

May 6, 2009

DRAFT BILL INTRODUCTION

111th Congress

H.R. _____ S. _____

2009

Main Street Fairness Act

A BILL

To promote simplification and fairness in the administration and collection of sales and use taxes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Main Street Fairness Act'.

SEC. 2. CONSENT OF CONGRESS.

The Congress consents to the Streamlined Sales and Use Tax Agreement.

SEC. 3. SENSE OF THE CONGRESS.

(a) Sales and Use Tax System- -It is the sense of the Congress that the sales and use tax system established by the Streamlined Sales and Use Tax Agreement, to the extent that it meets the minimum simplification requirements of section 7, provides sufficient simplification and uniformity to warrant Federal authorization to Member States that are parties to the Agreement to require remote sellers, subject to the conditions provided in this Act, to collect and remit the sales and use taxes of such Member States and of local taxing jurisdictions of such Member States.

(b) Purpose- The purpose of this Act is to--

- (1) effectuate the limited authority granted to Member States under the Streamlined Sales and Use Tax Agreement; and
- (2) not grant additional authority unrelated to the accomplishment of the purpose described in paragraph (1).

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

(a) Grant of Authority-

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(1) IN GENERAL- Each Member State under the Streamlined Sales and Use Tax Agreement is authorized, subject to the requirements of this section, to require all sellers not qualifying for the small seller exception to collect and remit sales and use taxes with respect to remote sales sourced to that Member State under the Agreement.

(2) REQUIREMENTS FOR AUTHORITY- The authorization provided under paragraph (1) shall be granted once all of the following have occurred:

(A) 10 States comprising at least 20 percent of the total population of all States imposing a sales tax, as determined by the most recent Federal census, have petitioned for membership and have become Member States under the Agreement.

(B) The following necessary operational aspects of the Agreement have been implemented by the Governing Board:

(i) Provider and system certification.

(ii) Setting of monetary allowance by contract with providers.

(iii) Implementation of an on-line multistate registration system.

(iv) Adoption of a standard form for claiming exemptions electronically.

(v) Establishment of advisory councils.

(vi) Promulgation of rules and procedures for dispute resolution.

(vii) Promulgation of rules and procedures for audits.

(viii) Provisions for funding and staffing the Governing Board.

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

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

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

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

(b) Termination of Authority-

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

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

(B) any amendment adopted to the Agreement after the date of enactment of this Act is (a) not within the scope of the administration of sales and use taxes or taxes on communications services by the Member States, or (b) inconsistent with the provisions of this Act.

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

(c) **Determination of Status-**

(1) **IN GENERAL-** The Governing Board shall determine if Member States are in compliance with the requirements of subsections (a) and (b) and shall reevaluate such determination on an annual basis.

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

SEC. 5. TRIBAL GOVERNMENTS.

(a) **Status as Member State.—**

(1) **In General.—**Any federally recognized Indian Tribe that imposes a generally applicable sales tax may, if such Tribe complies with the terms of this Act –

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

(B) if granted member state status pursuant paragraph 2, exercise the authority provided under Section 4.

(2) **Decision of the Governing Board.--**

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

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

(3) **Membership on the Governing Board.—**

(A) **In general.—**If any federally recognized Indian Tribes is accorded Member State status under the Agreement under this section, such Tribes shall be represented on the Governing Board by at least 1 member.

(B) **Multiple Tribes.—**If 2 or more federally recognized Indian Tribes are accorded Member State status under the Agreement under this section, additional representation of such Tribes on the Governing

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Board shall be determined by the Governing Board, in consultation with those Tribes that are Member States.

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

- (1) diminishing an Indian Tribe's sovereignty or characterizing an Indian Tribe as a state for other purposes;
- (2) affecting existing tax agreements between Indian Tribal Governments and States;
- (3) preventing Indian Tribal Governments and States from entering into bilateral agreements for the collection and allocation of sales taxes (whether or not such bodies are admitted as Member States to the Agreement); or
- (4) overriding established principles of Federal law governing –
 - (A) the taxing jurisdiction of Indian Tribal Governments; and
 - (B) the immunities of Indian Tribal Governments and their members from State taxation with respect to on-reservation transactions.

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

(a) Petition- At any time after the Governing Board has made the determination required under section 4(c)(2), any person who may be affected by the Agreement may petition the Governing Board for a determination on any issue relating to the implementation of the Agreement.

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

- (1) the petition relates to an issue of whether--
 - (A) a Member State has satisfied or continues to satisfy the requirements for Member State status under the Agreement;
 - (B) the Governing Board has performed a nondiscretionary duty of the Governing Board under the Agreement;
 - (C) the Agreement (i) continues to satisfy the minimum simplification requirements set forth in section 7, or (ii) otherwise continues to be consistent with the provisions of this Act; or
 - (D) any other requirement of section 4 has been satisfied; and
- (2) the petition is denied by the Governing Board in whole or in part with respect to that issue, or the Governing Board fails to act on the petition with respect to that issue not later than 6 months after the date on which the petition is submitted.

(c) Timing of Action for Review- An action for review under this section shall be initiated not later than 60 days after the denial of the petition by the Governing Board, or, if the Governing Board failed to act on the

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petition, not later than 60 days after the end of the 6-month period beginning on the day after the date on which the petition was submitted.

(d) Standard of Review-

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

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

(e) Jurisdiction-

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

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

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

(2) CONFORMING AMENDMENT TO TABLE OF SECTIONS- The table of sections at the beginning of chapter 91 of title 28, United States Code, is amended by adding at the end the following new item:
` 1510. Jurisdiction regarding the streamlined sales and use tax agreement.'.

SEC. 7. MINIMUM SIMPLIFICATION REQUIREMENTS.

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

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

(2) Uniform definitions of products and product-based exemptions from which a Member State may choose its individual tax base, provided, however, that all local jurisdictions in that Member State with respect to which a tax is imposed or collected, shall have a common tax base identical to the State tax base of that Member State. A Member State may enact product-based exemptions without restriction if the Agreement does not have a definition for the

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product or for a term that includes the product. A Member State shall relax the good faith requirement for acceptance of exemption certificates in accordance with section 317 of the Agreement, as amended through the date of enactment of this Act.

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

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

(5) Uniform rules for bad debts and rounding.

(6) Uniform requirements for tax returns and remittances.

(7) Consistent electronic filing and remittance methods.

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

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

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

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

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

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

(14) (A) In order for a state to require collection under section 4, the Member State shall provide reasonable compensation to all sellers for expenses incurred in administering, collecting, and remitting sales and use taxes (other than use taxes on goods and services

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purchased for the consumption of the seller) to that Member State. To be deemed reasonable the amount of such compensation shall: (i) be based on an independent study of costs of collection, jointly and equally commissioned and administered by business and government, and (ii) fully compensate sellers for their expenses arising from the following: (a) fees imposed with respect to sales and use taxes collected on credit and debit card and similar sales, (b) sales and use tax remitted with respect to bad debts arising from credit and debit card and similar sales, (c) documenting tax-exempt sales, (d) sales and use tax audits and appeals and (e) any complexities imposed by a Member State including, but not limited to, local sales and use tax rates, caps and thresholds on items such as clothing, and sourcing delivery sales based on the seller's location rather than the delivery location.

- (B) Such compensation shall be reimbursed to the seller for each tax reporting period based on a percent of the seller's total sales and use tax collected for the period. The compensation may vary for each Member State depending on the complexity of the sales and use tax laws in that Member State and it may vary by the characteristics of sellers in order to reflect differences in collection costs. Except for costs listed in subsection 14(A)(ii), a Member State may impose reasonable caps on other categories of collection costs. Such compensation also may be provided to a third party service provider with which a seller has contracted to perform all the sales and use tax responsibilities of a seller.
- (C) Subject to the provisions of subsections 14(A) and 14(B), the Governing Board shall determine reasonable compensation for each Member State. The authority to require collection by remote sellers as authorized by Section 4 ceases for the Member State if the Member State discontinues to provide reasonable compensation as defined in this subsection. The Governing Board's determination of reasonable compensation is subject to review under Section 6(b)(1).

(15) Appropriate protections for consumer privacy.

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

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

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

(19) Uniform rules and procedures to address refunds and credits for sales taxes relating to customer returns, restocking fees, discounts and coupons, and rules to address allocations of shipping and

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handling and discounts applied to multiple item and multiple seller orders.

(20) Application of Simplification Requirements to Taxes on Communications Services

(A) In General - Each Member State shall apply the simplification requirements of this Section 7 to sales and use taxes on communications services.

(B) Other Taxes On Communications Services - Not later than the first day of the calendar quarter beginning on or after the third anniversary of the enactment of this Act, each Member State shall apply the simplification requirements of this Section 7, as modified by subparagraph (E) of this paragraph, to taxes on communications services, other than sales and use taxes. Such simplification requirements shall be applied separately to each type of tax on communications services within a State and, for purposes of applying such requirements to each type of tax other than sales and use tax, references in paragraphs (1) through (19) to sales and use taxes shall be treated as referring to such other type of tax.

(C) Grant of Authority - Each Member State found to be in compliance by the Governing board with the provisions of the Agreement corresponding to subparagraph (B) of this paragraph is authorized, subject to the requirements of Section 4, to require all sellers not qualifying for a small seller exception, to collect and remit such other taxes on communications services with respect to remote sales sourced to that Member State under the Agreement on the first day of a calendar quarter at least 6 months after the date the Governing Board certifies such state's compliance with this provision.

(D) Termination - A state that has failed to be found in compliance, or that is found to be out of compliance with subparagraph (B) shall no longer possess or exercise with respect to any tax the authority granted to Member States under Section 4(a) until such Member State is found to be in compliance with subparagraph (B). The State shall still be considered a Member State for purposes of Section 4(a)(2)(A), notwithstanding the loss of authority.

(E) Modifications - In applying the simplifications of this section 7 to taxes on communications services, other than sales and use taxes on communication services, the following modifications shall apply:

(1) The requirement in Section 7(a)(1) is modified to permit a centralized, one-stop, registration system at the state-level for taxes administered solely within the state. Sellers shall also be allowed to elect to register directly with localities.

(2) The requirement in Section 7(a)(2) for tax base uniformity shall apply to each type of tax on communications services within a State, but shall not be construed to require that the tax base for different types of taxes on communications services must be identical to the tax base for sales and use taxes imposed on communications services. In addition, if a state does not impose a particular type of tax on communications services that is imposed by more than one

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locality in such state, Section 7(a)(2) shall be construed to require that all such local taxes have the same tax base.

(3) The requirement in Section 7(a)(6) is modified to permit one State-specific uniform return for each type of tax on communications services.

(4) The requirement in Section 7(a)(9) is modified to require that each taxing jurisdiction shall have only one rate for each type of tax on communications services. In addition, a State may take into account all State and political subdivision taxes on communication services that are imposed on a similar product when applying the last sentence of section 308A, as amended through the date of enactment of this Act.

(5) The requirement in Section 7(a)(13) is modified to require a single audit conducted at the state level for each type of tax on communications services within the state.

(b) Requirement To Provide Simplified Tax Systems-

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

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

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

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

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

(c) **NO REQUIREMENT TO EXEMPT FROM OR IMPOSE TAX--**Nothing in this Act or the Agreement shall require any State or any local taxing jurisdiction to exempt, or to impose a tax on any product, or to adopt any particular type of tax, or to impose the same rate of tax as any other taxing jurisdiction.

SEC. 8. LIMITATION.

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

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

- (2) affecting the application of such fees/taxes or requirements or enlarging or reducing the authority of any Member State to impose such fees/taxes or requirements; or
 - (3) affecting franchise agreements entered into by Member States or localities with providers of multichannel video programming services, except that any provision in any such agreement that relates to [the imposition or collection of] a tax on communications services (as defined in section 10 of this Act) shall be subject to the minimum simplification requirements as set out in this Act; or
 - (4) bearing on Congressional intent in enacting the Mobile Telecommunications Sourcing Act or to modify or supersede the operation of such Act.
- (b) No Effect on Nexus, Etc-
- (1) IN GENERAL- No obligation imposed by virtue of the authority granted by section 4 shall be considered in determining whether a seller has a nexus with any Member State for any other tax purpose.
 - (2) PERMISSIBLE MEMBER STATE AUTHORITY- Except as provided in subsection (a), and in section 4, nothing in this Act permits or prohibits a Member State from--
 - (A) licensing or regulating any person;
 - (B) requiring any person to qualify to transact intrastate business;
 - (C) subjecting any person to State taxes not related to the sale of goods or services; or
 - (D) exercising authority over matters of interstate commerce.

SEC. 9. EXPEDITED JUDICIAL REVIEW.

- (a) Three-Judge District Court Hearing- Notwithstanding any other provision of law, any civil action challenging the constitutionality of this Act, or any provision thereof, shall be heard by a district court of three judges convened pursuant to the provisions of section 2284 of title 28, United States Code.
- (b) Appellate Review-
- (1) IN GENERAL- Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of three judges in an action under subsection (a) holding this Act, or any provision thereof, unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court.
 - (2) 30-day TIME LIMIT- Any appeal under paragraph (1) shall be filed not more than 30 days after the date of entry of such judgment, decree, or order.

SEC. 10. DEFINITIONS.

For the purposes of this Act the following definitions apply:

- (1) GOVERNING BOARD- The term `Governing Board' means the governing board established by the Streamlined Sales and Use Tax Agreement.
- (2) MEMBER STATE- The term `Member State'--

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- (A) means a Member State as that term is used under the Streamlined Sales and Use Tax Agreement as of the date of enactment of this Act; and
- (B) does not include associate members under the Agreement.
- (3) **NATIONWIDE**- The term `nationwide' means throughout each of the several States and the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and any other territory or possession of the United States or Tribal lands of any federally recognized Indian tribe.
- (4) **NONDISCRETIONARY DUTY OF THE GOVERNING BOARD**- The phrase `nondiscretionary duty of the Governing Board' means any duty of the Governing Board specified in the Agreement as a requirement for action by use of the term `shall', `will', or `is required to'.
- (5) **PERSON**- The term `person' means an individual, trust, estate, fiduciary, partnership, corporation, limited liability company, or any other legal entity, and includes a State or local government.
- (6) **REMOTE SALE**- The term `remote sale' refers to a sale of goods or services attributed to a particular Member State with respect to which a seller does not have adequate physical presence to establish nexus under the law existing on the day before the date of enactment of this Act so as to allow such Member State to require, without regard to the authority granted by this Act, the seller to collect and remit taxes covered by this Act with respect to such sale.
- (7) **REMOTE SELLER**- The term `remote seller' means any seller who makes a remote sale.
- (8) **STATE**- The term `State' means any State of the United States of America and includes the District of Columbia, Puerto Rico, and any other territory or possession of the United States.
- (9) **STREAMLINED SALES AND USE TAX AGREEMENT**- The term `Streamlined Sales and Use Tax Agreement' (or `the Agreement') means the multistate agreement with that title adopted on November 12, 2002, as amended through the date of enactment of this Act and unless the context otherwise indicates as further amended from time to time.
- (10) **TAX ON COMMUNICATIONS SERVICES**- (A) The term `tax on communications services' or `taxes on communications services' means any tax, charge, or fee levied by a taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for communication services, regardless of whether such tax, charge, or fee is imposed on the vendor or customer or the service and regardless of the terminology used to describe the tax, charge, or fee. A tax on communications services shall include any tax, charge, or fee that is a payment obligation to a state enabled under subsection 254(f) of the Communications Act of 1934.
- (B) The term `tax on communication services' or `taxes on communication services' does not apply to:

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(1) any tax, charge, or fee levied upon or measured by the net income, capital stock, net worth, or property value of the provider of communication service;

(2) any tax, charge, or fee that is applied to an equitably apportioned amount that is not determined on a transactional basis;

(3) any tax, charge, or fee that represents compensation for a communications service provider's use of public rights of way or other public property, provided that such tax, charge, or fee is not levied by the taxing jurisdiction as a fixed charge for each customer or is in any way measured by gross amounts charged to customers or gross revenue for communication services; or

(4) any generally applicable business and occupation tax that is imposed by a State, is applied to gross receipts or gross proceeds, is the legal liability of the seller of communications services, and that statutorily allows the seller of communications services to elect to use the sourcing method required under the Agreement;

(11) COMMUNICATIONS SERVICES-

(A) IN GENERAL- The term 'communications services' includes - 'telecommunications services' and ancillary services as defined in the Agreement and 'video programming services'.

(B) For purposes of determining the type of taxes covered by this Act, 'video programming services' means the offering, transmission, conveyance or routing of radio and television audio and video programming services for purchase by subscribers or customers, regardless of the medium, technology or method of display, including the furnishing of transmission, conveyance and routing of such services by the video programming distributor. This clause (ii) shall include, but not be limited to, "cable service" as defined in 47 U.S.C. § 522(6), interactive on-demand service as defined in 47 U.S.C. § 522(12), the provision of "video programming" by a "multichannel video program distributor" as defined in 47 U.S.C. § 522(20), (13), and the distribution of audio and video programming by providers of "commercial mobile radio service" as defined in 47 C.F.R. § 20.3, when such services are offered for purchase by subscribers or customers of such service.

SEC. 10. SENSE OF THE CONGRESS ON DIGITAL GOODS AND SERVICES.

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