

Legal Update from Flagler Law Group



Our Mission is to serve the legal needs of Christian publishing organizations by leveraging focused expertise into practical solutions.

Brian Flagler founded Flagler Law Group in the spring of 2006 to serve the legal needs of publishers, designers, producers, and distributors of Christian media. With a combined 20+ years in the industry, we know Christian publishing. We believe that our experience handling matters for a diverse variety of Christian publishers, ministries, and other organizations **from the publishing perspective** significantly contributes to the value that we offer our clients.

(541) 549-8401
brian@flaglerlawgroup.com

May 2013

Senate Passes Online Sales Tax Bill; Future Uncertain in House

By Craig Gipson and Brian Flagler

Publishers selling direct through their websites may soon face changes in how sales tax is collected and which states they must pay. On May 6 a bipartisan majority in the Senate passed the Marketplace Fairness Act (MFA) designed to allow states to collect sales tax from remote online retailers. The MFA may have a more difficult time in the House as opponents have raised a number of concerns they would like addressed before the bill can become law.

If passed, how will the bill affect selling online?

Up until now, states have only been able to collect sales tax from retailers with a physical presence within the taxing state.[1] If finalized into law, the bill will allow states to also collect sales tax from out-of-state online retailers, with certain caveats. First, the bill passed by the Senate would only apply to online retailers with more than \$1 million in remote nationwide sales during the preceding year. Second, states may only gain out-of-state sales tax revenue if they legislatively take one of two actions: (1) join the Streamlined Sales and Use Tax Agreement (SSUTA); or (2) pass required legislation simplifying the state's state and local tax code.

Under the first option, membership in the SSUTA, states must pass a model tax system already adopted by 24 states which aims to reduce the burden of tax compliance. Under the Agreement, members must collect sales tax for one another as well as pass tax laws that create uniform state and local tax bases and require simplified tax returns. The second option mandates piecemeal legislation that in effect, operates much like the SSUTA: a state must designate a single state organization to handle sales tax registrations, filings, and audits, establish a uniform sales tax base, and give retailers specific advance notice about rate changes. States must also provide software, free of charge, to any retailer which must collect tax for those states and may not hold retailers liable for incorrect payments due to software errors.

Does the bill have any other effect on taxes?

The MFA specifically provides that it does not subject retailers to "franchise, income, occupation, or any other type of taxes, other than sales and use taxes." The same section also states that it does not "create any nexus or alter the standards for determining nexus between" a retailer and a state or locality. For all tax issues other than sales tax, the MFA maintains the status quo.

Will the House pass the bill?

The bill does not have the same momentum in the House as it did in the Senate. The majority of Democrats favor the bill while Republicans are split on the issue.[2] House Speaker John Boehner (R-OH)

indicated that the bill is not a priority and House Judiciary Committee Chairman Bob Goodlatte (R-VA), who would oversee the bill in committee, has expressed concerns with the Senate version. Congressional conservatives have reservations about the \$1 million threshold adversely affecting too many businesses and increased administrative expenses for additional audits and higher compliance costs. The House may eventually pass the MFA but it will follow a lengthy deliberation that may leave the bill in much different shape than the version that came from the Senate.

[1] The Supreme Court case of *Quill v. North Dakota*, 504 U.S. 298 (1992), established the physical presence nexus standard. The Court found that only vendors with a physical presence within the taxing state could be required to collect sales tax but that Congress possessed the power to establish nexus guidelines contrary to those the Court established in *Quill*. This legislation would establish that new standard.

[2] Bernie Becker and Mike Lillis, *Boehner suggests House will take its time on Internet Sales tax*. THE HILL (May 7, 2013) <http://thehill.com/blogs/on-the-money/domestic-taxes/298211-boehner-talk-to-the-committee-about-online-sales-tax>



www.ecpa.org
info@ecpa.org

This update is provided as an informational service of ECPA to its members and does not serve as, and should not be understood to provide, legal advice. Please contact [Brian Flagler](#) or your attorney if you would like to discuss application of this update to the specific circumstances of your publishing organization.

For more information about ECPA programs, contact us at 480-966-3998 or consult our website at www.ecpa.org. ECPA members may subscribe to Legal Updates by contacting stoomb@ecpa.org.

To unsubscribe, please [click here](#).

Having trouble reading it? [Read it online](#).