

**The Marketplace Fairness Act**  
**Senators Enzi, Durbin, Alexander, and Tim Johnson**

**Section-by-Section**

**Section 1. Short Title**

The Marketplace Fairness Act

**Section 2. Sense of Congress**

It is the sense of Congress that States should have the ability to enforce their existing sales and use tax laws, to treat similar sales transactions equally, and the right to collect, or not to collect, taxes that are already owed under State law.

**Section 3. Authorization to Require Collection of Sales and Use Taxes.**

Streamlined Sales and Use Tax Agreement. Member States are authorized to require all sellers not qualifying for a small seller exception to collect and remit sales and use taxes with respect to remote sales sourced to the Member State pursuant to the provisions of the Streamlined Sales and Use Tax Agreement (SSUTA). This authority begins no earlier than the first day of the calendar quarter that is at least 90 days after the date of enactment of the act.

Alternative Sales and Use Tax Collection. A state that is not a Member State under SSUTA is authorized 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 state, but only if the State implements minimum simplification requirements.

Minimum Requirements for Alternative Sales and Use Tax Collection. This authority begins no earlier than the first day of the calendar quarter that is at least 6 months after the State enacts legislation to implement minimum simplification requirements:

- (1) a single State-level agency to administer all sales and use tax laws including the collection and administration of sales and use taxes for sales sourced to the State made by remote sellers, a single audit for State and local taxing jurisdictions within the State and a single sales and use tax return for remote sellers to be filed with the State-level agency;
- (2) provide a uniform sales and use tax base within a state;
- (3) require remote sellers and providers to collect sales and use taxes pursuant to the applicable destination rate, which is the sum of the State rate and any applicable local jurisdiction rate;
- (4) provide adequate software and services to remote sellers and providers that identifies the applicable destination rate for sales sourced to the State, and provide certification procedures to providers to make the software and services available to remote sellers and hold providers harmless for errors or omissions due to information provided by the State;
- (5) hold remote sellers using a provider harmless for any errors and omissions by that provider; (6) relieve remote sellers from liability (including any penalties or interest) to

the State or locality for collection of the incorrect sales or use tax if it is the result of information provided by the State;

(7) provide remote sellers and providers with 30 days notice of a rate change.

Local Rate Changes. Local rate changes may only be effective on the first day of a calendar quarter. A remote seller or provider will be held harmless for collecting tax at the immediately preceding effective rate during the 30-day period. Each state must provide updated rate information as part of the software and services required under the previous paragraph.

Small Seller Exception. A State shall be authorized to require a remote seller to collect sales or use tax if the remote seller has gross annual receipts in total remote sales in the United States for the preceding calendar year of more than \$500,000.

### **Section 3. Termination of Authority**

The authority granted by this act will terminate on the date that the highest court of competent jurisdiction makes a final determination that a State no longer meets the requirements of this Act and that determination is no longer subject to appeal.

### **Section 4. Limitations**

No New Taxes. Nothing in this Act shall be construed as (1) subjecting sellers to franchise, income, occupation or other types of taxes other than sales and use taxes, (2) affecting the application of such taxes, (3) enlarging or reducing State authority to impose such tax.

Nexus. The authority under this Act shall not be considered in determining whether a seller has a nexus with any State for any other tax purpose.

Licensing and Regulatory Requirements. Nothing in this Act shall be construed as permitting or prohibiting a State from licensing or regulating any person, requiring any person to transact intrastate business, subjecting any person to State taxes not related to the sales of goods or services, or exercising authority over matters of interstate commerce.

No New Taxes. Nothing in this Act will be construed as encouraging a State to impose taxes on any goods and services not subject to taxation prior to the date of enactment of the Act.

Intrastate Sales. The Act shall only apply to remote sales and shall not apply to intrastate sales or sourcing rules. States granted authority under the SSUTA paragraph in this Act shall comply with intrastate provisions of the SSUTA.

### **Section 5. Definitions and Special Rules**

Provides definition for the following terms: Consolidated Provider, Locality/Local, Member State, Person, Remote Sale, Remote Seller, Single Provider, Sourced, State, Streamlined Sales and Use Tax Agreement,

**Section 6. Severability**

If any part of the Act is held to be unconstitutional, the remainder of the Act shall not be affected.