

The Marketplace Fairness Act and State Uniformity



What is the Marketplace Fairness Act?

- S.743/H.R.684
- Would allow states that comply with certain requirements to collect sales and use tax on remote sales
- Approved by the Senate on May 6, 2013
- Now faces uncertain future in the House



Which sellers will be subject to the states' remote taxing authority?

- All sellers not qualifying for the small seller exception laid out in Section 2(c) of the Act:
 - A State is authorized to require a remote seller to collect sales and use taxes under this Act only if the remote seller has **gross annual receipts in total remote sales in the United States in the preceding calendar year exceeding \$1,000,000**. For purposes of determining whether the threshold in this subsection is met, the gross annual receipts from remote sales of 2 or more persons shall be aggregated if—
 - such persons are 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; or
 - such persons have 1 or more ownership relationships and such relationships were designed with a principal purpose of avoiding the application of these rules.

What is required from the states?

- SSUTA member states
 - Provide notice of intent to exercise their taxing authority
 - any subsequent changes to the Streamlined Sales and Use Tax Agreement made after the date of the enactment of the MFA may not conflict with the minimum simplification requirements in subsection (b)(2) of the Act

What is required from the states?

- Non-SSUTA-member states
 - Enact legislation to exercise the authority granted by the Act (Sec. 2(b)(1))
 - Implement each of the minimum simplification requirements (Sec. 2(b)(2)(A)(i) -(iii))
 - Relieve remote sellers from liability (Sec. 2(E))
 - Relieve certified software providers from liability (Sec. 2(F))
 - provide 90 days' notice of rate changes and accordingly update the information indicating taxability of products and services, along with exemptions and rates and boundaries

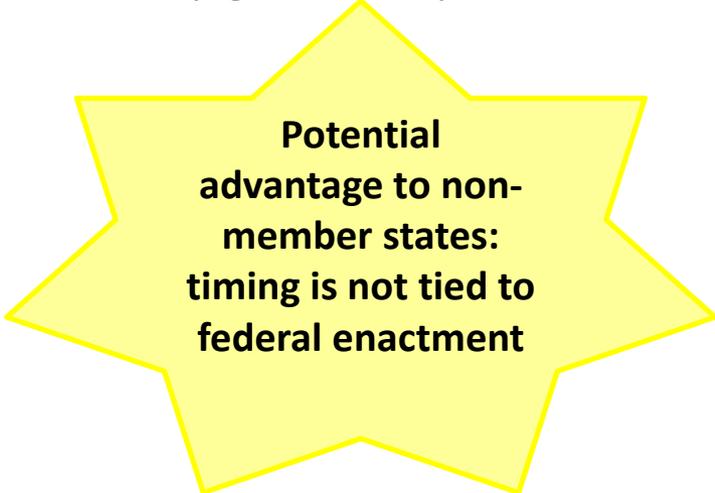
When may states start taxing?

SSUTA member states:

- 180 days after publication of the notice, 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

Non-SSUTA-member states:

- no earlier than the first day of the calendar quarter that is at least 6 months after the date the state implements each of the simplification requirements and enacts legislation to exercise the authority granted by the MFA



**Potential
advantage to non-
member states:
timing is not tied to
federal enactment**

Potential Issues in Implementation: Notice

- SSUTA member states must provide notice of intent to exercise their remote taxing authority and must also give “as much advance notice as practicable of a rate change.”
- Non-member states must provide remote sellers and certified software providers with 90 days notice of a rate change

Potential Issues in Implementation: Notice

- HOWEVER, There is no specified/standard manner of notice under SSUTA or the MFA, nor does it appear that any entity would oversee notice to ensure adequacy.
- Adequacy and manner of notice may be tied to state law.



Potential Issues in Implementation: Language

- Member states have already enacted simplification provisions similar to those from the MFA under Sections 300 and 500 of the Agreement
- Colorado recently enacted legislation and simplification provisions without difficulty ***(everybody please turn and beam at Phil)***

Potential Issues in Implementation: Language

- No central body exists to confirm the adequacy of the legislation and the simplification measures, or to ensure they stay in place
- Member state language already varies wildly
- Conceivably, each state's court could be tasked with determining the adequacy of the state's language

Possible Solution: Language

- Let's get uniform



		SSUTA MEMBER STATES			NON-MEMBER STATES
Simplification Requirement	SSUTA section	Nebraska	Rhode Island	West Virginia	Colorado
(2)(A)(ii) Single audit of remote sellers for all State and Local taxing jurisdictions within State	301	<p>Neb. Rev. Stat. §77-2712.05(6)(b)...Statewide administration of all sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions...</p> <p>(see also Neb. Rev. Stat. §77-27,143, Neb. Rev. Stat. §13-324)</p>	<p>R.I. Gen. Laws §.44-18.1-1: Rhode Island adopts the Streamlined Sales And Use Tax Agreement as created on November 12, 2002 and amended, by the member states of the Streamlined Sales Tax Project. The entire Agreement is adopted by reference with the exception of articles III, IV and VI which are adopted as set out in this chapter. The tax administrator shall promulgate rules and regulations necessary to be in compliance with the provisions of this Agreement.</p>	<p>W. Va. Code §W. Va. Code §8-13C-4(e): State level administration required.—Any municipality that imposes a municipal sales and service tax pursuant to this section may not administer or collect the tax, but shall use the services of the tax commissioner to administer, enforce and collect the tax.</p> <p>(see also, W. Va. Code §11-10-11a, W. Va. Code §8-13C-5(e), W. Va. Code §11-15B-33)</p>	<p>Co. Rev. Stat. 39-26-122.7(2)(b) A remote seller may only be subject to audit by the department of revenue. The department of revenue shall audit all sales tax imposed or collected under section 39-26-104(2). Notwithstanding any other provision of law, no local taxing authority shall have the authority to audit any remote seller.</p>