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## *U.S. Senate "compromise" raises hopes for remote sales tax collection*

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The Marketplace Fairness Act ([S. 1832](#)) was introduced in the U.S. Senate on November 9, 2011, by a bipartisan group of 10 Senators. An announcement by U.S. Senators Mike Enzi (R-WY), Dick Durbin (D-IL), and Lamar Alexander (R-TN) explained that, under the legislation, "States that voluntarily become Member States of the Streamlined Sales and Use Tax Agreement (SSUTA) would be able to require remote sellers to collect and remit sales and use taxes after 90 days." In addition, and in contrast to separate legislation introduced by Sen. Durbin in July (the Main Street Fairness Act / [S. 1452](#)), this legislation provides that "States that do not wish to become members of SSUTA would be allowed to collect the taxes only if they adopt certain minimum simplification requirements and provide sellers with additional notices on the collection requirements." The legislation represents a compromise between the Main Street Fairness Act and alternative legislation, the Marketplace Equity Act ([H.R. 3179](#)), introduced in the House in October that would bypass the SSUTA entirely and allow states meeting even fewer minimum simplifications to gain remote sales tax collection authority.

### Competing proposals

On July 29, the Main Street Fairness Act was introduced in the Senate by Sen. Durbin (a companion bill, [H.R. 2701](#), was introduced in the House on the same day by Rep. John Conyers (D-MI)). As with prior version that have failed to gain traction in the Congress, the legislation generally would grant states that are members of the SSUTA



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the authority to require remote sellers to collect and remit state and local sales and use taxes. The legislation requires that certain necessary operational aspects of the SSUTA be implemented by the SSUTA's governing organization (the "Governing Board"), and that each member state meet tax rate and boundary database and taxability matrix requirements provided in the SSUTA, before remote sales authority would be granted. Further, the SSUTA must meet a list of 18 minimum simplification requirements. Certain Governing Board actions would be subject to review by the U.S. Court of Federal Claims, which is granted exclusive jurisdiction for review of Governing Board determinations. ([Click here](#) for more on the Main Street Fairness Act.)

On October 13, Rep. Steve Womack (R-AR) and Rep. Jackie Speier (D-CA) introduced the Marketplace Equity Act. In contrast to the Main Street Fairness Act, this bill would allow states, either "individually or through an agreement with one or more of the several States," to require sales tax collection by remote sellers if such states meet each of four minimum requirement categories: (1) a small remote seller exception (annual gross receipts from remote sales not exceeding \$1 million nationwide or \$100,000 in any one state); (2) sales tax return forms and filings; (3) a uniform tax base between the state and its localities; and (4) sales and use tax rate structures (including state options for a "blended" state-wide rate, the maximum state rate, or a destination rate coupled with software to ease the collection burden and relief from liability for collection of tax at the incorrect rate). Unlike the Main Street Fairness Act, these abbreviated minimum simplification requirements would apply to remote sellers only. The proposal is also silent with respect to compensation to sellers for the cost of collecting the sales tax, as well as the availability of and compensation for "certified service providers" to perform the tax compliance function on behalf of remote sellers.

Advocates for the Marketplace Equity Act cited a wariness with the perceived complexity of the SSUTA and a reticence of larger states to cede tax policy authority to the Governing Board as reasons for this "slimmed down" bill. Further, the bill would provide an avenue for gaining Republican support by respecting states' rights while providing a level playing field for all sellers, advocates argued. However, at the Governing Board's October meeting in Seattle, this proposal was met with skepticism regarding whether it jettisoned too many simplifications, unwisely bypassed the SSUTA, and would bring significant degrees of Republican support. The Governing Board did invite Marketplace Equity Act advocates to join in talks to craft a compromise measure that might achieve the goals of both proposals. ([Click here](#) for more on the Seattle meeting discussions.)

## Marketplace Fairness Act

The Marketplace Fairness Act introduced on November 9 provides that full member states of the SSUTA may require remote sales tax collection beginning on the first day of the calendar quarter that is at least 90 days after the date of the Act's enactment. In addition, a non-member state may require remote sales tax collection beginning the first day of the calendar quarter that is at least 6 months after the date the state enacts legislation implementing certain minimum simplification requirements for remote sellers, including: (1) state-level tax administration; (2) a state-wide audit; (3) a single sales tax return; (4) a uniform tax base; (5) a destination rate (including the

local jurisdiction rate); (6) provide compliance software and services, including relief from liability for use of such software and certified service providers; (7) notice of local rate changes; and (8) a sourcing methodology for remote sales as outlined in the legislation. No seller compensation is included in the legislation beyond the provision of compliance software and services. The legislation includes a small seller exception of \$500,00 gross annual receipts from U.S. remote sales. Interestingly, the minimum requirements are not applied to the SSUTA and its member states. Also interestingly, a state's authority to require remote sales tax collection does not terminate until "the highest court of competent jurisdiction makes a final determination that the State no longer meets the requirements of this Act[.]"

## *PwC Observes*

The SSUTA has been criticized over the course of its development for being overly complex and providing insufficient simplification to warrant Congressional approval. However, many of the SSUTA provisions represented a negotiated and carefully crafted approach to important sales and use tax compliance issues that must be addressed by remote sellers and their customers in a mandatory collection regime. The Marketplace Fairness Act represents an attempt to strike a balance between the SSUTA, as embraced in the Main Street Fairness Act, and something approaching a bare minimum grant of authority to states for remote sales tax collection, as represented by the Marketplace Equity Act. In the process of granting states flexibility, however, the Marketplace Fairness Act may have dramatically expanded the ability of the state members of the SSUTA to scale back existing simplifications, while holding nonmembers to a different standard. While these and other issues will likely be discussed in ongoing negotiations, the legislation represents a significant development for proponents of remote sales tax collection, most notably in its high-profile introduction by prominent Senators and bipartisan support. With states turning up the pressure for a national solution by enacting their own, disparate legislation to attempt to force sales tax collection by remote sellers, Congressional action in this area is attracting more attention and gaining momentum.

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