The Remote Transactions Parity Act.

The Act gives states the authorization to impose a sales and use tax collection and remittance requirement on remote sellers if the states' laws are in compliance with the requirements set forth in the Act. The Act requires states to dramatically simplify their tax systems and make other changes to protect remote sellers.

There are two tracks by which a state may obtain the authorization. The first is to be or become a member of the Streamlined Sales and Use Tax Agreement (SSUTA). There are currently **24** states that are full members of the SSUTA. The second is for the state to implement simplification requirements set forth in the Act. (Note that Streamlined members are only granted authorization if the Streamlined Sales and Use Tax Agreement conforms to the Act's simplification requirements.)

To obtain authorization, nonmember states must also pass legislation that specifies which of the state's taxes the Act's authorization applies to, and any products or services not covered by the Act.

Simplification Requirements

States must provide the following:

- A single entity that will handle all sales and use tax administration, return processing, and audits. <u>It is important to note that remote sellers will only be subject to a single audit</u>.
- One return per state, reflecting the liabilities for the state and all localities within the state.
- A single uniform tax base for the state and all localities within the state.
- Free access to national Certified Software Providers ("CSPs").
  - CSPs must be able to generate and file returns, make payments, determine sourcing, and respond to audits, and be able to perform all those activities electronically.
  - States may not impose a collection requirement until they have certified multiple national CSPs.
- For the remote seller to let the CSP handle any audits for the remote seller.
- A publicly available table that is regularly updated and provides the taxability and exemptions for products and services and a rate and boundary database with the rates for the taxability of these services.

Protections for Remote Sellers and CSPs

In addition to the simplification requirements, a state must also implement protections for remote sellers and CSPs. Including:

- Relieve remote sellers from liability if a CSP makes an error.
- Relieve CSPs if the remote seller makes an error.
- Relieve CSPs and remote sellers from liability if the state makes an error in providing taxability or rate information.
- A 90 days notice when making changes to the taxability of products and services, or changes to rates or exemptions.
- Registrations from a central database.
- Protections to remote sellers against various suits filed by customers for over-collection (and under-collection) of sales and use tax.
- Provision that remote sellers and CSPs are not subject to over-collection liabilities if they have adopted reasonable business practices.
- Protections that a seller is not liable for tax, penalty and interest on a transaction if the purchaser provides proof of exemption within 90 days of the sale.

- A three-year statute of limitations on assessments made under the act if the remote seller has filed a return.

Small Seller Exception

The Act provides an exception for small sellers of $10,000,000 for the first year, $5,000,000 in the second year, and $1,000,000 in the third and subsequent years. Sales among related entities are aggregated if they meet certain affiliate requirements in the Internal Revenue Code, or the related entities are structured with the intent of avoiding the Act.

The Act also provides that a remote seller has gross annual receipts of less than $5,000,000 may not be audited by a state unless there is reasonable suspicion of intentional misrepresentation or fraud. Audits may not be conducted by contingent fee auditors.

Limitations

This section sets forth various provisions that limit the application of the Act. The Act does not:

- Affect any other taxes other than sales and use taxes.
- Affect a State's authority to impose other taxes or affect their application.
- Affect the determination of nexus.
- Affect licensing or regulatory requirements, intra-state sales, or the Mobile Telecommunications Sourcing Act.
- Encourage the creation of new taxes.
- Go into effect until 1 year after the date of enactment, but not during the period from October 1 through December 31.