

Back in the Hopper: The Marketplace Fairness Act

Why passage of a federal Internet sales tax law could impact your business

After nearly two years on the Congressional bench, the Marketplace Fairness Act (MFA) is again making the rounds. First introduced in 2011 and again in 2013, the MFA is an attempt by federal lawmakers to level the playing field for brick-and-mortar stores going up against ecommerce businesses. If the bill passes, states that meet tax code simplification requirements can opt-in to require out-of-state sellers to collect sales tax on purchases made online.

MFA had teeth for a while, making the industry news rounds as opponents and proponents hashed it out over whether the Internet should remain a tax-free zone. After initially [passing the Senate in May 2013](#), the bill stalled in the House, where it's remained until now.

There are currently three versions of remote sales tax legislation floating around the nation's capitol. Each one would create different consequences for remote retailers. Here's how they breakdown:

The Marketplace Fairness Act of 2015 ([Senate Bill 698](#))

The new version of MFA is similar to the 2013 bill and sponsored by many of the same lawmakers.

What MFA 2015 will do:

- Give states with simplified tax code additional taxing authority over remote sales
- Provide a small seller exception (\leq \$1,000,000 in total U.S. remote sales annually)
- Base sales tax rates on the location where the buyer receives the product or service (destination sourcing)
- Establish strict timeframes and parameters around when states can exercise authority

What MFA 2015 will not do:

- Alter existing nexus or create nexus between a state and a seller
- Impose new sales and use taxes
- Affect intrastate sales on the Mobile Telecommunications Sourcing Act

Remote Transactions Parity Act of 2015

The Remote Transactions Parity Act of 2015, drafted by Rep. Jason Chaffetz (R-UT), is similar to the MFA in that it would allow states to apply sales tax to remote sales. RTPA applies many of the same timelines, requirements and rules as MFA, with a couple of exceptions:

- The small remote seller exception is different
- It provides a catalog seller exception

Online Sales Simplification Act

A draft of the Online Sales Simplification Act (OSSA) was distributed to committee members in January by House Judiciary Chair Bob Goodlatte and Rep. Anna Eshoo (D-CA). OSSA is quite different from MFA 2015 and the Remote Transactions Parity Act. Most notably, OSSA:

- Does not provide for a small seller exception
- Allows states to require in-state sellers to collect sales tax on all interstate sales
- Employs origin sourcing (sales tax rate is based on the location of the seller not the purchaser)
- Imposes the lowest combined sales tax rate for remote sellers from states with no sales tax
- Requires sellers to remit the collected sales tax to the origin state



- Prohibits states that opt-out from imposing sales tax on remote sales
- Creates a clearinghouse for collected tax revenue

The states aren't waiting and neither should you

A federal decision around remote sales tax could soon come to a head. Earlier this year, following a [court decision](#) in Colorado, Supreme Court Justice Kennedy spoke out on what he called “a serious continuing injustice” regarding the States’ inability to collect sales tax revenues from online sales.

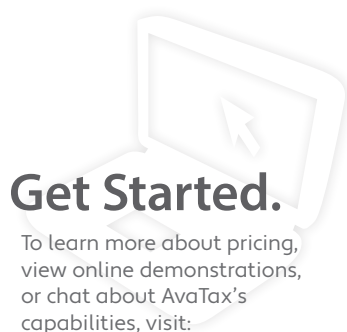
This could change, although a federal ruling may be moot at this point. Tired of waiting on MFA, several states took matters into their own hands, broadening the rules around nexus (criteria for creating a sales tax obligation) to include marketplace selling, click-through and affiliate marketing and Fulfillment by Amazon (FBA). More than 20 states now have laws requiring out-of-state sellers to collect and remit sales and use taxes if they have created sales relationships through these channels. Amazon, the U.S.’s largest online retailer, now collects sales tax in 24 states.

As such, sellers shouldn't wait for a formal invitation from Congress to address the impact of Internet sales tax on their business. With 12,000 taxing jurisdictions in the U.S. and 14,000+ changes to tax rates, rules and boundaries in 2014 alone, sales tax is already complicated and burdensome to manage. When ecommerce sales are added to the mix, that complexity will only increase.

Should we take this offline? Not anymore.

Whether or not to charge sales tax isn't something you want to manually decide every time a customer makes a purchase. It's also not wise to simply decide to not charge sales tax or to charge a flat rate. Rather, employ tax automation into your shopping cart or ecommerce system to make those nuanced decisions for you.

Ecommerce systems and shopping carts are designed to make online sales easier to manage and ensure the business processes specific to your Web store are centralized with other areas of your business. When you have better insight and control over inventory, purchases, delivery, shipping, etc., it's easier to make informed decisions about your business. Sales tax automation should be part of this process. When you're confident the right rates and rules are being applied to every transaction and can easily pull data to support that, it's much easier to prove compliance and a lot less work for your financial team.



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It's also likely that your customers aren't following MFA as closely as you are and may still believe they can buy online without paying sales tax. While you can't unanimously decide to not charge sales tax to customers, you can ensure that it isn't a surprise to them. Unexpected costs are the number one reason customers abandon a shopping cart; this includes not knowing the costs of shipping and sales tax at checkout. With sales tax automation integrated into your ecommerce system, shopping cart or point-of-sale system, the correct rate is instantly calculated and applied to taxable purchases.

In the end, the passage or failure of MFA shouldn't be the catalyst for changing how you handle tax compliance in your business. Enough is happening already at the state level that industry experts and analysts advocate automation as a best practice to protect your business and stay on top of sales tax.

[Learn more](#) about automating sales tax with Avalara AvaTax.

About Avalara

A privately held company, Avalara was founded by a team of tax and software industry veterans to fulfill a vision of delivering an affordable, scalable sales tax solution. Thus making what was not economically feasible in the past for mid-sized business not only affordable, but more accurate as well – all with the latest and most innovative technology available. From Bainbridge Island, close to Seattle, Avalara's knowledgeable staff works tirelessly to help customers put the hassles of sales tax compliance out of mind. Avalara's mission is to transform the tax process for customers by creating cost-effective state-of-the-art solutions. The company does so through integrated on-demand, Web-based software services that provide transparent transactions, accurate tax compliance, painless administration and effortless reporting.