



MULTISTATE TAX COMMISSION

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Nexus Program Director's November 20, 2024 Update on Nexus Law Developments Since July 29, 2024

Rulings or Administrative Actions

Alabama

The Department has published Notice 08-16-2024 dated August 16, 2024 to explain Act 2024-334 which becomes effective October 1, 2024. This act requires accommodations intermediaries to collect and remit state lodging taxes levied by § 40-26-1, Code of Ala. 1975, and parallel local levies for transactions occurring on or after January 1, 2025.

Alaska Remote Seller Sales Tax Commission

The Commission has eliminated the 200 transactions economic nexus threshold effective January 1, 2025, so gross sales into Alaska exceeding \$100,000 in the current or prior year will be the remaining local sales/use tax economic nexus threshold thereafter in effect for local jurisdictions that have joined the Commission.

California

The Franchise Tax Board has published for comment in September 2024 proposed CALIFORNIA CODE OF REGULATIONS TITLE 18, DIVISION 3, CHAPTER 3.5, SUBCHAPTER 17, ARTICLE 2.5, SECTION 25136-2 REGARDING MARKET-BASED RULES FOR SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY. See Michael Bologna, "California Proposes Tax Rule for Sourcing Sales of Intangibles," *Bloomberg Law News* (September 16, 2024).

The CDTFA has published California Tax Publication 101 entitled "Sales Delivered Outside California" and revised May 2024, which provides sales tax guidance concerning sales that are delivered to the purchaser outside of the state.

Massachusetts

The Commissioner has published Technical Information Release TIR 24-12 dated November 1, 2024 providing guidance for the Massachusetts Tax Amnesty Program pursuant to H. 4800 in effect from November 1, 2024 through December 30, 2024. The Amnesty Program will be open to individual and business taxpayers who meet

the eligibility requirements. Most tax types will be eligible, including personal income tax, corporate excise, and sales/use tax. Eligible taxpayers will be able to file delinquent or amended returns, pay the outstanding tax and interest, and benefit from a waiver of most tax penalties. Non-filers may also benefit from a three-year look-back period. Eligible taxpayers who wish to apply for amnesty must submit a request ("Amnesty Request") online at [MassTaxConnect](#).

Minnesota

The Department published "Minnesota Local Tax General Notice: Grand Rapids 3% Lodging Tax" dated October 23, 2024, providing that starting January 1, 2025, the Department will administer the Grand Rapids 3% Lodging Tax. Revenues will fund local tourism identified under Minnesota Statute section 496.190 and in Grand Rapids Ordinance 62-11 Lodging Tax, amended by Ordinance No. 24-05-03.

Missouri

The Department issued LR8316 dated August 30, 2024, determining that an online ordering company that allows customers to order meals and beverages from restaurants through its website or mobile app, then the restaurant prepares the food for the customer, is not required to collect and remit Missouri sales tax as a Marketplace Facilitator on sales to Missouri diners, from in-state (Missouri) restaurants. The online ordering company may transfer sales taxes collected on behalf of Missouri restaurants to those restaurants, but those Missouri restaurants are the sellers with primary reporting and remittance obligations under Missouri sales tax law. However, the online ordering company is required to collect and remit Missouri use tax as a Marketplace Facilitator for out-of-state restaurant orders that are being delivered into Missouri.

Nebraska

The Department has updated its lodging tax Information Guide entitled "Nebraska and Local Taxes on Lodging," highlighting the changes in red boxes.

New Jersey

The Department of Treasury published guidance dated October 8, 2024 entitled "Reminder: New Jerseyans Working Remotely for Out-of-State Employers May Be Eligible for Gross Income Tax Credit," encouraging New Jersey residents who work for an out-of-state employer to pursue legal challenges against states attempting to tax such income earned while working remotely in New Jersey under "convenience of employer" rules. Under a New Jersey law enacted in 2023, successful taxpayers are

entitled to refundable credits for up to 50% of the amount of taxes owed to New Jersey as a result of the readjustment for tax years 2020 through 2023.

North Dakota

North Dakota Tax Commissioner published sales/use tax guidance for marketplace facilitators in September 2024.

South Carolina

The Department has published guidance entitled "South Carolina Nexus in South Carolina" including FAQ's concerning its Business Activities Questionnaire in October 2024.

Tennessee

The Department has updated in July 2024 its Notice #20-15 providing sales/use tax guidance to marketplace facilitators, including FAQs.

Vermont

The Department has updated its published guidance entitled "Vermont Sales and Use Tax on Floral Arrangements" as of September 2024.

Legislation

California

Governor Newsom signed S.B. 1528 on September 22, 2024, which allows the CDTFA to electronically issue notices of determination and notices of jeopardy informing taxpayers that they owe unpaid taxes and fees. Paul Jones, California Allows Electronic Sales and Use Tax Notices," *Tax Analysts Tax Notes State* (September 25, 2024).

Delaware

The Delaware Legislature has enacted House Substitute No. 2 for H. B. 168, effective January 1, 2025, imposing a short-term rental tax and a lodging tax and requiring accommodation intermediaries to collect and remit such tax. The bill defines short-term rentals as accommodations rented to guests for no more than 31 consecutive nights. Tyrah Burris, "Delaware Enacts Tax on Short-Term Rentals," *Tax Analysts Tax Notes State* (Oct. 8, 2024).

Nebraska

Legislation has been introduced in the Nebraska Legislature calling for mandatory worldwide combined reporting for Nebraska corporate income taxpayers. COST filed testimony in opposition to that bill, which remains pending, on August 1, 2024.

Federal

U.S. Senate Finance Subcommittee on Fiscal Responsibility and Economic Growth hearing held September 25, 2024 on “Providing Small Business Relief from Remote Sales Tax Collection”

Subcommittee Chair Maggie Hassan (NH) called the meeting to order. Also in attendance were Senator Ron Wyden (OR), Chair of the Senate Finance Committee, and Senator Chuck Grassley (IA), the other members of the Subcommittee. Neither New Hampshire nor Oregon impose sales tax. Senator Hassan discussed her interest in developing and introducing legislation that would impose limitations on states' authority to collect sales/use tax from her definition of small internet sellers (total remote sales in the U.S. in the current or preceding calendar year that do not exceed \$10,000,000), unless those states are either members of the Streamlined Sales and Use Tax Agreement (SSUTA), or if not, have adopted certain uniformity and simplification features. Her proposal will also include additional requirements that all states imposing sales tax must meet (see her documents entitled “Lowering Costs for Small Business Act – Discussion Framework,” attached, which outline her proposal to date). Craig Johnson, Executive Director of the Streamlined Sales Tax Governing Board, Diane Yetter, President of Yetter Consulting Services and Sales Tax Institute, and Joe Bishop-Henchman, Executive Vice President, National Taxpayers Union Foundation, testified at the hearing. Craig Johnson testified on the sales/use tax administration uniformity and simplification features of the SSUTA. Diane Yetter, who has small internet businesses as clients, testified concerning the compliance difficulties that small remote sellers face with the various states' sales tax laws and administrative procedures, recommending federal legislation as a solution. She also recommended that physical presence nexus be eliminated and a “safe harbor” from collection obligations be put in place for small sellers that do have physical presence in a state and have sales volume below that “safe harbor” threshold. Joe Bishop-Henchman also testified concerning the complexities of the various states' sales tax laws and procedures and echoed the recommendation for federal legislation. Senator Hassan concluded the hearing with a statement that her staff would continue work drafting legislation proposing requirements that states must meet to retain their tax collection authority concerning remote sales by small sellers. Both Senators Wyden and Grassley expressed strong support for her efforts.

Cases

Illinois

A remote seller has challenged the constitutionality of the Illinois Level the Playing Field Legislation as imposing an undue burden on interstate commerce. This legislation imposes conflicting sourcing rules for state and local tax purposes, depending on whether the seller is in-state, out-of-state with some physical presence, or out-of-state with no physical presence. The case is *Chic Souls, LLC v. Illinois Department of Revenue*, case no. 24 TT79, filed in August 2024 in the Illinois Tax Tribunal. A similar case, *PetMed Express Inc. v. Illinois Department of Revenue*, was recently settled. Andrea Muse, “Undue Burden and P.L. 86-272 Issues Continue to Spark Litigation,” *Tax Analysts Tax Notes State* (October 31, 2024).

Maryland

Apple filed a petition in *Apple Inc. v. Comptroller of the Treasury of Md.*, Md. T.C., No. 23-DA-00-0456, October 20, 2023, seeking refund of digital advertising tax payments, arguing the tax is illegal and unconstitutional. The Comptroller filed a motion for summary judgment on March 14, 2024, arguing that ITFA violates the anticommandeering doctrine of the Tenth Amendment, and Maryland's Digital Advertising Tax does not violate the dormant Commerce Clause or the Due Process Clause of the United States and Maryland Constitutions. Oral arguments in *Apple Inc.* were heard on May 9, 2024. Andrea Muse, “Maryland Tax Court Hears Apple's Digital Ad Tax Challenge,” *Tax Analysts Tax Notes State* (May 10, 2024). Several other large companies have since filed petitions similar to Apple's. Michael Bologna, “Amazon, Facebook, Google Seek Maryland Digital Ad Tax Refunds,” November 14, 2023; Bologna, “Apple, Peacock Battle for Top Position in Maryland Ad Tax Fight,” February 13, 2024. The Maryland Tax Court has heard oral arguments on summary judgment motions filed in four cases (by Google, Peacock, Meta Platforms Inc. and Apple) challenging the legality of the Maryland digital advertising tax as violating the Internet Tax Freedom Act. Decisions are expected by the end of the year. John Woolley, “Maryland Judge Receptive to Meta's Case Against Digital Ad Tax,” *Bloomberg Law News* (August 9, 2024).

Following the U.S. District Court's dismissal of Count IV of the complaint claiming that Maryland's Digital Advertising Gross Revenues Tax Act tax pass-through prohibition provision violated the First Amendment in *Chamber of Commerce of the U.S.A., et. al. v. Lierman*, Civil Action No. 21-cv-00410-LKG on July 3, 2024, the plaintiffs have appealed that ruling to the Fourth Circuit, docket no. 24-1727 and have filed their supporting brief. The appeal remains pending. Andrea Muse, “Digital Tax Passthrough Provision Unconstitutional, Associations Argue” *Tax Analysts Tax Notes State* (November 4, 2024).

Minnesota

In *Uline, Inc. v. Commissioner of Revenue*, No. A23-1561 (August 7, 2024), the Minnesota Supreme Court affirmed a Tax Court decision upholding the Commissioner of Revenue's income tax assessment against Uline, Inc. ("Uline"), an industrial and packaging product business located in Wisconsin. Uline sent sales representatives into Minnesota and claimed protection from tax under P.L. 86-272. The Minnesota Supreme Court determined that Uline's sales representatives performed market research in Wisconsin, which was unprotected non-solicitation activity pursuant to the *Wrigley* "independent business function" test.

Missouri

In *Creve Coeur, Mo. v. Netflix Inc.*, Mo. Cir. Ct., No. 18SL-CC02819, 10/21/24 and *Creve Coeur, Mo. v. DirecTV LLC*, Mo. Cir. Ct., No. 18SL-CC02821-01, 10/21/24 the court granted the defendants' motions to dismiss on the pleadings, determining that the two streaming companies weren't liable to the municipalities for video provider service fees at any point under the state law. Richard Tzul, "Streaming, Satellite Giants Beat Missouri Service Provider Fees," Bloomberg Law News (October 23, 2024).

New York

In *In re Donald T. Struckle, Jr.*, DTA No. 830731 (August 8, 2024), and *In re Scott and Elizabeth Bryant*, DTA No. 830818 (September 12, 2024), the New York Division of Tax Appeals upheld application of the New York "convenience of the employer" rule to impose income tax on wages earned outside of New York by taxpayers working remotely for New York employers during the pandemic.

Oregon

The Oregon Supreme Court affirmed the lower court, upholding the Department of Revenue's income tax assessment in *SANTA FE NATURAL TOBACCO COMPANY v. Department of Revenue*, (TC 5372) (SC S069820) 372 Or 509 (2024). The taxpayer, an out-of-state tobacco manufacturer, argued that P.L. 86-272 applied to protect it against Oregon's income tax. The court applied the *Wrigley* "independent business function" test in determining whether the taxpayer's in-state activities were limited to those "ancillary to solicitation," finding that conduct of employees soliciting Oregon tobacco product retailers to place orders with Oregon wholesalers went beyond "solicitation," in that those employees at times took "prebook orders" from retailers, filling out an order form for tobacco products. The prebook order form would be signed by the retailer, would include the product amounts and delivery dates, and the employee would send that prebook order to the wholesaler. The

incentive agreements between the tobacco manufacturer and the wholesalers required the wholesalers to accept these prebook orders and otherwise imposed penalties them. The tobacco manufacturer also established “specific prebook goals” for its employee trade representatives. The court characterized this activity as “facilitation” of a sale, not solicitation of an order, which went beyond the scope of protected activities under P.L. 86-272. The court found that these “prebook orders” were not *de minimis*, and analogized them to the “agency stock checks” at issue in *Wrigley*.

South Carolina

Several amicus briefs (COST, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, BUSINESS ROUNDTABLE, NETCHOICE, THE SOUTH CAROLINA CHAMBER OF COMMERCE, AND THE GREATER COLUMBIA CHAMBER OF COMMERCE, Professor Hayes Holderness) have been filed with the South Carolina Supreme Court in its pending review of *Amazon Services, LLC v. South Carolina Department of Revenue*, Supreme Court Appellate Case No. 2024-000625, the lower court order affirming the sales tax assessment on facilitated sales. The South Carolina Supreme Court has granted review of the Court of Appeals decision upholding the Department’s sales tax assessment on three months of 2016 FBA sales in that case on October 3, 2024. Perry Cooper, “Amazon Wins South Carolina Top Court Review of Sales Tax Case,” *Bloomberg Law News* (October 7, 2024).

A Mastercard subsidiary, with no physical presence in South Carolina, has appealed to the South Carolina Court of Appeals the administrative law court’s decision upholding the Department’s income tax assessment sourcing credit card fee income to the location of the customers and merchants in South Carolina using/accepting the credit cards in *Mastercard Int’l Inc. v. Dep’t of Revenue*, S.C. Ct. App., No. 2024-001252. Mastercard argues that this income should be sourced to the banks issuing those credit cards (located mostly out of state) paying those fees to Mastercard. Briefing is in progress. The Mastercard subsidiary filed its supporting brief on October 30, 2024. Christopher Jardine, “Mastercard Seeks Reversal in South Carolina Corporate Tax Suit,” *Tax Analysts Tax Notes State* (November 4, 2024).

South Dakota

In *Ellingson Drainage Inc. v. South Dakota Department of Revenue*, 2024 S.D. 8 (February 7, 2024), the South Dakota Supreme Court upheld the Department’s use tax assessment against an out-of-state company that performed 30-some drain tile installation projects in South Dakota during the audit period. The use tax assessment was

imposed on equipment that Ellingson brought into the state to perform the projects but on which Ellingson had paid no sales or use tax. Some of the equipment had only been in the state for one day. The equipment was assessed on depreciated value (reduced 10% per year since purchase). In challenging the assessment, Ellingson argued that the assessment violated the “fair apportionment” prong of the *Complete Auto* 4-part test. The court, relying on *Jefferson Lines v. Oklahoma Tax Commission*, held the use tax was a substitute for a sales tax in this situation and did not need to be apportioned. In addition, it was the taxpayer’s choice as to how long the equipment remained in the state. Had the taxpayer paid any sales or use tax on the equipment, a credit would have been allowed. The taxpayer has petitioned for certiorari to the U.S. Supreme Court. The taxpayer argued that the use tax assessment violates the “external consistency” test. Providing a credit for taxes paid to other states isn’t a “silver bullet” to ensure states only tax a fair proportion of a multistate business’s activity, the National Taxpayers Union Foundation told the US Supreme Court in an amicus brief. Perry Cooper, “Taxpayer Group Asks Justices to Review South Dakota Use Tax Case,” *Bloomberg Law News* (June 10, 2024). By order dated October 7, 2024, the U.S. Supreme Court denied Ellingson’s petition for certiorari.

Washington

In Det. No. 21-0211, 43 WTD 58 (2024), the Washington State Department of Revenue Administrative Review and Hearings Division determined that an out-of-state distributor established substantial nexus for B&O tax and sales/use tax by sending representatives each year to visit Washington retailers that sold the distributor’s products and offering warranty repair services through those retailers.

In Det. No. 22-0027, 43 WTD 69 (2024), the Washington State Department of Revenue Administrative Review and Hearings Division determined that a company using proprietary software to provide sellers of advertising space a market for the space to advertisers must report the income it receives from advertisers as gross proceeds subject to business and occupation tax. The company argued that it was a “marketplace facilitator” so owed B&O tax only on its commissions. The Department disagreed, finding the company did not fit within the definition of “marketplace facilitator.” To be a marketplace facilitator, one must “contract with sellers to sell [the seller’s] products.” RCW 82.08.010(15)(a)(i). Publishers are not sellers as statutorily defined because they do not make sales at retail. Christopher Jardine, “Washington Hearing Officer Denies Nexus, Market Facilitator Appeals,” *Tax Analysts Tax Notes State* (September 11, 2024).

Richard Cram

Nexus Director's Update
November 20, 2024

Director, National Nexus Program

Lowering Costs for Small Business Act – Discussion Framework

Senator Maggie Hassan

The problem: In 2018, the Supreme Court’s [decision](#) in *South Dakota vs. Wayfair* required small businesses to start acting for the first time as sales tax collectors for out-of-state governments. As a result, when a small business sells products into another state, that state and all its local governments can require the small business to collect and transmit their sales taxes.

The Court’s decision has imposed significant burdens on small businesses. Sales tax experts [estimate](#) that there are between 10,000 to 12,000 state and local tax jurisdictions within the United States. There are so many complexly overlapping tax jurisdictions that tax experts cannot even agree on how many tax jurisdictions there are across the country.

These thousands of state and local tax jurisdictions can have [widely varying rules](#) regarding sales tax rates, what products are subject to sales tax, when and how to register with tax authorities, what tax paperwork must be filed, and tax paperwork deadlines. Further, small businesses run the risk of audits from any of these thousands of state and local governments for making mistakes in their good-faith attempts to adhere to these widely differing sales tax rules.

In 2022, small business owners [testified](#) to the Senate Finance Committee regarding the immense costs of collecting and sending sales taxes to thousands of out-of-state governments. A business owner from New Hampshire [testified](#) that his business spends \$50,000 a year to collect sales taxes for 1,500 out-of-state governments.

In order to function as sales tax collectors for out-of-state governments, small businesses are having to incur costs relating to maintaining sales tax compliance software, monitoring changes to state and local sales tax law, registering with state and local tax authorities, filing tax paperwork with state and local governments, and receiving accounting and legal advice.

The solution: This Discussion Framework would provide general protections for small remote sellers from overreach by out-of-state sales tax authorities. Further, in order for state and local governments to require small businesses to act as their sales tax collectors, the Discussion Framework would require these out-of-state governments to adopt specific simplification measures that would greatly reduce the burdens they’ve imposed on small businesses.

General protections for small businesses: The Discussion Framework would prohibit a state or local government from imposing sales tax collection obligations on a remote seller unless the out-of-state government protects small businesses by:

- Exempting remote sellers with less than \$10,000,000 in annual sales from having to collect sales taxes
- Banning retroactive tax collection from before the 2018 *Wayfair* decision
- Offering free compliance services, such as free software
- Exempting remote sellers from penalties for mistakes made by third parties, such as software

Simplification measures: The Discussion Framework would also prohibit a state or local government from imposing sales tax collection obligations on a remote seller unless the out-of-state government adopts certain simplification measures for small businesses.

- *Streamlined Sales Tax states:* Currently, 24 states are members of the Streamlined Sales Tax Agreement, which contains simplification measures that significantly reduce the burdens of sales tax collection for remote sellers. The Discussion Framework would require states within this Agreement to adopt several additional simplification measures, such as a centralized filing portal and measures to reduce audit burdens.
- *Non-Streamlined Sales Tax states:* The Discussion Framework would require states that are not members of the Streamlined Sales Tax Agreement to take several steps, including:
 - Better protect small businesses by exempting remote sellers from collecting sales taxes if they sell less than \$1,000,000 a year into the state
 - Adopt one sales tax rate across the state and all its localities for purposes of collecting taxes on remote sales
 - Fully compensate small remote sellers for the compliance costs they incur in collecting and sending sales taxes

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.