

**The Marketplace Fairness Act**  
**Senators Durbin, Enzi, Alexander, Heitkamp**

**Section-by-Section**

**Section 1. Short Title**

The Marketplace Fairness Act of 2017

**Section 2. Authorization to Require Collection of Sales and Use Taxes**

Streamlined Sales and Use Tax Agreement. Member States under the Streamlined Sales and Use Tax Agreement (SSUTA) are authorized to require all sellers not qualifying for a small seller exception to collect and remit sales and use taxes on remote sales sourced to the Member State pursuant to the provisions of SSUTA if SSUTA includes the minimum simplification requirements and liability provisions set forth under the Alternative in this Act. This authority begins no earlier than the first day of the calendar quarter that is at least 180 days after the State publishes notice of the State's intent to exercise the authority under this Act, but no earlier than the first day of the calendar quarter at least 180 days after the date of enactment of this 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 on remote sales sourced to that state, but only if the State implements minimum simplification requirements and liability provisions.

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) requires states to enact legislation specifying the taxes to which simplification requirements and authority shall apply, also specifying the products and services to be exempted from the Act;
- (2) establish a single entity within a State for sales and use tax administration, returns and audits, a single audit for all State and local taxing jurisdictions within the State, and a single sales and use tax return for remote sellers to be filed with that entity (a state may not require a remote seller to file sales and use tax returns more frequently than required for nonremote sellers);
- (3) provide a uniform sales and use tax base within a state;
- (4) requires interstate sales to comply with the sourcing definition based on a destination rate, which is the sum of the State rate and any applicable local rates;
- (5) provides information about the taxability of products and services and applicable exemptions from sales and use tax in the State and a rates and boundary database;
- (6) software free of charge for remote sellers that calculates sales and use taxes due on each transaction at the time the transaction is completed, files sales and use tax returns, and is updated to reflect applicable rate changes;
- (7) provide certification procedures for certified software providers (software provided by certified software providers shall be capable of calculating and filing sales and use taxes in all States qualified under this Act);
- (8) relieve remote sellers from liability to the State or locality for incorrect collection, remittance, or noncollection of sales and use taxes if the liability is a result of error or omission by a certified software provider;

- (9) relieve certified software providers from liability to the State or locality for incorrect collection, remittance, or noncollection of sales and use taxes if the liability is a result of misleading or inaccurate information provided by a seller;
- (10) relieve remote sellers and certified software providers from liability to the State or locality for incorrect collection, remittance, or noncollection of sales and use taxes if the liability is a result of incorrect information or software provided by the State; and
- (11) provide 90 days notice of a rate change and relieve any remote seller or certified software provider from liability for collecting sales and use taxes at the immediately preceding effective rate during the 90-day notice period if the required notice is not provided.

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 \$1,000,000. Persons will be aggregated for purposes of this section if they created one or more business relationships in order to avoid these rules.

### **Section 3. Limitations**

In General. Nothing shall be construed as subjecting a seller or any other person to any other type of taxes, other than sales and use taxes, affecting the application of such taxes, or enlarging or reducing State authority to impose such taxes.

No Effect on Nexus. The authority under this Act shall not be considered in determining whether a seller has a nexus with any State for any other 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 shall be construed as encouraging a State to impose sales and use taxes on any goods or services not subject to taxation prior to the date of enactment of this Act.

No Effect on Intrastate Sales – The authority under this Act only applies to remote sales and does not apply to intrastate sales or intrastate sourcing rules.

No Effect on Mobile Telecommunications Sourcing Act – nothing in this Act shall alter or preempt the Mobile Telecommunications Sourcing Act, 4 U.S.C. 116-126.

### **Section 4. Definitions and Special Rules**

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

### **Section 5. Severability**

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

### **Section 6. Preemption**

Except as otherwise provided in this Act, this Act does not preempt or limit any powers of State or local jurisdictions under any existing laws.