

Marketplace Fairness Act & SSUTA Mitigation for Local Government

Issues

If the Marketplace Fairness Act of 2013 (MFA)¹ were to be enacted, how does it impact the voluntary compliance revenues that offset the gain or loss due to the change to destination-based sales tax for mitigation purposes? Specifically,

1. Are MFA remote sellers² required to register through the Streamlined Sales and Use Tax Agreement (SSUTA)?
2. Are the new retail sales tax revenues that result from the MFA considered voluntary compliance revenues for purposes of mitigation?

If online retailers do not have to register through SSUTA, how would we identify this new revenue?

Answers

1. No, under the MFA remote sellers are not required to register through the SSUTA's central registration system. A remote seller may register directly with individual states or through the central registration system.
 2. No, not necessarily. If MFA remote sellers register directly with the Department and not through the SSUTA's central registration system, the retail sales tax revenues associated with these sellers would not be considered voluntary compliance revenue. However, if a remote seller registers through the SSUTA's central registration system, then the Department would likely treat the associated revenue as voluntary compliance revenue.
 3. The Department's registration process would have to be modified to recognize MFA remote sellers' registrations both with the State and through the SSUTA's central registration system in order to identify the new revenue. This is an issue the Department has begun to contemplate as it prepares for the possible enactment of the MFA. Additionally, the Streamlined organization may be considering how to identify these sellers within its central registration system
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Explanations

1. MFA and Streamlined registration.

MFA does not include a requirement to register through the Streamlined registration system and so it does not impose a duty on the remote sellers to register through the SSUTA's central registration system. Under the MFA, a remote seller could directly register with each state into which the remote seller sells products and does not otherwise have a legal requirement to register.

¹ For purposes of this document, the Department has looked at the Marketplace Fairness Act as introduced in the U.S. House and Senate (S.336 and H.R. 684) and as enacted by the Senate (S.743). Please be aware the provisions of the bill may change as the legislation moves forward.

² Generally, MFA remote seller refers to those sellers that would have no legal requirement to collect in Washington but for enactment of the MFA.

2. New revenue from remote sellers and mitigation calculations.

"Voluntary compliance revenue" means the local sales tax revenue gain to each local taxing jurisdiction reported to the Department from persons registering through the central registration system authorized under the agreement. RCW 82.14.495(3)(a). Based on the current statutory definitions of "voluntary compliance revenue" for purposes of mitigation, the term would not include collections reported by MFA remote sellers who are not registered through the SSUTA's central registration system.

Currently, the term has been interpreted to include the local sales and use tax revenue gain to each local taxing jurisdiction reported to the Department from persons without a requirement to register in Washington under existing state and constitutional law, *i.e.* SSUTA volunteer sellers, registering through SSUTA's central registration system. This interpretation recognizes the fact that the legislative mitigation program contemplated that new monies obtained through the SSUTA central registration system would be used to reduce local jurisdictional losses. The MFA remote seller tax revenue would represent new tax revenues for local jurisdictions and so to the extent reported through the central registration system should likely be included in voluntary compliance revenue under the plain statutory language. It would likely take a legislative change to include revenue from remote sellers directly registering with the state in voluntary compliance revenue.

3. Identifying sales by MFA remote sellers.

Currently, the Department has not created a process to identify MFA remote sellers, whether these remote sellers register with the Department directly or through the SSUTA's central registration system. The Department has begun looking at this issue in the context of the MFA implementation because we will need to identify these remote sellers to calculate new monies collected, to assist in return processing, and for other purposes. Additionally, the Streamlined organization may be considering how to identify these sellers within its central registration system.
