year and Arkansas and Mississippi comply with the requirements of the MFA, the seller will be required to collect the tax for those states.

4. How is the \$1 million small seller exception computed?

Proposed Answer: The \$1 million small seller exception is based on the total remote sales a seller has in the prior calendar year. Any sale, including nontaxable sales, sourced to a location where the seller does not have a requirement to collect the tax, absent the MFA's authority, is a "remote sale." A seller starting a new business does not need to register and begin collecting and remitting a state's tax on remote sales until its remote sales (which must be aggregated with related members' remote sales in the preceding calendar year) exceed \$1 million. Note: Rules apply to prevent a seller from creating multiple entities to fall below the small seller exception. See **FAQ XXX** for more information and an example of the remote seller calculation.

5. Which SST Member States can assert remote seller collection authority under the MFA?

Proposed Answer: All SST Member States can require remote sellers to collect its sales and use taxes subject to the notification and time constraints contained in the MFA. **As of October 1, 2013**, the following states are SST Member States: Arkansas, Georgia,

Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

6. What must an SST Member State do to begin exercising remote seller collection authority under the MFA?

Proposed Answer: An SST Member State must publish notice of the state’s intention to require all sellers, except those sellers qualifying for the small seller exception, to begin to collect and remit sales and use taxes on the seller’s remote sales sourced to that state. The MFA does not specify what form the notification is to take.

(Note: Each SST Member State should review its constitution and statutes to ensure that its laws permit remote seller collection authority and any special requirements as to how the notice must be issued. States should also be sure to notify their local governments to make sure they are aware of the remote seller collection authority.)

Here are links to the notices published by each of the Member States: (Note: The SSTGB does not take any responsibility as to the adequacy of the notices at the links below. It is just providing links to the information that the state developed itself.)

(Insert links to each state as they publish their notice)

7. How will the SSTGB disseminate the notice that an SST Member State publishes requiring remote sellers to collect its sales and use taxes under the MFA?

Proposed Answer: Each SST Member State will be requested to notify the Streamlined Sales Tax Executive Director and provide a copy of, or link to, the notice it publishes. The Executive Director will post that notice on the SSTGB’s website and have that notice distributed to the SSTGB, State and Local Advisory Council and General Public list serves, along with all sellers currently registered through the SST Central Registration System.

The notice will also be distributed to the contact list containing all of the states, business associations, local governments, trade associations and other organizations that have been identified as being affected by or having members that may be affected by the passage of the MFA.

8. What is the earliest date that an SST Member State can begin requiring remote sellers to collect its sales (or use) tax under the MFA?

Proposed Answer: The earliest date is dependent on when the legislation passes. An SST Member State may begin collection 180 days after the State publishes notice of the

State’s intent to exercise the authority under the MFA, but no earlier than the first day of the calendar quarter that is at least 180 days after the date of the enactment of the MFA.

Since the MFA was passed on XXXX, the earliest date an SST Member State can require remote sellers to collect its sales and use taxes is XXXXX.

Listed below are the dates that each of the SST Member States began requiring remote sellers to collect its sales and use taxes under the authority granted by the MFA:

(Insert each state name and the date they began their collection authority)

9. If an SST Member State has been found out of compliance by the SSTGB with the requirements of the SSUTA, does that state automatically lose its remote seller collection authority under the MFA?

Proposed Answer: No. A Member State that has previously been found to be in compliance with the requirements of the SSUTA, but which subsequently is found out of compliance does not automatically lose its status as an SST Member State. However, the state does face potential sanctions as described in Section 809 of the SSUTA. If the sanction imposed on the state is for expulsion, the state would no longer satisfy the requirements under Section 2(a) of the MFA (e.g., the Streamlined option) to require remote sellers to collect and remit its sales and use taxes. The state may still qualify for remote seller collection authority under Section 2(b) of the MFA if it has met the minimum simplification requirements.

10. What requirements are there under the MFA for SST Member States to provide information about taxable and exempt products?

Proposed Answer: SST Member States are required to complete the Taxability Matrix as described in Section 328 of the SSUTA. Some states also provide a list of the exemptions that are available in the state.

Here is a link to the taxability matrices and general lists of exemptions, provided by the SST Member States:

(provide link to the list each state has provided of its exemptions)

11. What does it mean to be a Model 1 or Model 2 seller?

Proposed Answer: A Model 1 seller is a seller that contracts with a Certified Service Provider (SST CSP) to compute, collect and remit the sales tax. A Model 2 seller uses

Certified Automated Software (CAS). CAS is software certified under the SSUTA to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction. A Model 2 seller prepares and files an SER and makes its remittances itself, whereas the SST CSP performs these services for a Model 1 seller.

(Note: All “remote sellers” under the MFA are “volunteer sellers” under the SST CSP contract in the SSUTA states. However, some “volunteer sellers” may not qualify as “remote sellers”.)

12. What does it mean to be a Model 3 seller?

Proposed Answer: A Model 3 seller is a seller registered under the SSUTA that has sales in at least five Member States, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the Member States that establishes a tax performance standard for the seller.

13. What does it mean to be a Model 4 seller?

Proposed Answer: A Model 4 seller is a seller that is registered under the SSUTA and is not a Model 1 seller, a Model 2 seller or a Model 3 seller. Model 4 sellers do not utilize an SSTGB certified system and they submit returns and payments to Member States on their own.

14. How does the MFA affect the classification of sellers as Model 1, Model 2, Model 3 or Model 4 sellers?

Proposed Answer: The MFA does not affect the seller’s classification under the SSUTA as a Model 1, Model 2, Model 3 or Model 4 seller.

15. What are the filing requirements for Model 1 sellers?

Proposed Answer: Model 1 sellers are required to file an SER with each Member State every month.

16. Can an SST Member State⁷ require a Model 1 seller to file their returns every month, even though that state would only require that seller to file their returns once a quarter if they were not a Model 1 Seller under the MFA?

Proposed Answer: Yes. The SSUTA requires Model 1 sellers to file their returns every month.

17. What are the filing requirements for Model 4 sellers?

Proposed Answer: The filing frequency for Model 4 sellers will be determined separately by each state. However, if the seller has indicated on their registration that they do not anticipate having sales in a state, the seller is not required to file a return in that state until the seller makes any sales, taxable or otherwise, in that state.

18. Are the contracts the SST Member States have with the SST CSPs comparable to the “free software” requirements of the MFA for non-SST States?

Proposed Answer: Yes. Under the SSUTA, the SSTGB has entered into a contract with the SST CSPs and compensate the SST CSPs for providing the software, including the installation, set-up, connection and integration of the SST CSP’s software with the seller’s system, along with the services necessary to:

- (i) ~~determine~~Determine the correct state and local tax rates on the transaction based on the taxability and sourcing rules in the SSUTA,
- (ii) ~~calculate~~Calculate the state and local taxes due at the time of sale,
- (iii) ~~generate~~Generate and file sales and use tax returns electronically,
- (iv) ~~electronically~~Electronically remit the state and local tax payments to each state, and
- (v) ~~respond~~Respond to any audit requests by states of the sellers with whom the SST CSP contracts.

19. Can an SST Member State audit remote sellers that are only collecting its sales (or use) tax because of the requirements contained in the MFA?

Proposed Answer: Yes. SST Member States have the ability to audit remote sellers subject to the state’s remote seller collection authority to determine that the correct amount of tax was remitted to the state. However, for each audit cycle, a remote seller will only be subject to a single audit by each state and that audit will cover all of the sales and use taxes due to that state and its local taxing jurisdictions.

20. If a remote seller is registered as a Model 1 seller in the SST Member States, does the state audit the remote seller or does the state audit the SST CSP that is providing the tax calculation, return filing and reporting for that remote seller?

Proposed Answer: A state will audit the SST CSP that has contracted to provide the tax calculation, return filing and reporting for a remote seller registered under the SSUTA as a Model 1 seller for all transactions processed by that SST CSP.

21. What is the process a seller uses to select a SST CSP?

Proposed Answer: Sellers will select a software provider the same way as selecting any other software. They will base the decision on their needs, the seller's market, or compatibility with the seller's accounting or shopping cart software. A seller should interview enough software providers to understand their capacity and compatibility.

22. If a seller is a remote seller in several SST Member States, but a non-remote seller in other SST Member States, can the seller just use the services of the SST CSP for the SST Member States where they are a remote seller and take care of the tax calculation, return filing and reporting themselves in the SST Member States where they are NOT a remote seller?

Proposed Answer: Yes, the seller can indicate in which states the SST CSP should calculate, collect and remit the taxes.

23. What are the liability protections SST Member States must provide remote sellers under the SSUTA and does this change under the MFA?

Proposed Answer: The liability protections provided by SST Member States do not change under the MFA. SST Member States must provide the following liability protections for all sellers pursuant to their membership in the SSUTA.

Tax Rate Changes

SST Member States will provide at least 30-day notice of a state rate change, after enactment and before the effective date of such rate change, or otherwise relieve sellers from liability for failing to collect at the new rate during that 30-day notice period absent fraud. While the SSUTA includes no specific liability relief relating to local rate changes, the SSUTA requires that local rate changes can only be effective on the first day of a calendar quarter after a minimum of 60-days notice to the seller (120-days notice for printed catalogs).

Reliance on State Rate and Boundary Databases

SST Member States will relieve sellers from liability for having charged and collected the incorrect amount of sales or use tax as a result of relying on erroneous data provided by the SST Member State as to tax rate, boundary, or taxing jurisdiction assignment in their sales and use tax rate and boundary databases. This includes third party vendor address-based databases an SST Member State has elected to use and certify.

Exemption Administration

- SST Member States will relieve sellers from liability where a purchaser improperly claims an exemption, if the seller obtains a fully completed SSUTA Certificate of Exemption or captures all the relevant data elements required by the SSUTA at the

time of sale or within 90 days after the date of the sale. In such cases, the SST Member State will hold the purchaser liable for any uncollected sales or use tax. (Note: This liability relief does not apply if the seller: (i) fraudulently fails to collect the tax; (ii) solicits purchasers to unlawfully claim an exemption; or (iii) accepts an exemption certificate claiming an entity-based exemption if the state has affirmatively indicated that the claimed exemption is not available in the state and the product is received by the purchaser at the seller’s location.)

- If the seller has not obtained an exemption certificate or all the relevant data elements within the 90-day period, a seller has 120 days, subsequent to a request for substantiation by an SST Member State, to either:
 - Obtain a fully completed exemption certificate from the purchaser, taken in good faith (which means that the seller obtains a certificate that claims an exemption that (i) was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced, (ii) could be applicable to the item being purchased, and (iii) is reasonable for the purchaser’s type of business); or
 - Obtain other information establishing that the transaction was not subject to the tax.(Note: A seller obtaining this information within the 120-day period is relieved of liability for the tax on a transaction unless the state can establish that the seller had knowledge or had reason to know at the time such information was provided that the exemption information was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax.)

Streamlined Taxability Matrix

SST Member States will relieve sellers of liability for having charged and collected the incorrect amount of sales or use tax resulting from the seller’s reliance on erroneous data provided by the SST Member State in that state’s Streamlined Taxability Matrix. SST Member State Taxability Matrices can be found at [\[insert link\]](#).

Streamlined Certified Automated System Software (CAS)

A seller that uses a CAS to calculate the amount of tax due on a transaction will be relieved from liability to an SST Member State for not collecting sales or use taxes that results from the seller relying on the SST Member State’s certification of the CAS. This liability relief is not available to a seller that has incorrectly classified an item or transaction into a product category (e.g., product mapping) certified by the SST Member State.

24. What are the liability protections SST Member States must provide SST CSPs and does this change under the MFA?

The liability protections that SST Member States must provide SST CSPs are the same as the liability protections provided to sellers as described in Question XXX. These liability protections do not change under the MFA.

State and Local Tax Rate Changes

SST Member States must extend to SST CSPs the same liability protections that are afforded to sellers for State and local tax rate changes. [See FAQ XXX.](#)

Reliance on State Rate and Boundary Databases

SST Member States must extend to SST CSPs the same liability protections afforded to sellers for use of Member States’ rates and boundary databases. [See FAQ XXX.](#)

Exemption Administration

SST Member States must extend to SST CSPs the same liability protections afforded to sellers for exemption administration in their states. [See FAQ XXX.](#)

Streamlined Taxability Matrix

SST Member States must extend to SST CSPs the same liability protections afforded to sellers for use of those Member States’ Taxability Matrices. [See FAQ XXX.](#)

Streamlined Certified Automated System Software (CAS)

SST Member States must extend to SST CSPs the same liability protections afforded to sellers for use of automated systems certified by those Member States. [See FAQ XXX.](#)

B. Non-Streamlined States ([Alabama, Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Hawaii, Idaho, Illinois, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Missouri, New York, New Mexico, Pennsylvania, South Carolina, Texas, and Virginia](#))

What is the difference between a “certified service provider” under the SSUTA (“SST CSP”) and a “certified software provider” under the MFA (“CSP-Non-SST”)? – Yet to be determined

These FAQs are drafted to provide information about the Marketplace Fairness Act (MFA) at a high level, with the intended audience being staff in departments of revenue and elected officials, such as legislators and governors, in states that are not part of the Streamlined Sales and Use Tax Agreement (SSUTA). It is intended that individual states will provide additional FAQs that explain in detail how each state intends to implement the MFA once the bill becomes law and each non-SST State makes decisions about whether to conform to the MFA’s requirements.

1. What is the Marketplace Fairness Act (MFA)?

Proposed Answer: The MFA is the name given to the federal legislation enacted by Congress on XXXXX, which gives states the authority to require all sellers not qualifying for the small seller exception to collect their sales and use tax, but only if the state is either (a) an SST Member State or (b) adopts and implements certain other minimum simplifications.

2. What does passage of the MFA mean for non-SST States?

Proposed Answer: Passage of the MFA means that non-SST States can require sellers not qualifying for the small seller exception to collect sales and use tax on remote sales sourced to their state once the state adopts and implements certain minimum simplification requirements. However, the state cannot begin exercising this authority until the first day of the calendar quarter that is at least 6 months after the state enacts the minimum simplifications. See FAQ XXX for information on how the passage of the MFA affects SST Member States.

3. Which remote sellers can a state require to collect and remit its sales and use taxes under the MFA?

Proposed Answer: States that have complied with the requirements of the MFA can require every seller making remote sales into its state to collect and remit its state's sales and use taxes, unless the seller qualifies for the small seller exception (i.e., the seller has gross annual receipts in total remote sales not exceeding \$1 million in the preceding calendar year). If a seller sells over \$1 million in products in the prior calendar year with those sales sourced to customers located in states where the seller does not have sufficient contacts to be required to collect and remit the tax (e.g., physical presence, see *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992)), the seller may be required to collect taxes as a remote seller on those sales. In determining the \$1 million threshold, it does not matter if the sales are taxable. There are also attribution rules that apply to aggregate receipts from persons based on: (i) the person being a related person pursuant to I.R.C. §§ 267(b) & (c) and 707(b)(1) or (ii) a relationship with a person designed to avoid the \$1 million threshold. See FAQ XXX for the states asserting remote seller collection authority under the MFA.

Example: A seller has retail stores (e.g., physical presence and a sales tax collection requirement) in Florida, Georgia and Alabama and only makes delivery sales using a common carrier to customers in Arkansas (an SST Member State) and Mississippi (a non-SST State). Absent the MFA, the seller has no requirement to collect tax in Arkansas or Mississippi. In determining whether the seller is over \$1 million in total remote sales, only the sales to Arkansas and Mississippi are taken into account. If the sales to customers in Arkansas and Mississippi are less than \$1 million in the preceding calendar year, the seller is still not required to collect the sales or use tax

for Arkansas and Mississippi. If those sales are over a \$1 million in the preceding calendar year and Arkansas and Mississippi comply with the requirements of the MFA, the seller will be required to collect the tax for those states.

4. How is the \$1 million small seller exception computed?

Proposed Answer: The \$1 million small seller exception is based on the total remote sales a seller has in the prior calendar year. Any sale, including nontaxable sales, sourced to a location where the seller does not have a requirement to collect the tax, absent the MFA’s authority, is a “remote sale.” A seller starting a new business does not need to register and begin collecting and remitting a state’s tax on remote sales until its remote sales (which must be aggregated with related members’ remote sales in the prior calendar year) exceed \$1 million. Note: Rules apply to prevent a seller from creating multiple entities to fall below the small seller exception. See FAQ XXX for more information and an example of the remote seller calculation.

5. What are the minimum simplification requirements that a state must meet if it does not belong to the SSUTA but wants collection authority over remote sellers?

Proposed Answer: In order to obtain remote collection authority, the MFA requires that a non-SST State must meet the following minimum simplification requirements:

- a. Enact legislation which specifically identifies the taxes to which the authority applies and the products, otherwise subject to these taxes, that will not be subject to this authority.
- b. Have only one entity within the state that administers the state and local sales and use tax, processes returns, and performs audits.
- c. Have only one audit for remote sellers for all state and local taxing jurisdictions within the state.
- d. Have a single sales and use tax return to be used by remote sellers to be filed with the single entity in the state that is responsible for tax administration.
- e. Not require remote sellers to file sales and use tax returns any more frequently than returns are required for nonremote sellers, not impose requirements on remote sellers that the state does not impose on nonremote sellers with respect to the collection of sales and use taxes, and not allow any local jurisdiction to require a remote seller to submit a sales and use tax return or to collect sales and use taxes.
- f. Provide a uniform sales and use tax base within state and local taxing jurisdictions, unless the state does not seek remote collection authority on any specifically identified products when the items are not both taxable or exempt at both the state and local level.
- g. Follow uniform procedures for sourcing remote sales.
- h. Relieve remote sellers from liability, penalty, and interest for the incorrect collection, remittance, or noncollection of sales and use taxes if caused by an error

- or omission made by the certified software provider (non-SST CSP), and non-SST CSP from liability for such mistakes if the error results from misleading or inaccurate information provided by the remote seller.
- i. Relieve remote sellers and non-SST CSPs from liability for incorrectly collecting, remitting, or failing to collect sales and use taxes if the liability is the result of incorrect information or software provided by the state.
 - j. Provide 90 days’ notice of a state or local rate change to remote sellers and non-SST CSPs and provide relief to any remote seller or non-SST CSP for collecting the tax at the immediately preceding rate if the 90-day notice period is not followed.
 - k. Provide remote sellers with information as to the taxability of products, exemptions available for products, and a rates and boundary database.
 - l. Provide remote sellers with free software that calculates sales and use taxes due on each transaction when the transaction is completed, files sales and use tax returns, and is updated to reflect rate changes.
 - m. Create certification procedures for non-SST CSPs.
6. When can a non-SST State begin exercising remote seller collection authority once it complies with the simplification requirements?

Proposed Answer: Non-SST States can exercise remote seller collection authority no earlier than the first day of the calendar quarter that is at least 6 months after the date that the state enacts legislation to exercise the authority that meets the simplification requirements. The plain language of the MFA appears to allow a non-SST State to pass legislation prior to the MFA becoming law with the result that when the MFA becomes law the required 6-month waiting period for some non-SST States may already be completed.

7. What types of taxes can a non-SST State require remote sellers to pay or collect and remit once the state implements the simplification requirements?

Proposed Answer: According to the express language of the MFA, non-SST States can only ask remote sellers “to collect and remit sales and use taxes with respect to remote sales sourced to that State.” The MFA does not provide a definition for the term “sales and use taxes.” Each State will identify the specific taxes that are covered by the provisions of the MFA which remote sellers would be required to collect.

The MFA also contains provisions that apply to all states seeking remote collection authority that provides nothing in the MFA “shall be construed as . . . subjecting a seller or any other person to franchise, income, occupation, or any other type of taxes, other than sales and use taxes; . . . affecting the application of such taxes; or . . . enlarging or reducing State authority to impose such taxes.” The MFA further provides that, as applied to all states seeking remote collection authority, nothing in the Act “shall be

construed as permitting or prohibiting a State from . . . subjecting any person to State or local taxes not related to the sale of products or services.”

8. What does it mean when the MFA says that a non-SST State has to specify the taxes the state intends to require remote sellers to collect?

Proposed Answer: While the MFA is silent on the degree of specificity a non-SST State must use in its conforming legislation to comply with this provision of the Act, each non-SST State must identify the taxes to be conformed.

States refer to sales and use type taxes in various ways and in various statutory provisions. Therefore, in order to exercise remote collection authority under the MFA, each non-SST State has to identify the exact taxes that the state intends to conform. For example, assume a state imposes a limited sales and use tax under Chapter A of its Tax Code on most products, such as clothing and data processing services, and also imposes a motor vehicle sales and use tax under Chapter B of its Tax Code. If the state’s legislature seeks remote collection authority under the MFA, it needs to state clearly which chapters of the Tax Code will be conformed.

The MFA provides non-SST States with flexibility to exclude from remote collection authority expressly identified products in the state’s legislation. Therefore, the state cannot impose collection responsibilities on remote sellers of these products. For example, assume a state provides a partial exemption on sales of gasoline such that sales and use tax applies at the local level while it is exempt from sales and use tax at the state level. The MFA allows the state to specifically identify and exclude from remote collection authority gasoline so that the difference in taxation at the state and local level can continue, but remote sellers of gasoline cannot be required to collect tax on the sale of gasoline.

9. What does it mean when the MFA says that a non-SST State has to specify the products subject to the tax by remote sellers?

Proposed Answer: The MFA provides non-SST States with flexibility to seek remote collection authority for products only if expressly identified in the state’s conforming legislation. Congress recognized that to improve simplification for remote sellers, non-SST States needed the authority to exclude some products from remote collection authority. For example, assume a state provides a partial exemption on sales of gasoline such that sales and use tax applies at the local level while it is exempt from sales and use tax at the state level. The MFA allows the state to specifically identify and exclude from remote collection authority gasoline so that the difference in taxation at the state and local level can continue, but remote sellers of gasoline cannot be required to collect tax on the sale of gasoline.

10. The MFA says a non-SST State has to provide information about the taxability of products, along with information about exemptions. What qualifies as appropriate information under the MFA?

Proposed Answer: The MFA does not require non-SST States to provide taxability information in any particular format. Each non-SST State that seeks to conform to the MFA’s simplification requirements has flexibility to provide the information it deems is appropriate to help remote sellers and purchasers comply with its laws regarding items that are taxable and exempt. Some of the ways non-SST States can comply with this simplification requirement include issuing rules and publications and working with certified software providers (non-SST CSPs) to provide information about taxability in a matrix or other format.

11. The MFA says a non-SST State seeking remote collection authority has to provide a rates and boundary database. What qualifies as an appropriate rates and boundary database?

Proposed Answer: The MFA does not prescribe any particular format for the rates and boundary database. Some non-SST States currently provide the public with a database for free that allows a person to look up an address and determine the applicable state and local sales and use tax rates that apply at the location of the address. Other states may offer their rates and boundary database in a downloadable format.

12. Does a non-SST State have to “publish notice” of its intention to exercise remote seller collection authority like the SST Member States?

Proposed Answer: No notice is required in addition to enacting legislation that conforms to the MFA’s simplification requirements. However, it will likely be in each non-SST State’s best interest to provide some type of notification to inform remote sellers of the collection requirements for its state. **See FAQ XXX** for additional information.

13. Can a non-SST State use the central registration system that was developed by the SST Member States to register remote sellers? If yes, what does a non-SST State have to do to use the system and how much does it cost? Are there any benefits to using the system? Will non-SST States be able to obtain lists of remote sellers that have registered through the SST central registration system? If a non-SST State chooses to use the SST central registration system, does that mean the non-SST State has to use that system for all sellers, not just remote sellers?

Proposed Answer: To date the SSTGB has not taken formal action on this issue, but the SSTGB is in the process of issuing an RFP to enhance its registration system, and plans to consult with non-SST States on proposed enhancements to meet their needs.

Requirements for non-SST States to use the system, cost, and functionality are yet to be determined. Non-SST States can contact **[fill in appropriate contact name and info]** for more information about the current features of the central registration system and possible features that may be added.

14. The MFA requires non-SST States to provide free software to remote sellers. What must that software do and are there any options for how a non-SST State provides that software?

Proposed Answer: The free software must calculate sales and use taxes due on each transaction at the time the transaction is completed, allow remote sellers to file sales and use tax returns, and be updated to reflect rate changes with 90 days' notice for any state or locality. If the required notice is not provided, then remote sellers cannot be liable for taxes not properly collected at the immediately preceding effective rate during the 90-day notice period. Exactly how the non-SST States are to provide the 90-day notice is not specified.

The bill language is silent on how non-SST States must provide the free software to the remote sellers.

15. The MFA requires non-SST States to have certification procedures for certified software providers (non-SST CSP). What does that mean and how do states certify such providers?

Proposed Answer: A non-SST CSP is defined by the MFA as a person that provides software to facilitate state and local sales and use tax compliance in conjunction with the requirement that non-SST States provide free software to remote sellers. The MFA also provides that once the state has a program for non-SST CSPs, remote sellers must be allowed to use the software provider of their choice.

The MFA is silent on the certification procedures non-SST States must adopt, leaving the non-SST States flexibility to determine what certification procedures are appropriate and to develop programs that meet each state's needs. For example, states could consider adopting or adapting the certification process followed by the SST Member States for their SST CSPs or adopting their own unique certification procedures.

16. The MFA requires a non-SST State to have a uniform base between state and local taxing jurisdictions. What does that mean?

Proposed Answer: The MFA does not expressly explain how a non-SST State achieves a uniform base to meet this simplification requirement. However, a product that is subject to sales and use tax by the state must also be taxable in any local jurisdiction within the state that also imposes a sales and use tax. For example, assume a state currently provides under its laws a partial exemption for canned software, meaning it is subject to state sales and use tax but exempt from local sales and use tax, , and also assume the state legislature determines what is taxable at both the state and local levels. It is also true that some states allow “home rule,” meaning that the local jurisdictions determine without state oversight whether to impose any type of sales and use tax and what products are subject to tax. In order for a state and its local jurisdictions to achieve remote seller collection authority on any given product, that product must be taxable or exempt by both the state and local taxing jurisdictions. A state may not require remote sellers to collect state or local sales or use taxes on products that are taxed differently at the state and local levels.

Under the above set of facts, the options available to obtain remote collection authority are as follows, assuming the state legislature has control over what is taxable at both the state and local level: (1) exclude the sale of canned software from remote collection authority altogether so the state does not require remote sellers to collect tax on the software, (2) make the sale of canned software taxable or exempt at both the state and local level, or (3) exclude all local jurisdictions from having any remote collection authority altogether and only seek remote collection authority for the state portion of the tax.

If a state allows cities to make their own taxability determinations via “home rule,” then it may be an option for a state to pass conforming legislation that allows local jurisdiction to have remote collection authority if their tax base is the same as the state’s tax base so both are uniform.

17. Which transactions are covered by the sourcing rules for non-SST States who receive remote collection authority?

Proposed Answer: Only remote sales are covered by the MFA. Remote sales are defined as any sale into a state in which the seller would not legally be required to pay, collect, or remit state or local sales and use taxes other than under the MFA. In other words, if a seller does not have any physical presence in a state which, under that state’s law and applicable federal law, means the seller does not have to pay or collect and remit sales and use tax, and the only reason the seller is required to pay or collect and remit sales and use tax in a particular state is because that state has conformed its laws to the MFA, then that is a remote sale.

18. What does the sourcing rule require for non-SST States, under the MFA?

Proposed Answer: A remote seller must pay or collect and remit any applicable state and local sales and use taxes in effect at that time of the sale according to the following hierarchy, which starts with tax due based on the location of delivery of the item (i.e., destination sourcing) and ends with tax due based on the seller’s location (i.e., origin sourcing). Remote sellers are required to maintain normal books and records. The failure to keep such records does not allow a remote seller to default to origin sourcing.

- a. If the seller knows the location where the product is received by the purchaser based on instructions for delivery as provided by the purchaser, tax is due based on that location.
- b. If the purchaser does not specify a location for the product to be delivered, the seller must collect tax based on the purchaser’s address that is known to the seller as provided by the purchaser or based on information known to the seller as collected to complete the sale, such as address information from a purchaser’s credit card or other payment instrument.
- c. If the delivery location or the purchaser’s address cannot be determined, then the seller must collect tax based on the address of the seller from which the remote sale was made.

19. Does the MFA make any changes to sourcing rules for persons who are not remote sellers?

Proposed Answer: No. The MFA only applies to remote sellers making sales into a state in which they are not currently required to pay, collect, or remit the tax. Existing state sourcing rules continue to apply when a seller is otherwise legally required to pay, collect or remit the tax in the state. The MFA also states expressly that intrastate sales are not affected.

20. What are the liability protections for remote sellers under the MFA when selling taxable products into non-SST States?

Proposed Answer: Non-SST States cannot hold a remote seller liable for the incorrect collection, remittance, or noncollection of sales and use taxes, including penalties and interest, if the remote seller’s action was the result of an error or omission made by a certified software provider or if the seller’s action was the result of incorrect information or software provided by the state. Remote sellers can be held liable if they provide misleading or inaccurate information to the certified software provider. See **FAQ XXX**.

21. What are the liability protections for software providers that are certified by a non-SST State under the MFA?

Proposed Answer: States cannot hold a certified software provider liable for the incorrect collection, remittance or noncollection of sales and use taxes, including penalties and interest, if the certified software provider’s action was the result of (1) “misleading” or “inaccurate” information provided by the remote seller or (2) incorrect information or software provided by the state.

22. Does the MFA affect existing nexus laws?

Proposed Answer: No. The MFA does not alter the existing standards for determining nexus between a person and any state or locality. The MFA provides that it shall not be construed to preempt or limit any power exercised or to be exercised by a State or local jurisdiction under the law of such State or local jurisdiction or under any other Federal law.

23. What happens if a remote seller that does not meet the small seller exemption refuses to collect the taxes in a state that has remote seller collection authority? What authority does a non-SST State have over these businesses?

Proposed Answer: The MFA expressly states that a non-SST State “may not require a remote seller to file sales and use tax returns any more frequently than returns are required for nonremote sellers or impose requirements on remote sellers that the State does not impose on nonremote sellers with respect to the collection of sales and use taxes.” Accordingly, a state may pursue collection of any unpaid tax and take steps to encourage compliance as it would with any other business obligated to be registered with the state and to collect and remit sales and use tax.

24. What happens to remote sellers if a state is not an SST Member State and also does not seek remote collection authority under the MFA?

Proposed Answer: Remote sellers would not have any collection responsibilities in non-MFA or non-SST States.

C. States With No State Sales Tax (Alaska, Delaware, Montana, New Hampshire and Oregon)

1. What is the Marketplace Fairness Act (MFA)?

Proposed Answer: The MFA is the name given to the federal legislation enacted by Congress on XXXXX, which gives states the authority to require all sellers not qualifying for the small seller exception to collect their sales and use tax, but only if the state is either (a) an SST Member State or (b) adopts and implements certain other minimum simplifications.

2. What does passage of the MFA mean?

Proposed Answer: Passage of the MFA means that SST Member States can require all sellers not qualifying for the small seller exception to collect their state sales and use taxes (and local sales and use taxes that conform with the requirements of the SSUTA) on all sales sourced to their state pursuant to the SSUTA. However, the state cannot begin exercising this authority until the first day of the calendar quarter that is at least 180 days after the date of enactment of the MFA.

For non-SST States, passage of the MFA means that these States can require sellers not qualifying for the small seller exception to collect their state sales and use taxes (and local sales and use taxes that conform to the requirements of the MFA) on remote sales sourced to their state once the state adopts and implements certain minimum simplification requirements. However, the state cannot begin exercising this authority until the first day of the calendar quarter that is at least 6 months after the state enacts the minimum simplifications.

3. Under the MFA, does a seller located in a state that does not impose a state sales or use tax have to collect sales or use taxes for the other states?

Proposed Answer: Yes. A seller located in a state that does not impose a sales or use tax (i.e., Alaska, Delaware, Montana, New Hampshire and Oregon) is required to collect the sales or use taxes for those states that have remote seller collection authority pursuant to the MFA, if the seller made more than \$1 million in total remote sales in the preceding calendar year. The taxability of products is based on laws of the state where the item is sourced (e.g., delivered). See **FAQs XXX and XXX** for information on which products are taxable.

4. Who should sellers in our state contact with questions about collecting sales or use taxes?

Proposed Answer: If the seller in your state is not currently required to collect sales or use tax, the seller should either contact (1) the Streamlined Sales Tax Governing Board, (2) the Department of Revenue for the State into which the seller is making sales or (3) a CSP that can provide the seller, at no charge, the software and services necessary to begin collecting and remitting the sales and use taxes in all the states which have remote seller collection authority. The CSP will take care of, among other things, (1) integrating its software with the seller's system so that the appropriate sales or use tax can be calculated and collected at the time of the sale, (2) generating and filing the necessary sales and use tax returns and (3) making the required remittances to each of the states.

(INSERT SSTGB CONTACT INFO, STATE CONTACT INFO and CSP CONTACT INFO)

IV. Local Government Questions and Answers

These FAQs are drafted to provide information about the Marketplace Fairness Act (MFA) at a high level, with the intended audience being local governmental units and their elected officials that are involved with imposing and administering local sales and use taxes. It is important that local officials understand the requirements that must be met if the local governmental unit wants remote sellers to be required to collect its local sales and use taxes.

1. What is the Marketplace Fairness Act (MFA)?

Proposed Answer: The MFA is the name given to the federal legislation enacted by Congress on XXXXX, which gives states the authority to require all sellers not qualifying for the small seller exception to collect their sales and use tax, but only if the state is either (a) an SST Member State or (b) adopts and implements certain other minimum simplifications.

2. What does passage of the MFA mean?

Proposed Answer: Passage of the MFA means that SST Member States can require all sellers not qualifying for the small seller exception to collect their state sales and use taxes (and local sales and use taxes that conform with the requirements of the SSUTA) on all sales sourced to their state pursuant to the SSUTA. However, the state and its local governmental units cannot begin exercising this authority until the first day of the calendar quarter that is at least 180 days after the date of enactment of the MFA.

For non-SST States, passage of the MFA means that these States can require sellers not qualifying for the small seller exception to collect their state sales and use taxes (and local sales and use taxes that conform to the requirements of the MFA) on remote sales sourced to their state once the state adopts and implements certain minimum simplification requirements. However, the state and its local governmental units cannot begin exercising this authority until the first day of the calendar quarter that is at least 6 months after the state enacts the minimum simplifications.

3. Are there any special requirements a local government needs to be aware of when enacting a local sales and use tax that the local government expects remote sellers to collect under the MFA? (Note: The MFA does not impose any restrictions on local governmental unit sales and use taxes which the local governmental unit **does not** expect remote sellers to collect.)

Proposed Answer: Yes. If the local government is in an SST Member State and expects remote sellers to collect the tax on sales sourced to that local governmental unit's jurisdiction, the local governmental unit must be certain that its local sales and use tax complies with the statutory requirements contained within their state as well as in the SSUTA. It is recommended that before a local governmental unit begins the process of adopting a local sales and use tax, the local governmental unit contact the State Department of Revenue to determine the specific requirements in its state. Under the SSUTA, these requirements include (1) state administration of the local tax which means that the sellers register with the state, file the returns with the state, make the payments to the state, and the state distributes the local taxes to the local governmental unit, (2) the state conducts any audits of the sellers collecting these taxes, (3) the local tax base is the same as the state tax base, (4) local rate and boundary changes can only be made effective the first day of a calendar quarter after a minimum of 60-days notice to sellers (120-days notice to sellers is required for printed catalogs), and (5) providing and maintaining a rate and jurisdiction database that identifies each jurisdiction using the Federal Information Processing Standards (FIPS) codes and assigns each 5-digit and 9-digit zip code the proper rate.

If the local governmental unit is in a non-SST State and expects remote sellers to collect the tax on sales sourced to that local governmental unit's jurisdiction, the local governmental unit must be certain that its local sales and use tax complies with the statutory requirements contained within their state as well as the requirements contained in the MFA. It is recommended that before a local governmental unit begins the process of adopting a local sales and use tax which it expects remote sellers to collect, the local governmental unit contact its State Department of Revenue to determine the specific requirements in its state. Under the MFA, these requirements include (1) state administration of the local tax which means that the remote sellers register with the state, file the returns with the state, make the payments to the state, and the state distributes the local taxes to the local governmental unit, (2) the state conducts any audits of the remote sellers collecting these taxes, (3) providing a uniform tax base among the State and local jurisdictions, (4) providing at least 90-days notice of a rate change, and (5) provide a rate and boundary database in a downloadable format that is updated quarterly.

4. Who does a local governmental unit need to notify if it enacts a new sales or use tax that it expects remote sellers to collect?

Proposed Answer: The local governmental unit needs to work with and inform their State Department of Revenue of any new or changes to their existing local sales and use taxes. It is important to remember that there must be parity in a number of areas between the state and local taxes under the SSUTA for the SST Member States and under the MFA for the non-SST States. Local governmental units need to carefully

review the state’s tax code and discuss with the State Department of Revenue any new taxes they enact and expect remote sellers to collect.

5. Who do local governments need to notify if they change the rate of a tax they expect remote sellers to collect?

Proposed Answer: When a local governmental unit changes the rate of a sales or use tax which it expects remote sellers to collect, the local governmental unit must notify its State Department of Revenue and also discuss these changes to ensure compliance with State statutes.

For SST Member States, at least 60-days notice (120-days notice for printed catalogs) must be provided to sellers before they can be required to collect the local tax at the new rate and the new rate can only be effective on the first day of a calendar quarter. (Note: Some states may require more than 60-days notice (120-days notice for printed catalogs).)

For non-SST States, the MFA requires at least 90-days notice be provided to remote sellers before they can be required to collect the local tax at the new rate. (Note: Some states may require more than 90-days notice.)

6. How will a local governmental unit know if the State will be requiring remote sellers to collect its state and local sales and use taxes?

Proposed Answer: Local governmental units should monitor state actions and the SSTGB’s website for an up-to-date list of which states have provided the required notice and enacted the necessary legislation, as applicable.

An SST Member State is required to publish a notice that provides at least 180 days notice of its intent to require remote sellers to collect its state and local sales and use taxes.

A non-SST State is required to enact legislation specifying the tax or taxes to which the remote seller collection authority applies. Local governmental units should carefully monitor this legislation so they understand and can provide input into how state statutes will affect local governmental unit sales and use taxes.

7. Who do remote sellers file sales and tax returns with to report and remit the local sales and use taxes collected?

Proposed Answer: For both the SST Member States and the non-SST States, a single sales and use tax return is filed by remote sellers with the single entity in the state that

is responsible for tax administration of the state and local sales and use taxes required to be collected by remote sellers. Local governmental units cannot require remote sellers to file separate sales and use tax returns or related information for these taxes directly with the local governmental unit.

8. What will the remittance procedures be for the State to send local tax revenues to the local governmental units?

Proposed Answer: For both SST Member States and non-SST States, the local sales and use taxes which remote sellers are required to collect are remitted to the State. It is then up to each State to determine the procedures relating to how and when these local sales and use taxes will be distributed to the local governmental units. A local governmental unit should discuss with its State Department of Revenue the procedures the state follows to send a local governmental unit its tax revenues.

9. Can a local governmental unit audit a remote seller?

Proposed Answer: For both SST Member States and non-SST States, only the State can audit a remote seller for all of the state and local sales and use taxes the remote seller is required to collect and remit to the state.

10. How does a local governmental unit know to which jurisdiction a particular remote sales is sourced?

Proposed Answer: For SST Member States, the location to which a sale is sourced is determined based on the sourcing provisions contained in the SSUTA. Generally, those provisions source the sale to the location where the product sold is received by the purchaser. If the product is delivered to the purchaser, the sale is sourced to the location based on the instructions for delivery that the purchaser furnishes to the seller. If no delivery location is specified, the remote sale is sourced to the customer's address that is either known to the seller or, if not known, obtained by the seller during the consummation of the transaction, including the address of the customer's payment instrument if no other address is available. If an address is unknown and a billing address cannot be obtained, the sale is sourced to the address of the seller from which the sale was made.

For non-SST States, **remote sales** are sourced under the requirements provided in the MFA. Those requirements provide that the location to which a remote sale is sourced refers to the location where the product or service sold is received by the purchaser, based on the location indicated by instructions for delivery that the purchaser furnishes to the seller. When no delivery location is specified, the remote sale is sourced to the customer's address that is either known to the seller or, if not known, obtained by the

seller during the consummation of the transaction, including the address of the customer’s payment instrument if no other address is available. If an address is unknown and a billing address cannot be obtained, the remote sale is sourced to the address of the seller from which the remote sale was made.

11. What should a customer do if the customer believes that a remote seller collected the incorrect amount of local tax at the time of the sale?

Proposed Answer: If the customer believes the remote seller collected the incorrect amount of local sales or use tax at the time of the sale, the customer should contact the remote seller or that state’s Department of Revenue to determine if there was an error. The local sales or use tax is collected based on the location to which the transaction is sourced following the rules provided in the SSUTA for SST Member States or the MFA for non-SST States.

12. Who can local governmental unit officials tell consumers or sellers to call with questions about the state’s implementation of the MFA?

Proposed Answer: If consumers or sellers have questions about the state’s implementation of the MFA or other remote seller collection legislation, the local governmental unit should refer the person to that State’s Department of Revenue. (PROVIDE CONTACT NUMBER/EMAIL ADDRESS FOR EACH STATE) PROVIDE LINK TO WEBSITE WHERE INFO CAN BE FOUND

VH. Business Questions and Answers

1. Am I required to collect taxes as a “remote seller”?

- o Consider flowchart, decision tree, checklist to answer this question

Proposed Answer: Every seller must collect the states’ sales/use taxes that have complied with the MFA requirements unless the seller qualifies for the small seller exception, remote sales not exceeding \$1 million. If a seller sells over \$1 million in products in the prior calendar year with those sales sourced to customers located in states where the seller does not have sufficient contacts to be required to collect and remit the tax (e.g., physical presence, see *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992)), the seller may be required to collect taxes as a remote seller on those sales. In determining the \$1 million threshold, it does not matter if the sales are taxable. There are also attribution rules that apply to aggregate receipts from persons based on: (i) the person being a related person pursuant to I.R.C. §§ 267(b) & (c) and 707(b)(1) or (ii) a relationship with a person designed to avoid the \$1 million threshold. See question X for the states asserting remote seller collection authority under the MFA.

Example: A seller has retail stores (*e.g.*, physical presence and a sales tax collection requirement) in Florida, Georgia and Alabama and only makes delivery sales using a common carrier to customers in Arkansas (an SST Member State) and Mississippi (a non-SST State). Absent the MFA, the seller has no requirement to collect tax in Arkansas or Mississippi. In determining whether the seller is over \$1 million in total remote sales, only the sales to Arkansas and Mississippi are taken into account. If the sales to customers in Arkansas and Mississippi are less than \$1 million in the preceding calendar year, the seller is still not required to collect the sales or use tax for Arkansas and Mississippi. If those sales are over a \$1 million in the preceding calendar year and Arkansas and Mississippi comply with the requirements of the MFA, the seller will be required to collect the tax for those states.

2. Who is a “remote seller”?

Proposed Answer: “Remote seller” means any person that makes remote sales. A “person” means an individual (*i.e.*, sole proprietors), trust, estate, fiduciary, partnership, corporation, limited liability company, or other legal entity, including a state or local government and not-for-profit entities.

3. What is a “remote sale”?

Proposed Answer: The term “remote sale” means a sale sourced to a state, as determined under the sourcing rules provided by the MFA in which the seller, absent the MFA, is not legally required to collect and remit the tax to a state. The location to which a remote sale is sourced refers to the location where the product sold is received by the purchaser, based on the location indicated by instructions for delivery that the purchaser furnishes to the seller (*e.g.*, donee’s location for a gift). When no delivery location is specified, the remote sale is sourced to the customer’s address that is either known to the seller or, if not known, obtained by the seller during the consummation of the transaction, including the address of the customer’s payment instrument if no other address is available. If an address is unknown and a billing address cannot be obtained, the remote sale is sourced to the address of the seller from which the remote sale was made.

Note: The above sourcing rules apply to determine the “remote sales” threshold under the MFA. However, a seller must comply with the sourcing provisions of the Streamlined Sales and Use Tax Agreement to determine the taxability for those states granted remote seller collection authority under section 2(a) of the MFA.

4. What states have remote seller collection authority and when did the remote seller collection authority begin for each of the states?

Proposed Answer: States can qualify for remote collection authority in two ways: 1) being an SST Member State or 2) meeting the minimum simplification provisions in the MFA. The following states have indicated they have, or will have, remote seller collection authority on and after the dates provided below [Click Here for most current list](#):

State A – SSUTA State – Starts X, 2014
State B – Non-SST State – Starts X, 2014

5. How will I know if a new state begins to exercise remote seller collection authority?

Proposed Answer: SST Member States must provide at least 180 days notice of when they are requiring remote sellers to collect and remit their sales or use tax under the MFA. The collection authority can only begin on the first day of a calendar quarter. :

Non-SST States can exercise remote seller collection authority no earlier than the first day of the calendar quarter that is at least 6 months after the date that the state enacts legislation to exercise the authority that meets the simplification requirements. ~~Non-SST States must enact legislation and their remote seller collection authority begins no earlier than the first day of a calendar quarter that is at least six months after enactment of the legislation.~~

[See FAQ XXX](#) for a list of states asserting remote seller collection authority.

6. What happens if a seller doesn't begin collecting taxes timely for the states that have remote seller collection authority?

Proposed Answer: Besides being required to remit the tax (regardless if the seller collected it from his or her customers) states can impose penalties and interest for failing to timely collect and remit their taxes. Liability for the tax could go back to the date the state began exercising its right to require remote sellers to collect their sales and use tax.

7. How is the \$1 million small seller exception computed?

Proposed Answer: The \$1 million small seller exception is based on the total remote sales a seller has in the prior calendar year. Any sale, including nontaxable sales, sourced to a location where the seller does not have a requirement to collect the tax, absent the MFA's authority, is a "remote sale." A seller starting a new business

does not need to register and begin collecting and remitting a state’s tax on remote sales until its remote sales (which must be aggregated with related members’ remote sales in the prior calendar year) exceed \$1 million. Note: Rules apply to prevent a seller from creating multiple entities to fall below the small seller exception. See FAQ XXX for more information and an example of the remote seller calculation.

8. How does a seller register for the states that have remote seller collection authority?

Proposed Answer: For all the SST Member States, a seller has the option to register directly with a state or with all those states by registering through the SSTGB’s central registration system. See {website} to register using this system. Some non-SST States may also allow sellers to register using the SSTGB central registration system. For those non-SST States not participating in the central registration system, sellers will have to register directly with those states. Sellers always have the option of registering directly with the state, including the SST Member States. The following is a listing and link to each state’s website that can be used to register with that state, along with an indication on whether the state accepts the SSTGB central registration option:

Alabama

Alaska – n/a (no state sales tax)

9. What are the benefits of a seller using the SSTGB central registration system?

Proposed Answer: By using the SSTGB central registration system, sellers are able to register for all of the SST Member States as well as those non-SST States that participate in the SSTGB central registration system at one time. In addition, as additional states receive remote seller collection authority, sellers will be notified in advance so that they will know exactly which states they are required to collect the sales tax for on their remote sales and when they need to begin collecting each of those states’ sales taxes.

For the SST Member States, sellers who register using the SSTGB central registration system will not be charged any registration fees for those states in which they are a volunteer seller. In general, a volunteer seller is a seller who (i) has no fixed place of business for more than 30 days in the state, (ii) has less than \$50,000 in property in the state, (iii) has less than \$50,000 in payroll in the state, (iv) has less than 25% of its property or payroll in the state and (v) was not collecting sales or use tax in the state as a condition for the seller or an affiliate of the seller to qualify as a supplier of products to the state.

Sellers may also qualify for the sales tax amnesty provided by the SST Member States.

Note: Some of the non-SST States may not allow nexus sellers to register using the SSTGB central registration system. See **FAQ XXX**.

10. Will registering through the SSTGB central registration system cost a seller anything?

Proposed Answer: For the SST Member States, if a seller registers using the SSTGB central registration system, the seller will not be charged any registration fees for those states in which the seller is a volunteer seller. In general, a volunteer seller is a seller who (i) has no fixed place of business for more than 30 days in the state, (ii) has less than \$50,000 in property in the state, (iii) has less than \$50,000 in payroll in the state, (iv) has less than 25% of its property or payroll in the state and (v) was not collecting sales or use tax in the state as a condition for the seller or an affiliate of the seller to qualify as a supplier of products to the state.

Non-SST States may charge a fee. See **FAQ XXX** for links to each state’s website.

11. Can a seller register directly with those states where the seller makes remote sales (and not use the SSTGB central registration system)?

Proposed Answer: Yes. A seller is only required to register in the states where it is making remote sales and in the other states where it otherwise has a collection responsibility because of its activities in those states. Once a seller registers in a given state, the seller may have to file returns for that state even if he or she did not make any sales in that state during a reporting period.

12. Who does a seller contact with questions related to the filing of returns in each of the states?

Proposed Answer: Below is contact information for each of the states.

State A – email address – telephone number - website

State B

13. Under the MFA, does a seller have to collect taxes for states in which the seller does not have a physical presence (i.e., nexus)?

Proposed Answer: Yes. For all states authorized under the MFA as having met the required simplifications, sellers that make more than \$1 million in total remote sales

in the preceding calendar year are required to register with those states to collect and remit sales or use tax regardless of whether they have nexus through physical presence in the state to which the sale is sourced. If a seller has less than \$1 million in total remote sales in the preceding calendar year, then the seller is only required to register to collect tax in those states where the seller has established nexus under their state specific nexus rules.

14. Under the MFA, does a seller located in a state that does not impose a state sales or use tax have to collect sales or use taxes for the other states?

Proposed Answer: Yes. A seller located in a state that does not impose a sales or use tax (i.e., Alaska, Delaware, Montana, New Hampshire and Oregon) is required to collect the sales or use taxes for those states that have remote seller collection authority pursuant to the MFA, if the seller made more than \$1 million in total remote sales in the preceding calendar year. The taxability of products is based on laws of the state where the item is sourced (e.g., delivered). See **FAQs XXX and XXX** for information on which products are taxable.

15. How does the seller know what is taxable in each state?

Proposed Answer: The MFA requires authorized states to provide information about the taxability of products. States generally tax all tangible personal property and enact certain exemptions. These exemptions may be based on the nature of the product, use of the product or who purchases the product. Most states only tax those services specifically enumerated in their laws.

For many exempt sales, sellers are required to obtain an exemption certificate from purchasers claiming an exemption (e.g., an exemption from tax based on the purchaser's status (exempt organizations) or how a product is used (resale, manufacturing, etc.)).

See FAQ XXX for links to each state's website.

16. Can a product that is not subject to sales tax in the state where the seller is located, be taxable in the state where the product is sourced (e.g., delivered)?

Proposed Answer: Yes. The taxability of the product in a seller's home state is not necessarily the same as in the customer's state. The taxability of products is based on the state to which the product is sourced (e.g., delivered). Therefore, sellers will need to review the individual state's information to determine if the seller needs to collect tax for the state to which the product is sourced. **See FAQ XXX – refer to the Q & A that lays out the sourcing rules for SSUTA and non-SST States**

17. Does a remote seller have to collect just the state sales and use taxes or does the remote seller also have to collect the applicable local sales and use taxes?

Proposed Answer: Remote sellers are required to collect the state and local taxes a state has indicated are covered under the MFA. This does not mean that a state will require remote sellers to collect all the sales and use taxes imposed at the state or local level. The MFA requires a state to provide the applicable state and local tax rates.

18. What does MFA mean by a “certified software provider” (non-SST CSP)?

Proposed Answer: A “certified software provider” (non-SST CSP) is a person that provides software to remote sellers that determines the correct state and local tax rates on the transaction based on the taxability and sourcing rules in the MFA, calculates the state and local taxes due at the time of sale and generates and files the sales and use tax returns electronically.

19. How can non-SST CSPs help a remote seller with its tax calculation, collection and reporting requirements for all the states that the remote seller make sales into?

Proposed Answer: A non-SST CSP helps a remote seller with its tax calculation, collection and reporting requirements for all the states that the remote seller makes sales into by integrating and connecting its tax calculation system with the remote seller’s billing system. This integration and connection results in the remote seller’s billing system being able to properly determine the taxability of the sales of its products and the proper state and local sales or use taxes to collect on those transactions at the time of the sale. The non-SST CSP is also responsible for preparing and filing the appropriate sales and use tax returns in each of the states.

20. How does a seller contact a “certified service provider” (SST CSP) or “certified software provider” (non-SST CSP) to assist in collecting the tax on its remote sales?

Proposed Answer: The contact information for service providers approved by states as “certified service providers” is listed on the Streamlined Sales Tax website (www.streamlinedsalestax.org). Upon notification, the “certified software providers” approved by non-SST States will also be listed on this website.

21. How does a “certified service provider” (SST CSP) integrate its tax calculation, collection and reporting systems into a remote seller’s existing system?

Proposed Answer: The SST CSP’s system contains product taxability, rates, boundary, sourcing and the other functionality that is required for the determination, calculation, and reporting of sales and use tax. The SST CSP’s system is connected (integrated) to the shopping cart or accounting system used by the seller. The connection (integration) process requires the seller’s shopping cart, order processing system or accounting system to be configured to the SST CSP’s software so the information required for a tax calculation can be passed electronically from the seller’s system to the SST CSP’s software and the tax results passed back to the seller’s system for invoicing. SST CSPs then prepare and file the necessary tax returns directly with the states.

22. How does a “certified software provider” (non-SST CSP) integrate their tax calculation, collection and reporting systems into a remote seller’s existing system? What is the process?

Proposed Answer: **Waiting to see final legislation.**

23. What is the process a seller uses to select a certified service provider (SST CSP) or certified software provider (non-SST CSP) (certified provider)?

Proposed Answer: Sellers will select a certified provider the same way as selecting any other software or service provider. Sellers should base the decision on their needs, the seller’s market, the provider’s certification with the states, and compatibility with the seller’s accounting or shopping cart software. A seller should interview enough providers to understand their capacity and compatibility.

24. How are certified service providers (SST CSPs) compensated in the SST Member States?

Proposed Answer: Under the contract the SST CSPs have with the SST Member States and in those states where the seller is a remote seller, the states compensate the SST CSPs for the software and services. In states where sellers are not remote sellers or volunteer sellers, the SST CSPs and sellers negotiate an agreeable price for their software and services.

25. For the SST Member States, can the seller just use the services of the SST CSP for those states where the seller is a remote seller?

Proposed Answer: Yes. Most sellers using the services of SST CSPs generally set their system up to use the SST CSP in all the states where they are collecting and reporting tax.

For the SST states, if a seller registers as a Model 1 seller through the SST central registration system and selects a SST CSP, that SST CSP must provide the tax calculation and return filing services for that seller for all the SST states. (Note: A seller may register for the SST states through the central registration system as a nonremote seller and still use a SST CSP. However the seller will be required to compensate the SST CSP for its services. A seller can also choose to manage its own sales tax calculation and remittance independent of a SST CSP.)

26. For the non-SST States can the seller just use the services of the non-SST CSP for the states where the seller is a remote seller?

Proposed Answer: Yes. Most sellers would generally use a single tax calculation solution in all the states where they are collecting and reporting tax.

WAITING FOR FINAL LEGISLATION.

27. Although a seller is required to start collecting sales tax on its remote sales because of the MFA, does this mean the remote seller is also subject to other taxes imposed by the state that are not sales or use taxes (e.g., corporate income tax)?

Proposed Answer: No. The MFA expressly provides that a state having remote seller collection authority may not use that as a basis to subject a remote seller to any other tax imposed by the state. Note: This does not mean a state is prevented from asserting it has another legal basis for imposing a tax obligation on a remote seller.

28. Does the MFA change how sellers are currently treating intrastate sales or sourcing intrastate sales?

Proposed Answer: No. The MFA has no impact on intrastate sales or how they are sourced. These sales will continue to be sourced under the individual state rules.

29. Does the MFA change the Mobile Telecommunications Sourcing Act in any way?

Proposed Answer: No. The MFA makes it clear that sales subject to the Mobile Telecommunications Act are still sourced pursuant to that law. In general, that is the primary service address (or billing address) of the mobile device.

30. Doesn't the Internet Tax Freedom Act prohibit states from requiring sellers to collect sales tax on sales made over the Internet?

Proposed Answer: No. The Internet Tax Freedom Act prohibited new taxes on (a) Internet access fees and (b) multiple and discriminatory taxes on electronic commerce. Some states were grandfathered and are able to tax the Internet access fee. This Act never prohibited states from imposing their sales or use taxes on products sold over the Internet. Purchasers have always been subject to a “use tax” on these purchases if the seller did not collect the applicable sales or use tax.

31. Can a state audit a remote seller to determine if the remote seller meets the small seller exception and/or determine if the remote seller collected the correct tax?

Proposed Answer: Yes. States have the ability to evaluate whether the remote seller is subject to the state’s remote seller collection authority. If a remote seller is subject to the state’s remote seller collection authority, that remote seller may be audited. However, for remote sellers, a state is required to centrally administer the collection, remittance and audit processes and therefore, a remote seller is not subject to separate administration and audits by a state and one or more of its local governments.

IV. Consumer Questions and Answers

General Disclaimer: These FAQs are intended to provide consumers with general guidance on issues related to the MFA. If you have any specific issues that are not addressed in these FAQs, you should contact the appropriate tax agency and/or consult with a tax advisor.

1. Did the passage of the MFA result in states imposing a new tax?

Proposed Answer: No. The states that impose a sales tax have also had a complementary use tax that purchasers were supposed to be paying all along if the seller did not collect the appropriate sales or use tax at the time of the sale. The passage of the MFA just allows the states to now require certain remote sellers to collect this tax from the purchaser at the time of the sale, rather than each purchaser having to remit that tax directly to the state themselves. However, if the remote seller does not collect the appropriate sales or use tax from the purchaser at the time of the sale, the purchaser is still responsible for remitting the appropriate use tax directly to the state.

2. I have ordered goods from the same seller for many years and was never charged any sales or use tax until now. Why is this seller now collecting tax?

Proposed Answer: Prior to the passage of the MFA, sellers were only required to collect sales tax on sales into states where they maintained a physical presence. Therefore, if a seller didn't have a store, warehouse, sales representative or agent operating on its behalf in the state, it didn't have to collect and remit the tax. The MFA changed the rules and now if your state is an authorized state under the MFA, those businesses that had more than \$1 million in total remote sales in the preceding calendar year are required to collect the tax in your state. For a list of SST Member States or non-SST States that have collection authority under the MFA, go to [SST Hyperlink](#) or [FTA Hyperlink](#).

3. Do all companies not located in my state have to collect the tax. Why do some collect tax and others don't?

Proposed Answer: Assuming your state is authorized under the MFA to require remote sellers to collect and remit the sales or use tax, only those remote sellers that had more than \$1 million in total remote sales in the preceding calendar year are required to collect the sales or use tax in your state. Remote sellers that are not located in your state and which have \$1 million or less in total remote sales in the preceding calendar year are not required to collect the sales or use taxes in your state. However, even if the remote seller is not required to collect your state's sales or use taxes, you are still responsible as the purchaser for remitting the corresponding use tax that would be due on your purchases directly to your state.

4. Do I have to pay the sales or use tax charged on a taxable product by an out-of-state company that is not located in my state?

Proposed Answer: Yes. You are required to pay your state's sales or use tax to an out-of-state company that has a requirement under the MFA to collect and remit your state's sales or use tax.

5. How do I know if a seller who charged me my state's sales or use tax is remitting that tax to my state?

Proposed Answer: If you have concerns that a seller is charging your state's sales or use tax but not remitting that tax to the state, please contact your state directly to verify that the seller is registered to collect and remit the tax to your state. In most cases, your state will not be able to verify that the sales or use tax has been remitted on a specific transaction by the seller, but the states do conduct audits to verify the sellers are properly collecting and remitting the taxes to the state. Click here to obtain the contact information for your state. [\(Provide links to each state's Department of Revenue home page.\)](#)

6. Do I owe any additional tax if the remote seller only collected the state sales (or use) tax but not the appropriate local sales (or use) tax? If so, how do I pay that additional tax?

Proposed Answer: Most states require a purchaser to pay the appropriate local sales or use tax directly to the state if the seller did not collect the tax at the time of the sale. The local tax is generally due based on the location where the property is first stored, used, or consumed by the purchaser. Contact your state's revenue department to determine if you are required to report and remit the local sales or use tax that was not collected by the remote seller and how to report that tax in your state. [Click here to obtain the contact information for your state. \(Provide links to each state's Department of Revenue home page.\)](#)

7. What do I do if the seller collects the incorrect local tax?

Proposed Answer: If you think the seller collected the incorrect amount of local tax at the time of the sale, you should contact the seller and/or your state's revenue department to determine if there was an error. The local tax is generally due based on the location where the property is first stored, used, or consumed by the purchaser. [Click here to obtain the contact information for your state. \(Provide links to each state's Department of Revenue home page.\)](#)

8. Doesn't the Internet Tax Freedom Act prohibit the states from imposing any sales or use taxes on sales made over the Internet?

Proposed Answer: No. The Internet Tax Freedom Act prohibits (1) new taxes on Internet access and (2) **multiple and discriminatory taxes** on electronic commerce. The Internet Tax Freedom Act does not prohibit a state from imposing its sales and use taxes on products purchased over the Internet.

Purchasers have always been subject to the use tax on these purchases if the seller did not collect the sales tax. In states that are not authorized to require all remote sellers to collect tax, the purchaser still has the obligation to remit the use tax on these transactions. So regardless of not being charged tax on an item purchased over the Internet, the purchaser is still personally liable for the use tax.

VII. Educational Materials to Convey Key Messages

1. What does passage of the MFA really mean?
2. What is the next step for businesses affected by the MFA?
- [3.](#) Where to go for additional information about the MFA and its impact?

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