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Marketplace Fairness Act of 2013

- **Marketplace Fairness Act of 2013 (S. 743)**
 - After being routed through an expedited voting process, S.743 passed the Senate May 6, 2013 in a 69-27 vote
 - If enacted, S. 743 would grant certain states the authority to require remote sellers to collect and remit sales and use taxes on sales into the state
 - Bill is now in the House of Representatives

Marketplace Fairness Act of 2013 (continued)

- **Which Sellers Would be Required to Collect and Remit?**
 - Generally, any seller making remote sales that is not currently required to collect sales and use taxes in certain states
 - Small seller exception – Only sellers with gross annual receipts from total U.S. remote sales in the preceding calendar year exceeding \$1 million can be required to collect and remit
 - Aggregation rules apply for certain related sellers
 - No carve out for foreign (Non-U.S.) sellers or sellers located in jurisdictions that do not impose a sales and use tax
- **Which States Would S.743 Grant this Authority to?**
 - SSUTA full member states
 - Other states implementing certain simplification requirements
 - Authority could be exercised the first day of the calendar quarter that is at least 180 days after S.743 is enacted
 - “State” is broadly defined and includes the D.C., territories, possessions and tribal governments

Marketplace Fairness Act of 2013 (continued)

- **What Minimum Simplification Requirements Must be Implemented by non-SSUTA States?**
 - Designating a single agency in the state responsible for all state and local sales tax administration, return processing, and audits for remote sales sourced to the state;
 - Designing a single return to be used by remote sellers for all state and local sales taxes
 - Having a single state and local audit for remote sellers
 - Adopting a uniform tax base for state and local taxes;
 - Adopting sourcing rules in accordance with the Act or the SSUTA;
 - Providing a taxability matrix;
 - Providing software available free of charge to remote sellers
 - Software must have certain functionalities including: (1) calculating the sales and use taxes due on each transaction; (2) filing sales and use tax returns, and (3) reflecting rate changes within a 90-day period
 - Having procedures for certifying software providers
- **S. 743 does not address how or who will determine whether non-SSUTA states have appropriately implemented the simplification requirements**

Marketplace Fairness Act of 2013 (continued)

- **Other Key Provisions**

- Hold harmless provisions
 - States must agree to hold remote sellers and certified service providers harmless under certain circumstances if relying on erroneous state provided information
- S. 743 does not subject a remote seller to any state taxes other than sales and use taxes
 - Likewise, the bill does not confer nexus over a remote retailer, affect intrastate sourcing rules, or preempt the Mobile Telecommunications Sourcing Act

Marketplace Fairness Act of 2013-Recent Updates

On September 18, 2013, Chairman Goodlatte issued seven basic principles that he believes should serve as the starting point for discussion of any remote sales tax bill:

- Tax Relief
 - Tech Neutrality
 - No Regulation Without Representation
 - Simplicity
 - Tax Competition
 - States' Rights
 - Privacy Rights
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- **Potential amendments to be considered include an increase in or an elimination of the small seller exception, additional simplification requirements, and role for federal court review**

Marketplace Fairness Act of 2013-Recent Updates (continued)

- In December 2013, it was reported that U.S. House Judiciary Committee Chair Bob Goodlatte (VA) assigned staff to draft a new House version of the Marketplace Fairness Act
- On December 2, 2013, the U.S. Supreme Court denied Amazon.com Inc.'s and Overstock.com Inc.'s appeal of New York's "click-through nexus" law

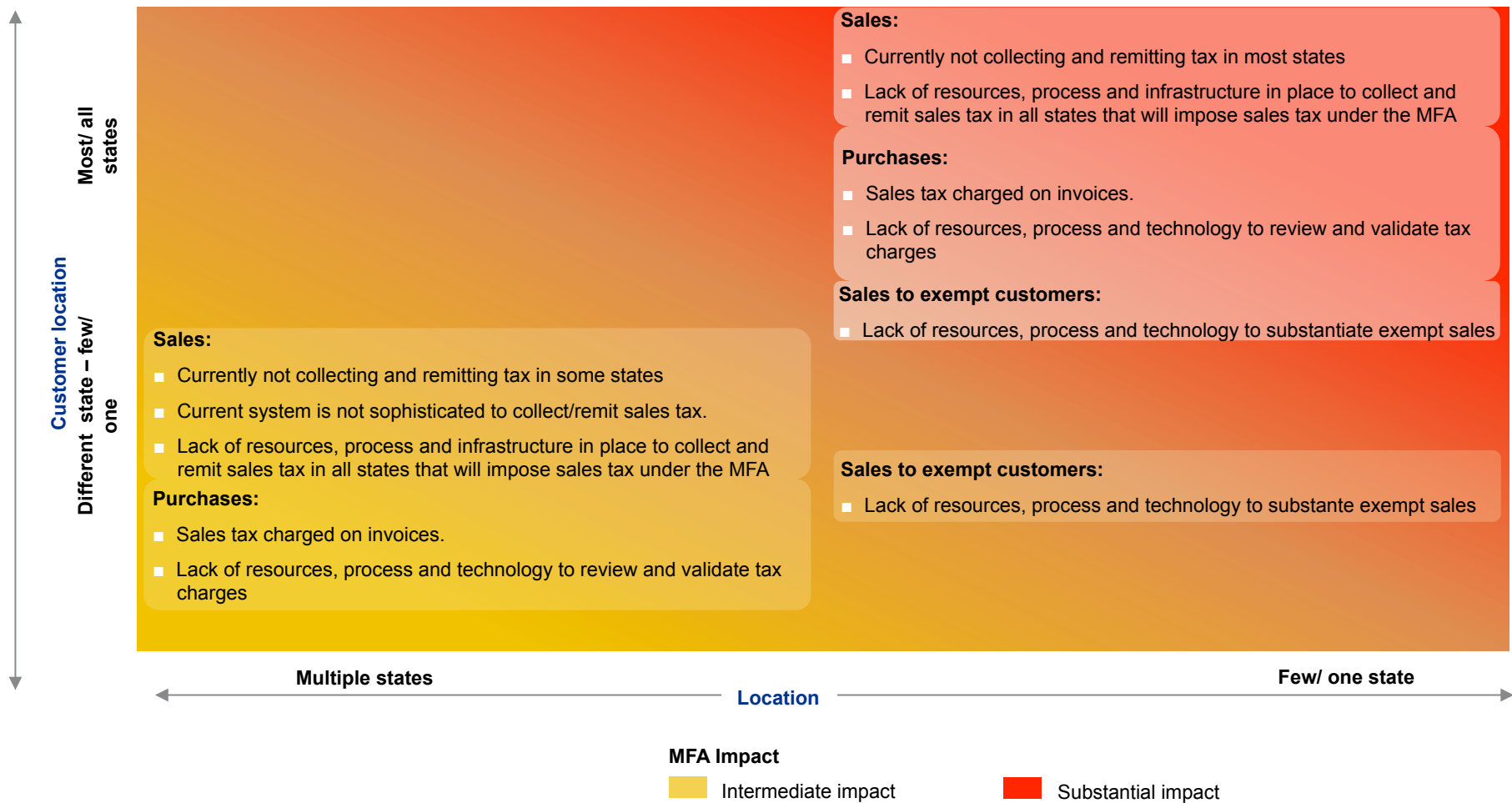
Common Misconceptions Surrounding the MFA

- ***“The MFA only applies to companies that sell goods and services over the internet to end users and does not apply to manufacturers and wholesalers that sell exclusively or primarily to others for resale.”***
- ***“Our employees can take care of this – maybe we’ll hire just one more person.”***

Common Misconceptions Surrounding the MFA

- ***“My business already collects and remits sales and use taxes in all states; the MFA will not impact us.”***
- ***“Even if such legislation is passed, my business will have plenty of time to adjust to any new sales or use tax collection and remittance responsibilities.”***

Potential Issues Map



Compliance Challenges

Major “game-changer” in state and local sales taxation of interstate commerce

Issues for sellers

- Registration in expanded number of states
 - Expanding collection to larger number of states
 - Acquiring, retaining, managing and retrieving exemption certificates
 - Taxability determinations in multiple states
 - Appropriate rate determination
 - Remittances and filing
 - Integrating automated systems
 - Managing additional audit demands
 - Dealing with increased “vendor-billed” tax
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Questions?