

E-Fairness Legislation Side-by-Side

Bill	H.R. 3179, Marketplace Equity Act	S. XXX, Marketplace Fairness Act (DRAFT)
Lead Sponsors	Reps. Steve Womack (R-AR) and Jackie Speier (D-CA)	Sens. Mike Enzi (R-WY), Dick Durbin (D-IL), Lamar Alexander (R-TN)
Small Seller Exemption	<ul style="list-style-type: none"> • Gross annual receipts in total remote sales exceeding: <ul style="list-style-type: none"> ○ \$1,000,000 in the U.S.; or ○ \$100,000 in total remote sales into any one state • States may set higher exemptions 	<ul style="list-style-type: none"> • Gross annual receipts in total remote sales exceeding \$500,000 in the U.S.
Rate Structure	<ul style="list-style-type: none"> • Single state-wide blended rate; or • Maximum state rate; or • Applicable destination rate <ul style="list-style-type: none"> ○ States must make such software available to remote sellers and relieve them of liability for reliance on software • Rate for remote sellers cannot exceed rate for brick-and-mortar businesses 	<ul style="list-style-type: none"> • Applicable destination rate <ul style="list-style-type: none"> ○ States must provide adequate software and services to remote sellers that identify applicable destination rate ○ Certification procedures for software providers ○ Hold remote sellers harmless for errors or emissions for reliance on software
Tax Base	<ul style="list-style-type: none"> • Uniform sales and use tax base among state and local taxing jurisdictions 	<ul style="list-style-type: none"> • Uniform sales and use tax base among state and local taxing jurisdictions
Commencement	<ul style="list-style-type: none"> • First day of the calendar quarter at least six months after the date the state publishes a public notice containing: <ul style="list-style-type: none"> ○ Title and reference to legislation state has enacted ○ Criteria under which remote sellers must collect sales and use taxes ○ The rate or rates the remote seller will be required to collect ○ Effective date 	<ul style="list-style-type: none"> • For states that are part of the Streamlined Sales and Use Tax Agreement (SSUTA), collection authority shall commence no earlier than the first day of the calendar quarter that is at least 90 days after the date of enactment of the Act • For states <u>not</u> part of the SSUTA, collection authority shall commence on the first day of the calendar quarter that is at least six months after the state enacts implementing legislation • States must provide remote sellers with 30 days notice of any rate changes by a locality in the state

	<ul style="list-style-type: none"> • States must provide remote sellers with references to compliance information and any requisite forms 	
Filing	<ul style="list-style-type: none"> • Remote seller must file a single sales and use tax return with a designated state agency 	<ul style="list-style-type: none"> • States must designate a single state agency to administer sales and use tax for all jurisdictions with respect to remote sales • Remote seller must file a single sales and use tax return with a designated state agency
Termination of Authority	<ul style="list-style-type: none"> • Authorization shall be terminated if the state no longer meets the requirements of the Act on the date that: <ul style="list-style-type: none"> ○ A court of competent jurisdiction determines that the state is no longer in compliance ○ The determination of such court is no longer subject to appeal 	<ul style="list-style-type: none"> • Authorization shall be terminated if the state no longer meets the requirements of the Act on the date that: <ul style="list-style-type: none"> ○ A court of competent jurisdiction determines that the state no is no longer in compliance ○ The determination of such court is no longer subject to appeal
Streamline Sales and Use Tax Agreement (SSUTA)	<ul style="list-style-type: none"> • States that adopt interstate compacts (e.g., SSUTA) satisfying the minimum requirements under the Act would qualify for collection authority • No direction mention of the SSUTA 	<ul style="list-style-type: none"> • Member states of the SSUTA are authorized to require all sellers (unless exempted) to collect and remit sales and use taxes with respect to remote sales • SSUTA is defined as the multi-state agreement of the same title adopted on November 12, 2002 and is further amendment from time to time
Preemption	<ul style="list-style-type: none"> • The Act shall not be construed to preempt or limit any 	<ul style="list-style-type: none"> • No provision
Limitations	<ul style="list-style-type: none"> • Nothing in the Act shall be construed as: <ul style="list-style-type: none"> ○ Subjecting a seller to franchise taxes, income taxes, or licensing requirement of a state or political subdivision ○ Affecting the application of such taxes or requirement or enlarging or reducing the authority of any state to impose such taxes or requirements ○ Requiring any state or local taxing jurisdiction to exempt, or to impose a tax on any product, or to adopt any particular type of tax, or to impose the same rate of tax as any other 	<ul style="list-style-type: none"> • Nothing in the Act shall be construed as: <ul style="list-style-type: none"> ○ Subjecting a seller or any other person to franchise, income, occupation, or 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 • Nothing in this Act shall be construed as permitting or prohibiting a state from: (a) licensing or regulating any person, (b) requiring any person to qualify to transact interstate business, (c) subjecting any person to state taxes not related to the sale of goods or services, or (d) exercising

	<p>jurisdiction</p> <ul style="list-style-type: none"> ○ Permitting or prohibiting a state from: (a) licensing or regulating any person, (b) requiring any person to qualify to transact interstate business, (c) subjecting any person to state taxes no related to the sale of goods or services, or (d) exercising authority over matter of interstate commerce ● No effect on nexus determination for other purposes 	<p>authority over matters of interstate commerce</p> <ul style="list-style-type: none"> ● 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 ● Provisions of the Act only apply to remote sales and shall not apply to intrastate sales or intrastate sourcing rules ● No effect on nexus determination for other purposes
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