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The proposed Marketplace Fairness Act for Internet-based businesses

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A bill is making its way through Congress that will substantially alter the internet sales landscape if it becomes law.

The *Marketplace Fairness Act* which has been lobbied by retailers for some time, has now passed through the Senate and making its way to the House of Representatives where it is expected to be met with some resistance.

By way of background, the current rules and decisions of the courts state that an online merchant who sells goods to a purchaser in a state where they do not have a physical presence do not need to charge sales tax on that purchase.

Some large online retailers such as Amazon have physical location by way of fulfillment centers or service centers in some states, so they would charge sales tax on shipments only to those states. The physical "brick and mortar" retailers who sell goods primarily in person in a given state feel they are at a disadvantage to this type of online, out of state sellers because they are required to collect various sales taxes as a result of their physical location.

In theory, as mentioned above, when a purchaser receives a good from a seller from another state, no sales tax is charged by the seller if the seller had no physical presence in the purchaser's state. However the purchaser would be required to complete a Use Tax report and remit payment to their resident state for the sales tax that would have been charged if the item had been purchased in that state. This Use Tax was rarely ever paid on a voluntary basis, and rarely enforced.

This new proposed law will require online sellers to collect and remit sales taxes for every state regardless of their presence, when the retailer's gross sales exceed $1 million in any year.

The major difficulty for an online retailer is that they may have sales to every state, and would be the need to understand the sales tax regime in all of the states. Currently 45 states and the District of Columbia charge a sales tax on sales made in-state.

It would not be as easy as just figuring out the sales tax rate for the state that products are to be shipped to and then multiplying by that rate. There are more than 9,000 taxing jurisdictions in the U.S. When a consumer purchases a product at a traditional brick and mortar retailer, the sales tax percentage charged at the cash register is a combination of state and local (county and city) components. The online retailer would need to understand each locale that the product is shipped to and apply the correct combination of taxes to each sale.

The bill also requires that states simplify their sales tax rules. Twenty four states have agreed to the SSUTA (Streamline Sales and Use Tax Agreement). The member states have agreed to 4 simplification policies: Uniform tax base (meaning the same goods and services are taxed in each state), an agreement to the state collecting the tax (i.e. the seller or purchaser's home state), a simplified rate (the same rate across the whole state), and remitting the tax to a single entity.

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If an entity doesn't simplify the taxation by agreeing to the SSUTA, then the proposed bill requires other simplification by the state, such as providing businesses with free software to compute the sales taxes for that state.

This bill is expected to create some lively discussion in the House before a vote. Many feel this is creating a new tax, while others see this as an opportunity to collect the otherwise often missed Use Tax and level the playing field for all interstate businesses.

Should the bill pass, it will mean significant planning and increased compliance for internet sellers.

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