METRO MAYORS CAUCUS
WORKING TOGETHER FOR A BETTER REGION

Metro Mayors Caucus
FasTracks Task Force

October 24, 2012

Meeting Record

METRO MAYORS CAUCUS
WORKING TOGETHER FOR A BETTER REGION

FasTracks Futures Task Force
Wednesday, October 24, 2012 — 7:30 AM
Denver Metro Chamber
Council Room — 4th Floor

Agenda

7:30 AM **Welcome and introductions**

7:35 AM **FasTracks Updates and Discussion**
- NW Corridor Update
- BRT
- Mobility study
- Corridor timelines

8:15 AM **Task Force Discussion — Moving Forward**
- Corridor schedules
- MTD discussion on governance and financing for regional alternative
- Other financing alternatives
    - Marketplace Fairness & Equity Acts
    - Main Street Fairness Act
    - Other options

9:25 AM **Next steps**
- **Next meeting**
    - **Date**
    - **Agenda**

9:30 AM **Adjourn**

FasTracks Futures Task Force
Wednesday, October 24, 2012

Notes:
FasTracks Updates and Discussion

- Purpose is a more inclusive and comprehensive understanding of all the conversations going on
- NW Corridor
  - BNSF changed the game and derailed the election
  - Push to define BRT as an alternative
  - NW Corridor mobility study is looking at what could be done on NW
    - Looking at BRTY on 287 and 119
    - RTD paying for this
    - Will be done in May or June of 2013
  - Longmont not likely to be served by NW Line
    - Longmont will be served much better by BRT than by the originally planned rail from Boulder
    - Bottom line is serving a population that is not currently served
  - Question remains on how any alternative gets funded
  - US-36 BRT now needs to be treated as a project
    - NW Rail gone for the foreseeable future
    - BRT not that expensive compared to other corridors
      - Need definition of true BRT
  - RTD talking about $300M dedicated to NW and North Metro
    - Sources
  - Outstanding question is what happens to any money left from this $300M

Task Force Discussion — Moving Forward

- Other transportation finance discussions
  - MPACT 64
    - Working closely with CDOT
    - 2 pronged approach
      - Gas tax increase $.10 indexed
      - Statewide enabling legislation to form metro transportation district
    - Statewide funding first in 2013
    - Legislation on regional district in 2013 General Assembly
  - MTD
- Alternate funding
  - Tobacco tax & liquor tax

        - $10-15M per year for RTD
            - Needs legislation
            - Maybe not a TABOR election
    - Internet and catalog sales tax
        - Needs to be a priority of the MMC in 2013
        - We should engage with the entire Colorado delegation to support MEA or MFA
        - $352M annually for Colorado — state and local
- MMC needs to get back the leadership role we had in 2008
    - Need to have more information about what is happening and what is planned before we can give direction to RTD

Next Meeting

- Need a presentation from RTD
    - More detail on the $300M
    - Are they going to sacrifice rubber tire service
- November 12 — 1:30 to 3:30 PM

RTD FasTracks

FasTracks Moving Forward: Cost Saving/Revenue Enhancing Measures

FasTracks Funding for Base System Operations

October 16, 2012

RTD FasTracks

Overview of Tonight's Presentation

- **FasTracks Areas of Emphasis**
- **Cost Savings/Revenue Enhancing Measure #1: FasTracks Funding For Base System Operations**
  - Options
  - Financial Impact
  - Staff Proposed Approach (no RTD Board action in October)
- **Next Steps**

2

RTD FasTracks

FasTracks Guiding Principles

- **Staff continues to rely on our Guiding Principles to develop our strategy for completing all of FasTracks**
  - Ensure every step contributes to the full vision
  - Focus money available to the greatest good
  - Spend public money wisely
  - Maximize outside funding before going to taxpayers
  - Deliver key investments in all corridors

Build As Much As We Can As Fast As We Can Until It Is All Done!

3

RTD FasTracks

FasTracks Areas of Emphasis

- **Complete all projects currently under construction on time and within budget**
  - Potential savings from these projects can help accelerate the schedule for the rest of the FasTracks program
  - Conducting value engineering analyses on all projects prior to construction to ensure cost effectiveness
  - Applying lessons learned throughout the program
  - Working closely with stakeholders to minimize requested scope changes during construction

4

FasTracks Areas of Emphasis (cont.)

RTD FasTracks

- **Identify specific cost saving/revenue enhancing measures that, if enacted, would result in additional short-term funding for the FasTracks program**
  - Developing a Risk Allocation Matrix (RAM) that identifies opportunities for increasing short-term funding for the program, including pros/cons and level of risk for each
    - Presenting individual measures to the RTD Board beginning October 2012 and continuing over the next several months
  - Accumulating these funds in an internal “savings account” until they can be applied to complete additional projects and ensure funding is available for long-term O&M of these additional projects

5

Staff Proposed Goals

RTD FasTracks

- **Short term project goals:**
  - Completion of US 36 Bus Rapid Transit (BRT) Project
  - Construction of North Metro to 72^{nd}
- **Project initiation by 2017**
- **Anticipated funding needed: $300 M**

6

RTD FasTracks

FasTracks Areas of Emphasis (cont.)

- **Work collaboratively to consider options and make decisions regarding the build out of the full FasTracks Program**
  - Establishing FasTracks Quarterly Meetings for all remaining FasTracks projects that will:
    - Provide updates on the status of FasTracks projects
    - Discuss opportunities for innovative financial solutions through partnering with local governments and the private sector
  - Request stakeholder inputs on what should be included in the next SB 208 report, due in February 2014, and the upcoming DRCOG 2040 Metro Vision Plan, being developed in the same timeframe
  - Continuing to seek additional federal and state funding through competitive grant programs and the implementation of MAP-21
  - Conducting the Northwest Area Mobility Study (NAMS)

7

RTD FasTracks

Northwest Area Mobility Study (NAMS): Objective & Scope

- **The objective of this study is to develop consensus among RTD, CDOT and corridor stakeholders on cost effective mobility improvements to serve the Northwest area**
- **Draft Scope of Work includes:**
  - Phasing options for Northwest Rail Line
  - Potential to extend North Metro to Longmont
  - Potential additional BRT in the Northwest area
  - Feasibility of bidirectional/North I-25 managed lane improvements between the Denver Central Business District (CBD) and US 36

8

Northwest Area Mobility Study (NAMS): Implementation

RTD FasTracks

- **Study will result in a list of improvements for the Northwest area of the district**
  - For each item on the list, RTD will develop base year estimates for capital and O&M costs, and fatal flaw analyses of technical, financial and environmental issues
  - Results of the study will inform the next FasTracks Annual Program Evaluation (APE)
- **Financial analyses to determine timing and schedule of improvements will be conducted as part of the next APE, separately from the NAMS**
  - Based on direction from the RTD Board, results of the APE will be included in the next SB 208 report due in February 2014

9

Northwest Area Mobility Study (NAMS): Implementation (cont.)

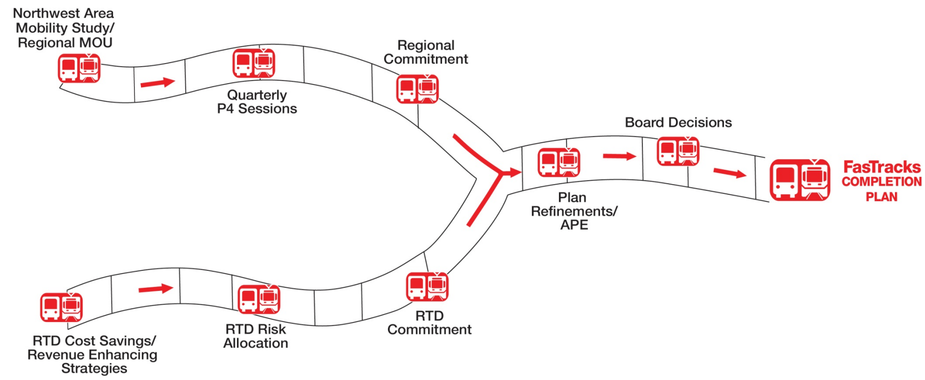
RTD FasTracks

- **It should be noted that projects cannot be added or removed from the 2004 FasTracks program without approval by residents through a district-wide election**
  - Therefore, RTD cannot include fixed guideway improvements that are not part of the FasTracks program in the upcoming SB 208 report
- **If the study results in consensus that providing cost effective mobility improvements in the Northwest area would require a change to the original FasTracks plan, then RTD staff will present the proposed change to the RTD Board**
  - If the RTD Board approves the proposed change, then they would have the option to include the scope change in a future election (if the RTD Board decides to pursue an election at some time in the future)

10

FasTracks Moving Forward: The Path to Completion

REGIONAL DIALOGUE



11

Cost Savings/Revenue Enhancing Measure #1

Evaluate FasTracks funding for base system operations, ensure all service increases are sustainable and balance funding for base system operations with the need to complete FasTracks

12

FasTracks Funding For Base System Operations

RTD FasTracks

- **Original FasTracks plan assumed the following:**
  - Increase in bus service levels by 1% per year between 2006 and 2020
  - Increase in bus service levels 1.5% per year between 2021 and 2025
- **Deferring funding for base system operations from the FasTracks program would result in additional funding available for FasTracks capital expenditures**
- **FasTracks contribution to base system operations over time has reduced the need for cuts to base system service**

13

FasTracks Base System Operations Funding: Options

RTD FasTracks

- **Option 1: Maintain FasTracks funding for base system operations consistent with current growth assumptions**
- **Option 2: Starting in 2014 and extending through 2035, maintain FasTracks funding to support base system operations at 2013 levels, but increase funding to cover service cost increases consistent with the Consumer Price Index (CPI)**
- **Option 3: Starting in 2014, freeze FasTracks funding for base system operations – maintain 2013 funding level through 2035**

14

Impact: Changing FasTracks Funding For Base System Operations (YOE $)

RTD FasTracks

Time Period	Option 2: Maintain FasTracks Funding To Support Base System Operations At 2013 Levels, Increase By CPI		
	FasTracks Contribution: Option 1 (No Change)	FasTracks Contribution: Option 2	Additional Funding Available for FasTracks: Option 2
Cumulative 2013 – 2017	$110 M	$86 M	$24 M
Cumulative 2013 – 2020	$207 M	$144 M	$63 M

- **Would not need to reduce service or change fund policy. This option would result in the desired fund balance of three months operating expense in 2018**

15

Impact: Changing FasTracks Funding For Base System Operations (YOE $)

RTD FasTracks

Time Period	Option 3: Freeze FasTracks Funding For Base System Operations at 2013 Levels		
	FasTracks Contribution: Option 1 (No Change)	FasTracks Contribution: Option 3	Additional Funding Available for FasTracks: Option 3
Cumulative 2013 – 2017	$110 M	$81 M	$30 M
Cumulative 2013 – 2020	$207 M	$129 M	$78 M

- **Would not need to reduce service or change fund policy. Depending on sales and use tax collections, this option would reduce the capital replacement fund, but the policy would stay in place.**

16

RTD FasTracks

Staff Proposed Approach

- **Option 2:** **Starting in 2014 and extending through 2035, maintain FasTracks funding to support base system operations at 2013 levels, but increase funding to cover service cost increases consistent with the CPI**
- **Risk Level:** **Medium**
  - **Base system operations would be more sensitive to the impacts of significant/severe downturns in the economy. If such a downturn occurs, RTD would need to:**
    - Access Management Reserves **OR**
    - Reduce base system service levels

ID #	Date Presented	Description	Level of Risk H	M	L	Risk Description
1	10/16/12	Evaluate FasTracks funding for base system operations, ensure all service increases are sustainable and balance funding for base system operations with the need to complete FasTracks		X		Base system operations would be more sensitive to the impacts of significant/severe downturns in the economy. If such a downturn occurs, RTD would need to: • Access Management Reserves **OR** • Reduce base system service levels

17

RTD FasTracks

Staff Proposed Approach: Financial Impact

Cost Savings/Revenue Enhancing Measures (YOE $)	
	Funding Needed by 2017: $300 M
#1: Changes in FasTracks Funding for Base System Operations	- $24 M
Remaining Funding Needed for Internal Savings Account	*$276 M*

18

RTD FasTracks

Next Steps

- **Late 2012/Early 2013:** Continue to present additional information to RTD Board on proposed cost saving/revenue enhancing measures as identified in the Risk Allocation Matrix (RAM)
  - Formal RTD Board action on consolidated list of cost saving/revenue enhancing measures anticipated 2013
  - Board approved measure will be incorporated into future Strategic Budget Plans (SBPs), Annual Budgets and Senate Bill 208 report
- **Early 2013:** Initiation of the Northwest Area Mobility Study (NAMS)
- **Ongoing:** Regional dialogue on implementation of the entire FasTracks program
- **February 2014:** RTD submittal of a new SB 208 report

19

International Council of Shopping Centers

FAQs about the Marketplace Fairness Act and the Marketplace Equity Act

Why does Congress need to get involved, isn't this a matter for the states? For the past 20 years, States have been unable to enforce their own sales and use tax laws on sales by out-of-state, catalog, and online sellers due to the 1992 Supreme Court decision Quill Corp v. North Dakota.

Congress has been debating solutions for more than a decade, and some States have been forced to take action on their own, leading to greater confusion and further distorting the marketplace. Because this is a matter of interstate commerce, Congress MUST grant the authority needed for states enforce sales tax collection and remittance from out-of-state sellers.

On average, States depend on sales and use taxes for 20% of their annual revenue. At a time when State budgets are under increasing pressure, Congress should give States the ability to enforce their own laws.

Why now? Internet-based commerce continues to grow, and States will be unable to collect as much as $23 billion in revenue in 2012 unless Congress acts.

Won't this raise taxes? No. Consumers are required under state laws to pay sales and use taxes on the goods they purchase, but online sellers simply are not required to collect the tax in the same way that local businesses do – which puts local businesses at a disadvantage. Consumers can be audited and charged with penalties for failing to pay sales and use taxes, but too often States are unable to enforce this requirement. Five states have no sales tax – Delaware, Montana, Oregon, New Hampshire and Alaska.

Will this help Businesses? Yes. Thousands of businesses are forced to do business at a competitive disadvantage because they have to collect taxes and online sellers do not, which in some states can mean a 5 to 10% price advantage.

Will this help States? Yes. Both bills empower the States and allow them to collect sales and use taxes two ways: States can collect under the Streamlined Sales and Use Tax Agreement (SSUTA) or they can adopt minimum simplification requirements. States would have the option to choose the best solution for them, and not be required to conform to a one-size-fits-all model.

Are there other bills in Congress on this issue? Yes, in July Senator Dick Durbin and Congressman John Conyers introduced the Main Street Fairness Act in their respective chambers (S. 1452/HR 2701). While the ultimate goal is the same as the Marketplace Fairness Act and the Marketplace Equity Act, the Durbin/Conyers bill only provides authorization for states that are part of the SSUTA. Currently there are 24 such states; there are no alternatives in the bill to implement remote sales tax collection for the remaining 21 states that have a sales and use tax. Both the Marketplace Fairness Act (S. 1832 introduced in the Senate in November) and the Marketplace Equity Act (HR 3179 introduced in the House in October) do provide for such an alternate path - - minimum requirements - - as previously noted.

Will small sellers be protected from new requirements? Yes. Under the Marketplace Fairness Act, online sellers with less than $500,000 in remote sales annually will be exempt from collection requirements. Under the Marketplace Equity Act, online sellers with less than $1 million in remote sales annually, or less than $100,000 in remote sales in a specific state will be exempt.

What can I do to help? Talk to your Senators and ask them to support S. 1832; ask your House members to support HR 3179 - - it's time to level the playing field for all retailers.

How can I find out more information? Visit www.icsc.org/salestaxfairness. Information is being added on a regular or as-needed basis.

2008 - 2010 State Budget Gaps Estimates
2012 - Uncollected Sales Tax Revenue on Out of State Transactions

State	FY2008 Budget Gaps (millions)	FY2009 Budget Gaps Estimated (millions)	FY2010 Budget Gaps Estimated (millions)	FY 2012 Uncollected Sales Tax Revenue Estimated (millions)	FY 2012 Uncollected Sales Taxes Revenue As Percent of FY2010 Budget Gap
Alabama	(n/a)	$485.3	$425.0	**$347.7**	**81.8%**
Alaska	(n/a)	(n/a)	$1,350.0	**$3.0***	***no state sales tax***
Arizona	$1,500.0	$3634.2	$4,765.1	**$708.6**	**14.8%**
Arkansas	(n/a)	(n/a)	$100.0	**$113.9**	**113.9%**
California	$4,500.0	$29,971	$46,325.0	**$4,159.7**	**8.9%**
Colorado	(n/a)	$604.0	$2,084.8	**$352.6**	**16.9%**
Connecticut	$79.8	$422.1	$4,543.8	**$152.4**	**3.4%**
Delaware	$69.1	$326.2	$452.0	***no state sales tax***	***no state sales tax***
Florida	$901.0	$3,942.3	$6,665.0	**$1,483.7**	**22.2%**
Georgia	$650.0	$2,460.6	$3,461.7	**$837.6**	**24.1%**
Hawaii	(n/a)	$363.3	$2,093.4	**$122.5**	**5.9%**
Idaho	(n/a)	$120.0	$711.3	**$103.1**	**14.5%**
Illinois	$750.0	$5,100.0	$11,584.0	**$1,058.8**	**9.1%**
Indiana	(n/a)	$767.4	$877.8	**$398.8**	**45.4%**
Iowa	(n/a)	$385.0	$1,096.8	**$181.0**	**16.5%**
Kansas	$49.9	$598.8	$1,569.2	**$279.2**	**17.7%**
Kentucky	$434.0	$906.1	$1,244.8	**$224.5**	**18.0%**
Louisiana	(n/a)	$479.0	$2,020.0	**$808.3**	**40.0%**
Maine	$63.8	$266.1	$871.9	**$65.4**	**7.5%**
Maryland	(n/a)	$2,068.0	$2,632.8	**$375.9**	**14.2%**
Massachusetts	$1,000.0	$4,800.0	$3,602.0	**$268.0**	**7.4%**
Michigan	(n/a)	$371.7	$1,800.0	**$288.9**	**16.0%**
Minnesota	(n/a)	$1,361.0	$2,808.0	**$455.2**	**16.2%**
Mississippi	(n/a)	$200.0	$347.1	**$303.2**	**87.3%**
Missouri	(n/a)	$541.6	$388.0	**$430.2**	**110.8%**
Montana	(n/a)	(n/a)	$157.1	***no state sales tax***	***no state sales tax***
Nebraska	(n/a)	$63.9	$456.9	**$118.0**	**25.8%**
Nevada	$384.9	$1,127.8	$1,261.8	**$344.9**	**27.3%**
New Hampshire	$50.0	$371.0	$529.9	***no state sales tax***	***no state sales tax***
New Jersey	(n/a)	$5,100.0	$9,213.2	**$413.4**	**4.5%**
New Mexico	(n/a)	$454.2	$943.0	**$246.0**	**26.0%**
New York	(n/a)	$6,907.0	$20,809.0	**$1,767.0**	**8.5%**
North Carolina	(n/a)	$2,000.0	$4,843.6	**$436.5**	**9.0%**
North Dakota	(n/a)	(n/a)	(n/a)	**$31.3**	**(n/a)**
Ohio	(n/a)	$1,915.0	$1,571.1	**$628.6**	**40%**
Oklahoma	(n/a)	(n/a)	$1,611.5	**$296.3**	**18.4%**
Oregon	(n/a)	$142.0	$2,000.0	***no state sales tax***	***no state sales tax***
Pennsylvania	(n/a)	$2,300.0	$4,130.0	**$706.2**	**17.1%**

2008 - 2010 State Budget Gaps Estimates
2012 - Uncollected Sales Tax Revenue on Out of State Transactions

State	FY2008 Budget Gaps – Closed (millions)	FY2009 Budget Gaps Estimated (millions)	FY2010 Budget Gaps Estimated (millions)	2012 Uncollected Sales Tax Revenue Estimated (millions	FY 2012 Uncollected Sales Taxes Revenue As Percent of FY2010 Budget Gap
Puerto Rico	$700.0	$2,350.0	$2,500.0	**(n/r)**	**(n/r)**
Rhode Island	$145.0	$800.0	$805.6	**$70.4**	**8.7%**
South Carolina	$90.0	$1,056.0	$1,249.2	**$254.3**	**20.3%**
South Dakota	$19.0	$64.4	$88.1	**$60.8**	**69.0%**
Tennessee	$494.0	$1,410.5	$1,776.0	**$748.5**	**42.1%**
Texas	(n/a)	(n/a)	$3,300.0	**$1,777.1**	**53.9%**
Utah	(n/a)	$350.0	$685.0	**$180.7**	**26.3%**
Vermont	(n/a)	$77.5	$342.8	**$44.8**	**13.1%**
Virginia	$681.3	$1,776.6	$3,676.5	**$422.7**	**11.5%**
Washington	(n/a)	$413.0	$5,039.0	**$541.0**	**10.7%**
West Virginia	(n/a)	(n/a)	$213.0	**$103.3**	**48.5%**
Wisconsin	$149.0	$861.0	$3,100.0	**$289.0**	**9.3%**
Wyoming	(n/a)	(n/a)	(n/a)	**$61.7**	**(n/a)**
D.C.	#	#	#	**$72.5**	**#**
Total	**$12,755.8**	**$87,684.4**	**$173,788.8**	**$23,260.0**	**13.4%**

State Budget Gap data from NCSL's State Budget Update: June 2008 , State Budget Update: November 2008; February 2009 Update on State Budget Gaps: FY 2009 & FY 2010; State Budget Update: November 2009; and, the NCSL Fiscal Affairs Program staff.

Sales tax data from "State and Local Sales Tax Revenue Losses from E-Commerce Estimates as of April 2009" by Dr. Donald Bruce and Dr. William Fox, Center for Business and Economic Research, University of Tennessee.

(n/a) – No budget gaps reported

- No budget report filed

* - Alaska has local level sales taxes

FOR FURTHER INFORMATION, PLEASE CONTACT:
Neal Osten
Federal Affairs Counsel
Communications, Financial Services
& Interstate Commerce
neal.osten@ncsl.org
(202) 624-8660

A look at the Marketplace Fairness Act

Posted on September 20, 2012 by admin

In previous blogs, I've provided an overview of the debate about whether states can or should be able to tax remote sellers matters, and why states cannot currently tax remote sellers whose only contact with the state is through common carrier (delivery service like USPS, UPS, and FedEx). Today, as promised, we'll look at one of the bills proposed in Congress this session to resolve the issue: The Marketplace Fairness Act S.1832.

The Marketplace Fairness Act is impressively concise and manages in just 10 pages (including header, large-ish font, and wide margins) to provide Congressional Authority for states to enforce State and Local sales and use tax laws on remote sellers. Proposed by Senator Enzi (R-WY) with 9 co-sponsors on the bill when proposed November 9, 2011, the Marketplace Fairness Act had 5 Democrat and 5 Republican sponsors, which is remarkably bi-partisan for this Congress. It now has 20 co-sponsors, so let's take a look at it:

The bill highlights:

- The bill takes advantage of the existing Streamlined Sales and Use Tax Agreement ("SSUTA") by allowing Member States of that Agreement to require all sellers not qualifying for a small seller exception to collect and remit sales and use taxes sourced to that Member state. The Governing Board of the SSUTA claims that of forty-four states[1], twenty-four (more than half!) have passed legislation conforming to the SSUTA requirements and 9 more are considering it.
- For states that are not Members of the SSUTA, the bill provides an alternative. Those states can require all sellers not qualifying for the small seller exception to collect and remit sales and use taxes with respect to remote sales sourced to that state as long as the State adopts and implements minimum simplification requirements. Section 3(b)(1).
- The Act provides a hold harmless provision for sellers who rely on information from the state or from private third party providers who are certified by the state.
- The Act expressly says that it shall not be construed as creating an obligation with respect to other taxes, including franchise, income, occupation, or any other type of taxes, other than sales and use taxes. Section 5(b). It is not clear what this means for a state like Hawaii which technically has an "excise tax," though it operates as a sales tax for most practical purposes. Hawaii probably cannot use this Act to require remote sellers to pay the excise tax[2], but that is a question for a different day.

- The obligations created by the Act cannot be used to determine a seller has nexus. Section 5(b).
- The Act does not change (permit or prohibit) states' rights or abilities to require licensing, registration, etc. Section 5(c).
- The Act does not require or encourage any new taxes on any goods or services. Section 5(d).

Some questions you may be asking…
What is the small seller exception (aka how likely are you to be required to start paying these taxes)?
The small seller exception is for any remote seller that has gross annual receipts in total remote sales in the US in the preceding year of $500,000 or fewer. Section 3(c). That number might seem pretty low since it's gross and not net, but according to the testimony of Mr. Paul Misener, Vice President for Global Public Policy of Amazon.com, as provided to the U.S. Senate Committee on Commerce, Science, and Transportation on August 1, 2012, "research commissioned by Amazon [shows] only one percent of online sellers sell more than $150,000 per year. In other words, the $500,000 threshold in S.1832 would exempt well over 99% of online sellers."[3]

What are these "minimum simplification requirements"?
The states that wish to collect taxes from remote sellers and are not members of the SSUTA must:

(1) Simplify the administration by:

1. Administering all sales and use tax laws including collection and administration through one state-level agency;
2. Allowing only a single audit for all state and local taxing jurisdictions within that state; and
3. Providing a single sales and use tax return that is to be filed with the state-level agency.

(2) Simplify the tax base by providing uniform sales and use tax base (in layman's terms this means that the decision of what is taxable should be uniform).

(3) Require the tax collected to be the destination rate (defined as the sum of the state rate + the applicable local rate).

(4) Provide software and services to identify the destination rate and provide certification procedures for private sector providers to become certified providers for sales and use tax administration, collection, remittance, and audits.

(5) Hold remote sellers relying on a certified provider harmless for any errors and omissions by the certified provider.

(6) Hold remote sellers relying on information provided by the state harmless for any liability for collecting the incorrect amount of sales or use tax, including any penalties and interest.

(7) Rate changes by any locality must be provided to remote sellers and certified providers with 30 days' advance notice.

Where is the bill today?
S. 1832 exists as a stand-alone bill that is currently in Committee. It was referred to the Senate Committee on Finance November 9, 2011. The Commerce, Science, and Transportation Committee held a hearing on "Marketplace Fairness: Leveling the Playing Field for Small Business" on August 1, 2012. This remains in Committee and is unlikely to emerge for a vote because of the pending election. The Act will likely need to be resubmitted and given a new number in the next Congress.

Senator Enzi also submitted the bill as Amendment 2496 to S. 2237 (the "Small Business Jobs and Tax Relief Act") on July 10, 2012. As an amendment, the bill has 14 bipartisan co-sponsors. However, S. 2237 is a Democrat-only sponsored bill and is unlikely to pass without bi-partisan support for the bill itself. On July 12, 2012, the Senate voted on a cloture motion for S.2237.[4] 53 Senators (49 Democrats, 2 Republicans, and 2 Independents) voted Yea to end debate while 44 Senators (1 Democrat and 43 Republicans) voted Nay to prolong debate (aka filibuster or prevent the bill from ever being voted on). This bill failed the Cloture motion by 7 votes[5] and will likely never be brought to an up-or-down vote.

Anything else interesting going on here?
This bill focuses on states that have state sales & use taxes; it appears to completely ignore that some states may not have a state level sales or use tax but still have a local sales and use tax (for example Alaska).
It also does nothing to help businesses that have located in a state without sales or use taxes (perhaps even deliberately to avoid that administrative burden) and that have remote sales in excess of $500,000, which, under this Act, may have to collect and remit sales and use taxes to other states.

Let us know what you think in the comments section below.

Would your business be affected by passage of the Marketplace Fairness Act?

[1] It's not clear where SSUTA gets the number 44, and an explanation is not readily apparent on the Streamlined Sales Tax Governing Board website. It is likely the count of the number of states that have a state-wide sales and use tax, though that number could be debated. A blog post for another day, perhaps.

[2] "Hawaii does not have a sales tax; instead, we have the general excise tax, which is assessed on all business activities. The tax rate is .15% for Insurance Commission, .50% for Wholesaling, Manufacturing, Producing, Wholesale Services, and Use Tax on Imports For Resale, and 4% for all others. For differences between the general excise tax and sales tax, please see Tax Facts 96-1, General Excise vs. Sales Tax." Hawaii Department of Taxation, http://www6.hawaii.gov/tax/a7_faq.htm

[3] Testimony of Paul Misener, August 1, 2012, page 4.

[4] A vote on cloture is a vote whether to end debate so an up-or-down vote may be taken.

[5] For a motion to pass, 3/5ths or 60% of all Senators chosen and sworn must vote “Yea”.

This entry was posted in Legislation. Bookmark the permalink.