

REMOTE SALES TAX COLLECTION: CONGRESS TO EXAMINE DIFFERENT PROPOSALS

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Overview

The rise of internet sales and electronic commerce over the past fifteen years has prompted states and Congress to reconsider the issue of remote sales tax collection. After years of inaction on the issue, Congress now has three¹ similar, though importantly distinct legislative proposals under consideration in both the House and Senate that would require out-of-state retailers to collect and remit sales taxes. Under current state nexus laws, out-of-state retailers are not required to collect sales taxes because states do not have sales tax collection authority over businesses without a physical presence or nexus within the state.² A sizeable though unknown portion of internet and mail order catalogue sales are attributable to remote sellers that do not have a physical presence in states in which customers live and buy products. In such instances, vendors are not required to collect and remit sales taxes on behalf of the state. As the National Governors Association (NGA) noted, in a recently released statement before the House Judiciary Committee, the current laws surrounding out-of-state sales have left states unable to capture billions of dollars in annual sales taxes that are owed by consumers but not collected.³

There has been hesitancy to adopt federal legislation on remote sales taxation because some opponents argue that it will place undue compliance burdens on small businesses, collection costs will be too difficult, and in the past, similar legislative changes have been touted as tax increases. Supporters of the proposed legislation describe the changes not as a tax increase or a new tax, but as a way to ensure taxes already in place remain equally applicable across the retail environment. Proponents, such as businesses that compete with remote vendors, are in favor of legisla-

tion that will reduce price disparity in the marketplace for products sold by out-of-state retailers that do not charge customers a sales tax on purchases. This principle of equality is exemplified in the titles of pending legislation, which are referred to as the Main Street Fairness Act, the Marketplace Equity Act, and the Marketplace Fairness Act.

While Congress considers the variations of pending legislation, states are closely watching to see how these measures could impact future tax revenue streams. Internet purchases are projected to continue their trend of double digit growth for the next few years⁴, and states are hoping to capture additional tax revenue on these sales that might have been missed otherwise. However, the proportion of online sales growth from potentially uncollected revenue sources is unknown because a significant percentage of growth in online sales is being driven by 'brick and click' retailers or businesses that have a physical presence but are also reaching customers online. In these instances, large retailers that have stores but also offer online sales should already be collecting sales taxes through online sales. The only businesses that currently can avoid collecting sales taxes are remote retailers without nexus in a particular state in which a customer is purchasing products.

Uniformity Considerations for Remote Sales Tax Legislation

Congress is in the process of addressing a number of legal considerations inherent to federal legislation covering remote sales taxation. A primary concern is state sovereignty over their tax systems, and the need for states to retain full authority over the tax base, rates, definitions, and application. For example, states have the discretion to exempt cer-

¹Main Street Fairness Act (H.R. 2071 and S. 1542), Marketplace Equity Act (H.R. 3179), and Marketplace Fairness Act (S. 1832).

²For more information on nexus, see *Quill v. North Dakota*, 504 U.S. 298, 312 (1992).

³National Governors Association, November 30, 2011, Hearing Statement-Marketplace Fairness Act.

⁴National Governors Association, November 30, 2011, Hearing Statement-Marketplace Fairness Act.

tain products from the sales tax according to state definitions of products; however, it is unclear if new federal legislation would dictate the application of the sales tax by requiring states to adopt uniform definitions in the *Streamlined Sales and Use Tax Agreement*⁵ (SSUTA). The Main Street Fairness Act (H.R. 2071 and S. 1542), requires states to sign on to the multi-lateral agreement, which does not dictate the application of sales taxes or exemptions to particular items, but does compel states to adhere to certain provisions and definitions surrounding sales and use taxes. The other two legislative proposals, (The Marketplace Fairness Act, S. 1832 and The Marketplace Equity Act, H.R. 3179), do not remove the SSUTA option, but also allow states to collect remote sales taxes without signing the SSUTA, so long as states adopt and implement minimum simplification requirements.



Due to the complexity of issues that can evolve from changes in the sales tax system, it is difficult to propose a blanket policy that states should adopt, which is partly why the Marketplace Fairness Act and Marketplace Equity Act are gaining more bipartisan support. States have been aware of the administrative problems through remote sales tax collection for well over a decade and have taken steps to streamline sales tax collection. Streamlining has administrative and collection benefits, but the uniform definitions for the myriad of items that could be subject to a sales tax may be the reason why some legislators are hesitant to require state adoption of the SSUTA.

Equity, Increased Revenue, and Tax System Modernization

Confronted with the current fiscal climate, all revenue sources remain vital for many state governments, and without federal legislation it is unlikely that states will make significant progress in their ability to collect remote sales taxes. The potential for gains in a number of areas are the driver behind a uniform set of national rules governing out-of-state retailers. The application of sales taxes to remote vendors is intended to ensure equity across the marketplace, promote revenue collection for state taxes already in place, and account for states' contributions to the economy and tax base. States and the federal government are considering all corporate taxpayers in legislative proposals, particularly the needs of small businesses that could potentially face overly burdensome administrative costs, which is why legislative proposals include small business exemptions from remote sales tax collection provisions. Nationalizing remote sales tax collection standards and procedures will ultimately benefit state tax collection systems that have not advanced as quickly as consumer purchasing behavior. The collection of sales taxes from out-of-state retailers will also be a good proxy for state success in the modernization of their tax systems.

⁵ See *The Streamlined Sales and Use Tax* Project initiated in 1999 by the National Governors Association and the National Conference of State Legislatures. 21 states are full members and 3 states are associate members of the cooperative agreement to simplify sales and use tax collection and administration by retailers and states called *The Streamlined Sales and Use Tax Agreement* (SSTA).

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