



MULTISTATE TAX COMMISSION

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To:	Sales and Use Tax Subcommittee
From:	Roxanne Bland, MTC Counsel
Date:	December 11, 2013
Subject:	Report on Pending Federal Legislation, 113 <sup>th</sup> Congress

## Overview

Congress has a December 13, 2013 deadline for the Budget Conference Committee to reach an agreement. Senate Finance Chair Max Baucus (D-MT) and House Ways and Means Chairman Dave Camp (R-MI) are pushing for federal tax reform to be a part of any budget agreement. Senate Ranking Minority Leader Orrin Hatch (R-UT) and House Majority Leader Eric Cantor (R-VA) oppose any consideration of federal tax reform as giving Democrats an opening for using tax reform for producing additional revenue.

No state tax bills will be considered before the end of the year, including the Marketplace Fairness Act. Advocates are still a ways away from satisfying the Judiciary Committee's Chairman Bob Goodlatte (R-VA) that they have met the criteria for moving the bill. All other state tax bills are in line behind the Marketplace Fairness Act, though some may be merged into it. Eventually, the bills that moved out of the House in the previous Congress will probably move again, but next year.

## Legislation Introduced

### 1. S. 31, H.R. 434, Permanent Internet Tax Freedom Act

Makes permanent the prohibition on state taxation of Internet access fees. The current moratorium expires November 1, 2014. Introduced by Sen. Ayotte, (R-NH) Rep. Chabot (R-OH).

### 2. S. 743 (S. 336), H.R. 684 Marketplace Fairness Act

Ratifies the Streamlined Sales and Use Tax Agreement. For those states that are not members of SST, provides a set of criteria to simplify their sales and use taxes that once met, allows them to require tax collection by remote sellers. These include state level administration, single audits, single sales and use tax returns for remote sellers to file with the agency administering the sales and use tax. State may not require remote sellers to file returns more frequently than nonremote sellers. No local jurisdiction may require a remote seller to collect and remit local taxes except as provided. Uniform sales tax base between state and local jurisdictions. Contains a small seller

exception in the amount of \$1,000,000 dollars applicable to Streamlined and non-Streamlined states. Sourcing rules similar to that contained Streamlined (i.e., destination sourcing). States must provide: taxability matrix, rates and boundaries database, free software that (a) calculates tax due on completed transactions, (b) that files returns, and (c) updated to reflect rate changes. States must also provide certification procedures for persons to be approved as certified software providers. Provides remote sellers relief from liability where the error or omission is on the part of the certified service provider; provides certified service providers relief from liability where the error is due to misleading or inaccurate information provided by the remote seller; provides remote sellers and certified service providers relief where the error is due to the state's incorrect software or information. S. 743 introduced April 16, 2013, by Senator Enzi (R-WY). S. 336 (laid aside) introduced February 14, 2013. H.R. 684 introduced February 14, 2013, Rep. Womack (R-AR). Passed the Senate on May 6, 2013. On September 18, 2013, Rep. Goodlatte (R-VA). Chair of the House Judiciary Committee, issued a list of seven basic principles which have been characterized as a starting point for discussions to resolve the issue. They are:

1. **Tax Relief** -- Using the Internet should not create new or discriminatory taxes not faced in the offline world. Nor should any fresh precedent be created for other areas of interstate taxation by States.
2. **Tech Neutrality** -- Brick & Mortar, Exclusively Online, and Brick & Click businesses should all be on equal footing. The sales tax compliance burden on online Internet sellers should not be less, but neither should it be greater than that on similarly situated offline businesses.
3. **No Regulation Without Representation** -- Those who would bear state taxation, regulation and compliance burdens should have direct recourse to protest unfair, unwise or discriminatory rates and enforcement.
4. **Simplicity** -- Governments should not stifle businesses by shifting onerous compliance requirements onto them; laws should be so simple and compliance so inexpensive and reliable as to render a small business exemption unnecessary.
5. **Tax Competition** -- Governments should be encouraged to compete with one another to keep tax rates low and American businesses should not be disadvantaged vis-a-vis their foreign competitors.
6. **States' Rights** -- States should be sovereign within their physical boundaries. In addition, the federal government should not mandate that States impose any sales tax compliance burdens.
7. **Privacy Rights** -- Sensitive customer data must be protected.

### **3. S. 1235, H.R. 2309 Wireless Tax Fairness Act of 2013**

Prohibits states or local governments from imposing any new discriminatory tax on mobile services, mobile service providers, or mobile service property for five years after the enactment

of this Act. Defines "new discriminatory tax" as a tax imposed on mobile services, providers, or property that is not generally imposed on other types of services providers or property, or that is generally imposed on others at a lower rate. "Principles" of 4-R Act apply to any allegedly discriminatory treatment, including redress in federal courts. House and Senate bills are identical. Sponsors: Rep. Zoe Lofgren, D-CA and Sen. Ron Wyden, D-OR.

#### **4. S. 1364, Digital Goods and Services Tax Fairness Act**

Prohibits multiple or discriminatory taxes on or with respect to the sale or use of digital goods or digital services. Taxes on or with respect to sales of digital goods and services may only be imposed on the sale to a customer. Such taxes may only be imposed on and collected only from a customer or a seller. Taxes may be imposed only by the state and local jurisdictions whose territorial limits encompass the customer's tax address. For multiple locations, seller may determine customer's tax address or addresses as provided by the customer. Seller relying in good faith on address or addresses provided by customer shall be held harmless for any additional tax based on a determination of a different address. Bundling: digital goods and services bundled with other goods and services may be taxed at the same rate as the other goods and services unless seller can reasonably identify charges for digital goods and services from records kept in the regular course of business.

#### **5. H.R. 2543, End Discriminatory State Taxes for Automobile Renters Act of 2013**

A 4-R Act-like bill that prospectively prohibits discriminatory taxes against the rental of motor vehicles, the business of renting motor vehicles, and the motor vehicle property. Provides for federal district court jurisdiction for violations of the Act. Sponsor: Rep. Steve Cohen, (R-TN).