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## Compliance & Financial **Insights**

# Get Ready to Comply With the Marketplace Fairness & Marketplace Equity Acts

**September 2012**



### Webinar Program



# Housekeeping

- This is one of a number of complimentary webinars that ADP offers to Finance and HR professionals each year
- Today's webinar will last for 60 minutes, ending at 1:00 p.m. (ET)
- The last 10 minutes of today's program have been reserved for Q&A
- A PDF copy of today's slides for download
- CPE certificates will be emailed to those who qualify within 30 days of today's broadcast
- Please participate in our brief survey at the conclusion of today's webinar



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Over 600,000 clients  
worldwide

Pays 1 out of 6 in the U.S.  
private sector - 33M worldwide



Founded in 1949  
Went public in 1961

45,000 Associates  
In 60+ Countries

- Revenues of approximately \$10 Billion
- Market capitalization of >\$23 Billion

Electronically moving  
over \$1 Trillion annually

1 of 4 AAA Rated U.S. Industrial Companies  
(by Standard & Poor's & Moody's)

**One of the world's leading providers of  
technology-based SaaS solutions to employers**



# Presenters



**Charles Collins**

**ADP**

***VP Government Affairs***



**Matthew Walsh**

**ADP**

***Sr. Director, Operations***

## Polling Question #1



- **Are you following potential Federal Legislation on remote commerce?**
  - A. Yes
  - B. No
  - C. Not Applicable

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# Agenda

## Marketplace Fairness & Marketplace Equity Acts

- What the acts would do?
- Why states and local need Congress help?
- What is covered by the acts?
- Review major provisions

## Compliance Issues for Remote Sellers

## Product Taxability and Filing Requirements

## Compliance Solutions

## Action Items

## Questions and Answers



# Marketplace Fairness and Marketplace Equity Acts



## What are the Marketplace Fairness and Marketplace Equity Acts?

- **Congressional legislation providing states authority to collect sales and use taxes on remote transactions**
  - **Marketplace Fairness Act:** *“To restore States’ sovereign rights to enforce State and local sales and use tax laws, and for other purposes”* – S. 1832
  - **Marketplace Equity Act:** *“To improve the States’ rights to enforce the collection of State sales and use tax laws, and for other purposes”* – H.R. 3179



# Marketplace Fairness and Marketplace Equity Acts



## What are the Marketplace Fairness and Marketplace Equity Acts?

- **Marketplace Fairness Act – S. 1832**
  - **Sense of Congress:** *“It is the sense of Congress that States should have the **ability to enforce their existing sales and use tax laws** and **to treat similar sales transactions equally**, without regard to the manner in which the sales is transacted, and **the right to collect – or – decide not to collect** – taxes that are already owed under State law.”*

# Marketplace Fairness and Marketplace Equity Acts



## Why do State and local jurisdictions need Congressional legislation to enforce State and local sales and use tax laws?

- Limited authority over remote sellers
- Congressional ability to regulate interstate commerce
- To enforce existing laws and to treat similar transactions equally jurisdictions need clear statutory authority to require remote sellers to collect
  - Authority is needed from Congress
- **Allows states to address \$23B uncollected tax on remote purchases**  
*(“State and Local Government Sales Tax Revenue Losses from Electronic Commerce by Professors Donald Bruce, William Fox and LeAnn University of Tennessee)*

# Marketplace Fairness and Marketplace Equity Acts

## What remote transactions are covered by the bills?

- All forms of remote commerce are included
- Not just e-commerce transactions
- Transactions covered can occur
  - Over the Internet
  - By Mail order
  - Through a Call center
  - By TV shopping
  - In a store where the property purchased is shipped out of state



## Polling Question #2

- **Is your company a remote seller or a brick and mortar seller?**
  - A. Remote seller
  - B. Brick & mortar seller
  - C. Other
  - D. Not Applicable

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# Marketplace Fairness and Marketplace Equity Acts



## History of Legislation

- Remote commerce legislation in previous sessions

## Remote Commerce Bills

- **Durbin/Conyers – S. 1452 / H.R. 2701**
  - Main Street Fairness Act (MSFA): States comply with SST to gain collection authority
- **Womack/Speier – H.R. 3179**
  - Marketplace Equity Act (MEA): Specific provisions are required to gain collection authority
- **Enzi/Durbin/Alexander/Johnson – S. 1832**
  - Marketplace Fairness Act (MFA): Provides State an Option to gain collection authority (SST compliance or specific provisions specified in act)

# Marketplace Fairness and Marketplace Equity Acts



## Main Street Fairness Act (MSFA) – S. 1452 / H.R. 2701

- **Sponsors: Senator Richard Durbin, IL & Representative John Conyers, MI**
- **Requires compliance with Streamlined Sales Tax Agreement for collection authority**
- **Provides for a small seller threshold as determined by the Streamlined Sales Tax Governing Board**
- **Requires States to certify sales tax compliance solutions of providers**
- **Requires States to provide remote sellers hold harmless protection**
- **Requires States to provider certified service providers for remote sellers**

# Marketplace Fairness and Marketplace Equity Acts



## Marketplace Equity Act (MEA) – H.R. 3179

- **Sponsors are Representative Steve Womack, AR, and Representative Jackie Speier, CA**
- **Compliance with SST Agreement is not required**
- **Provisions to gain compliance contained in Act**
- **Effective 1st of quarter six months after State publishes notice of compliance**
- **Small seller threshold: \$1M remote sales, \$100K/state**

# Marketplace Fairness and Marketplace Equity Acts

## Marketplace Equity Act (MEA) – H.R. 3179

- **Specific list of provisions to gain authority**
  - Identical State and local tax base
  - States must choose one of following for remote sales
    - Single State-wide blended rate (State and local)
    - Maximum State rate
    - Destination rate
  - States can have lower rate for sales of Food and Drugs
  - State level administration
  - Single return for remote sellers





# Marketplace Fairness and Marketplace Equity Acts



## Marketplace Fairness Act (MFA) – S. 1832

- **Sponsors are Senators Mike Enzi, WY; Richard Durbin, IL & Lamar Alexander, TN**
- **States' rights bill**
- **States have two paths to gain collection authority**
  - Effective date for States depends upon path
- **Small seller threshold: \$500K of remote sales**

# Marketplace Fairness and Marketplace Equity Acts



## Marketplace Fairness Act (MFA) – S. 1832

- **States have two paths to gain collection authority**
  - Comply with Streamlined Sales Tax Agreement (1st day of quarter at least 90 days after passage of Act)
  - Pass specific list of simplification provisions (1st day of quarter at least 6 months after passage of Act)
    - State-level administration – Uniform tax base
    - Destination rate for remote sales
    - Single return for remote sellers – Single state-level audit
    - State provided software and services
    - Consolidated filer provision
- **Continuing discussion over amount of services to be provided for remote sellers and compensation**

# Marketplace Fairness and Marketplace Equity Acts



## Discussion of specific provisions

### ■ Consolidated filing (MFA)

- Allows eligible providers to file one return per jurisdiction for all sellers in lieu of separate return by jurisdiction per seller
- Allows remote transactions to be reported separately from over the counter sales
- Simplifies filing for providers and implementation

### ■ Small seller threshold (Varies in bills)

- Seller below threshold would not be required to collect (probably \$500k to \$1M)
- Significant discussion over what the number should be
  - Amazon wants zero or as close as possible – eBay wants \$10-\$30M
- A \$5M threshold significantly reduces the tax collected by states since many sellers would be exempted

# Marketplace Fairness and Marketplace Equity Acts



## Discussion of specific provisions

- **Level of software and services states must provide**
  - States to provide rates/jurisdictional database & product taxability matrix (Streamlined Sales Tax Agreement)
  - Remote sellers need databases combined for compliance
  - Providers simplify compliance for remote sellers
  - Certification of software & hold harmless protection provide greater certainty for compliance and reduce audit exposure
- **Vendor compensation and/or state provided services for remote sellers**
  - Would reduce cost to remote sellers to comply with Act

# Marketplace Fairness and Marketplace Equity Acts



## Compliance issues for remote sellers

- Do you have an accounting system that can handle tax calculation and compliance?
- Can your system handle calculations and compliance for all state and local tax jurisdictions?
- Will your system require modification to comply in all jurisdictions?
- If you do not use a provider for tax compliance how will you maintain the system?
  - Updated rates and taxability
- Will you need to establish a tax department or outsource compliance?

# Marketplace Fairness and Marketplace Equity Acts

## Steps to help ensure compliance

- **Take some time now to review:**
  - Current tax collection obligations
    - Where are you currently filing?
    - Where should you be currently filing?
  - Revenue projections
  - Your systems
    - Shopping cart/order entry
    - Tax calculation
  - Data provided and captured
  - Product line



# Marketplace Fairness and Marketplace Equity Acts



## Taxability considerations:

- **Sales tax is more than just rates:**
  - Sales tax rates are numerous and change frequently, but that is not the only aspect to consider.
  - Products:
    - Products and services can have special taxability rules
      - What are you selling?
  - Purchasers:
    - Purchasers can have exemptions based on who they are or the use of the item
      - Who are you selling to?
  - Shipping charges, discounts, situsing, etc.
- **Does your current system allow you to capture enough data to help ensure you are compliant?**

# Marketplace Fairness and Marketplace Equity Acts

## Product taxability:

- Many items are provided with special tax treatment across the U.S.
- Full exemptions, partial exemptions or thresholds
- Common areas for special treatment:
  - Clothing
  - Medical related items (drugs and equipment)
  - Publications
  - Computer software and related services
- Don't forget sales tax holidays!





# Marketplace Fairness and Marketplace Equity Acts



## Purchaser taxability:

- Do you sell to only taxable persons or do you also sell to those with special tax status?
- Many types of purchasers have tax exemptions across the U.S.
  - Non-profits
  - Manufacturers
  - Resellers
- How do you currently handle sales to these types of customers?
- Does your system allow you to capture all data needed to support?
- How do you maintain the exemption certificates?

# Marketplace Fairness and Marketplace Equity Acts



## Other tax calculation and compliance considerations:

- **Discounts**
- **Shipping charges**
- **Back orders or delayed shipments**
- **Returns**
- **Deployment of the calculation system (premise or hosted)**
- **Maintenance of required data for audit support**

## Polling Question #3

- **If you are a remote seller are you currently collecting tax in more than 10 states?**
  - A. Yes
  - B. No
  - C. Not Applicable

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# Marketplace Fairness and Marketplace Equity Acts



## Filing and remitting the taxes collected:

- **What is your current system for filing and paying?**
  - In-house
  - Third party provider/accounting firm
- **Will your current method be able to support your operations for filing in more jurisdictions?**
- **Will you be able to support various methods of filings?**
  - Paper
  - Web file
  - EDI
  - SERs

# Marketplace Fairness and Marketplace Equity Acts

- **Action items:**

- Review your systems
  - Sales order
  - Tax calculation (if applicable)
- Review your product line
- Review your customers
- Review your filings



- **Make sure your sales order system can handle the needed information**
- **Ensure your tax calculation and compliance systems can provide the detail and accuracy the states and your customers demand**

## Question

### ■ Are you a current ADP client?

- A. Yes, I am a current ADP client.
- B. No, I am not a current ADP client.
- C. I am an ADP employee.

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# Q&A



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