

Virginia Department of Taxation

Overview of Proposed Federal Legislation Granting States Remote Sales Tax Collection Authority

Craig M. Burns
Tax Commissioner

Background

- Federal bills have stemmed from state efforts to grant remote collection authority to the states.
 - Main Street Fairness Act (H.R. 2701): introduced August 2011.
 - Subsequently combined in another bill.
 - Marketplace Equity Act (H.R. 3179): introduced October 2011.
 - Marketplace Fairness Act (S. 1832): introduced November 2011.
- US Supreme Court ruled in 1967 and 1992 that states cannot require sellers without a physical presence in a state to collect the sales and use tax, unless they receive authorization from Congress.
 - Congress has repeatedly declined to enact legislation overturning these decisions.
- In 2000, several states formed Streamlined Sales Tax Project to compel Congress to grant states remote collection authority.

Background, Streamlined Sales Tax

- Participating states worked to develop an Agreement (SSUTA) and the rules and processes to be used once the project was implemented.
- SSUTA creates uniform definitions of common sales and use tax terms and transactions (food, clothing, lease or rental, tangible personal property, drugs).
 - Requires state level administration of local sales and use taxes.
 - Simplifies state and local rate structure.
- Absent federal legislation, the Streamlined Agreement is purely voluntary. No remote seller is required to collect state sales and use taxes.

Main Street Fairness Act

(S. 1452 and H.R. 2701)

- Federal Streamlined legislation was introduced in August, 2011.
- Require states to become full members of the SSUTA and meet SSUTA's minimum simplification requirements for remote collection authority.
- SSUTA has a number of simplification requirements including identical local and state tax bases, uniform rules for sourcing, uniform procedures for certifying services, etc.
- As of October 1, 2012, SSUTA has 22 full member states.
 - Virginia is not a member state.

Notable Provisions

Small Seller Exception—set out in SSUTA.

- Governing Board must establish amount and may adjust annually.

Compensation

- Member states must provide compensation to remote sellers according to amount identified in SSUTA.

Marketplace Equity Act (H.R. 3179)

- Membership in SSUTA not required.
- Remote collection authority for states that meet certain minimum simplification requirements, including identical state tax base and exemptions, and an option of three different rate structures.
- Permissible to impose a lower rate for sale of food or drugs.
- Small Seller Exception: Exception for remote sellers with gross annual receipts nationwide of \$1 million or less, or statewide of \$100,000 or less. States may increase.

Marketplace Fairness Act (S. 1832)

- Grants remote collection authority to states that either:
 - Become a member of the SSUTA; or
 - Adopt minimum simplification requirements.
- Small Seller Exception: Exception for businesses with \$500,000 or less in gross annual out-of-state revenue in the previous year.

Summary of Pending Federal Legislation

	Marketplace Equity Act (H.R. 3701)	Marketplace Fairness Act (S. 1832)
Requires SSUTA Membership	No.	States may comply by adopting SSUTA, but adopting minimum simplification requirements is sufficient.
Includes small seller exception	Yes. \$1 million or less annually nationwide or \$100,000 statewide, with state discretion to increase.	Yes. \$500,000 or less annually nationwide.
Tax rates	Choose among three rate structures.	Destination rate (state rate + local rate).
Requires identical state and local tax base	Yes.	Yes.
Single return with single agency administration	Yes.	Yes.
Requires state to provide software to calculate	Yes, if state requires destination sourcing of sales .	Yes
Requires state provide taxability matrix	No. Must provide notice of tax rate changes and effective date.	No, if meeting minimum simplification requirements

Summary of Pending Federal Legislation

Marketplace Equity Act (H.R. 3701)

Authority effective: First day of calendar quarter at least 6 months after date state publishes public notice.

Statutory Changes: Virginia would need to repeal local discretion to exempt or tax fuel for domestic consumption.

Administrative Changes: Virginia would need to publish public notice prior to exercising authority, including rate(s) at which affected remote retailers must collect tax.

Impact on Amazon Legislation: Federal legislation would render Virginia Amazon legislation unnecessary, but would have no impact on collections from Amazon.com.

Revenue Impact: Assuming Virginia share of remote collections is \$115 million (SB 340, 2010 Session), \$1 million small seller exception would reduce Virginia receipts by 18% or \$20.7 million.

Marketplace Fairness Act (S. 1832)

Authority effective: First day of calendar quarter at least 6 months after date state enacts legislation to implement minimum simplification requirements.

Statutory changes: Virginia would need to repeal local discretion to exempt or tax fuel for domestic consumption under minimum simplification requirement and SSUTA.

Administrative Changes: Under minimum simplification requirement, Virginia would need to:

- Provide adequate software identifying applicable destination rate.
- Certify software and services and hold sellers and third party providers harmless for relying on information provided by the state.

Impact on Amazon Legislation: Federal legislation would render Virginia Amazon legislation unnecessary, but would have no impact on collections from Amazon.com.

Revenue Impact: Assuming Virginia share of remote collections is \$115 million (SB 340, 2010 Session), \$500,000 small seller exception would reduce Virginia receipts by 8% or \$9.2 million.

Current Status of Bills

Marketplace Equity

- July 24, 2012-- House Judiciary Committee held to discuss merits of bill. No action was taken at the hearing.

Marketplace Fairness

- August 1—Senate Committee on Commerce, Science, & Transportation held hearing
- Some states that object to certain provisions are in discussions (including California, Texas, New York, Illinois and Florida).