

Lowering Costs for Small Business Act – Discussion Framework

Senator Maggie Hassan

Protections for remote sellers: This section prohibits a state or locality from imposing a sales tax collection obligation on a remote seller unless:

1. **Small remote seller exemption:** The state and its localities exempt small remote sellers from sales tax collection obligations. As defined below, small remote sellers are those with gross annual receipts in total remote sales in the U.S. in the current or preceding calendar year that do not exceed \$10,000,000.
2. **Ban on retroactive taxation:** A state and its localities exempt remote sellers from all sales tax collection obligations for any sale that occurred prior to June 21, 2018.
3. **Free compliance services:** A state and its localities (A) contract with providers of software, provided free of charge to remote sellers, that (i) calculates sales and use taxes due on each transaction at the time the transaction is completed, (ii) files sales and use tax returns, and (iii) is updated to reflect tax rate and tax base changes; (B) implement certification procedures for persons to be approved as certified service providers; and (C) provide information databases to remote sellers indicating (i) the taxability of products and services, (ii) any product and service exemptions from sales tax, and (iii) applicable tax rates and tax jurisdiction boundaries.
4. **Safe harbor for new and modified sales taxes:** The state and its localities exempt remote sellers from liability for the incorrect collection or remittance of sales taxes, including any penalties or interest, if the liability is the result of good-faith errors in collecting (A) new sales taxes effective in the current calendar year, or (B) sales taxes for which modifications, such as changes to tax rate or base, were effective in the current calendar year.
5. **Safe harbor for third-party errors:** The state and its localities exempt a remote seller from liability for the incorrect collection or remittance of sales taxes, including any penalties or interest, if the liability is the result of (A) an error or omission made by a compliance service provider or a marketplace facilitator to which the remote seller made a good-faith effort to provide accurate information, (B) incorrect information provided to the remote seller by the state, or (C) incorrect information provided to the state by compliance software that is provided to the remote seller under contract with the state.
6. **Safe harbor related to exemption certificates:** The state and its localities exempt a remote seller from liability for the incorrect collection or remittance of sales taxes, including any penalties or interest, if the liability is the result of a purchaser (A) improperly claiming a tax exemption, or (B) providing incorrect information on a tax exemption certificate, provided that (i) the fully completed exemption certificate was provided to the remote seller at the time of sale or within 90 days subsequent to the date of sale, (ii) the remote seller did not fraudulently fail to collect the tax due, and (iii) the remote seller did not solicit customers to unlawfully claim an exemption.

Simplification for remote sellers: This section prohibits a state or locality from imposing a sales tax collection obligation on a remote seller unless the state meets one of the following two conditions:

1. The state is a Member State of the Streamlined Sales and Use Tax Agreement (SSUTA), but only if the SSUTA adheres to the minimum simplification requirements described below within 360 days of enactment of this legislation;

or

2. The state meets the minimum simplification and compensation requirements for non-SSUTA states described below.

Minimum simplification requirements for SSUTA states: A state that is a Member State of the Streamlined Sales and Use Tax Agreement may not impose a sales tax collection obligation on a remote seller unless SSUTA meets the following five conditions:

1. **Minimum nexus threshold:** Each Member State and its localities exempt remote sellers from sales tax collection obligations in a given calendar year if the remote sellers deliver less than \$100,000 in retail sales into the state in the current or preceding calendar year;
2. **One tax rate per zip code:** Each Member State and its localities adopt a single applicable tax rate for remote sellers across all product types for each five-digit zip code, and SSUTA has implemented a centralized system through which remote sellers can determine the combined state and local tax rate applicable to a given sale. Member States (i) must provide remote sellers the option to collect sales taxes at actual local sales tax rates, rather than at the single applicable tax rate; (ii) may provide one alternative rate per zip code for food or medication; and (iii) may provide tax exemptions for any product, nothing in this section withstanding.
3. **Registration and filing rules:** The SSUTA has implemented (A) a centralized registration and filing system through which remote sellers can satisfy their registration and filing obligations with all Member States and their localities, (B) a sales tax exemption certificate accepted across all Member States, and (C) a standardized sales tax filing form for remote sellers that sellers can file for all Member States and their localities. A Member State can require the standardized sales tax filing form to be submitted no more than (i) monthly if submitted by a Certified Service Provider under SSUTA, or (ii) quarterly if submitted by a remote seller;
4. **Audit limitation and coordination:** The SSUTA has implemented an Audit Coordination System under which (A) a remote seller that is audited by more than one Member State in a given year is assigned a single Audit Coordinator who is the only person the relevant Member States require the remote seller to coordinate with regarding the relevant audits, and (B) the Audit Coordinator coordinates with any Certified Service Provider contracted with a remote seller rather than directly with the remote seller;

and

5. Uniform intrastate tax base and interstate uniformity rules: Each Member State has provided a uniform sales tax base across the state and its localities, and the SSUTA has adopted the “remote sales tax uniformity rules,” as defined below, across all Member States.

Minimum simplification and compensation requirements for non-SSUTA states: A state that is not a Member State of the Streamlined Sales and Use Tax Agreement may not impose a sales tax collection obligation on a remote seller unless the state meets the following six conditions:

1. Minimum nexus threshold: The state and its localities exempt remote sellers from sales tax collection obligations in a given calendar year if the remote sellers deliver less than \$1,000,000 in retail sales into the state in the current or preceding calendar year;
2. One rate per state: The state and its localities adopt a single applicable tax rate for remote sales that (A) applies across all product types, and (B) applies across the state and all its localities. States (i) must provide remote sellers the option to collect sales taxes at actual local sales tax rates, rather than at the single applicable tax rate; (ii) may provide one alternative rate for food or medication; and (iii) may provide tax exemptions for any product, nothing in this section withstanding.
3. Registration and filing rules: The state has implemented (A) a centralized registration and filing system through which remote sellers can satisfy their registration and filing obligations with the state and its localities, and (B) a standardized sales tax filing form for remote sellers that sellers can file for the states and all its localities on no more than on a quarterly basis;
4. Audit centralization: The state has established a single entity that is responsible for all state and local sales tax administration, including providing centralized remote sales tax audits for the state and its localities;
5. Uniform intrastate tax base and intrastate uniformity rules: The state has provided a uniform sales tax base across the state and its localities, as well as adopted the “remote sales tax uniformity rules,” as defined below, across the state and its localities;

and

6. Small remote seller compensation: The state and its localities compensate small remote sellers for the “full compliance cost” of collecting and remitting sales taxes. The Treasury Department is directed to issue guidance within 180 days of enactment of this legislation regarding how non-SSUTA states are to determine “full compliance cost” for purposes of compensating small remote sellers, in accordance with the below.

- a. Compensation methods for small remote seller compensation shall include (A) deduction or withholding of sales taxes collected, and (B) direct payment of vendor compensation where deduction of sales tax is insufficient to cover the full cost of collecting sales tax.
- b. The determination of “full compliance cost” shall consider (A) compliance costs, including fixed software costs, recurring software costs, and audit compliance costs; and (B) whether the state has adopted simplification measures implemented by the SSUTA, including (i) participating in the SSUTA Certified Service Provider program, (ii) participating in the SSUTA centralized registration and filing system, (iii) participating in the SSUTA Audit Coordination Program, and (iv) adopting the SSUTA interstate uniformity rules.

Definitions:

- Remote seller: A person without a physical presence in a state who sells products for delivery into that state. Inventory controlled by a third party does not constitute physical presence.
- Small remote seller: Remote sellers with gross annual receipts in total remote sales in the U.S. in the preceding calendar year that do not exceed \$10,000,000. Aggregation rules under tax code section 267 and 707 apply.
- Sales tax collection obligation: An obligation imposed on a seller to pay, collect, or report information regarding a sales, use, transaction, or similar tax.
- Streamlined Sales and Use Tax Agreement: The multi-State agreement with that title adopted on November 12, 2002, as in effect on the date of the enactment of this Act and as further amended from time to time.
- Member State: A “Member State” as that term is used under the Streamlined Sales and Use Tax Agreement as in effect on the date of the enactment of this Act. Does not include any associate member under the Streamlined Sales and Use Tax Agreement.
- State: Each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.
- Locality: Any political subdivision of a State.
- Person: An individual, trust, estate, fiduciary, partnership, corporation, limited liability company, or other legal entity.
- Remote sales tax uniformity rules: Uniformity rules that include:
 - A product classification system,
 - Definitions of transaction terms, such as “sales price,”
 - Rules for sourcing transactions to tax jurisdictions,
 - Procedures for certifying service providers on which remote sellers may rely to determine sales tax rates and the taxability of the product(s) in each transaction,
 - Rules for treatment of bad debts,
 - Rules for sales tax holidays,
 - Rules for refunds, customer returns, restocking fees, discounts, and coupons,
 - Rules for calculating the cost basis for sales tax, including the treatment of fees and commissions, and

- Rules for threshold measurement periods for determining if a remote seller has a sales tax collection obligation.