

111TH CONGRESS
2D SESSION

H. R. 5660

To promote simplification and fairness in the administration and collection of sales and use taxes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 1, 2010

Mr. DELAHUNT (for himself, Mr. CONYERS, Mr. CAPUANO, Ms. HERSETH SANDLIN, and Mr. WELCH) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To promote simplification and fairness in the administration and collection of sales and use taxes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Main Street Fairness Act”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Consent of Congress.
- Sec. 3. Findings.
- Sec. 4. Authorization to require collection of sales and use taxes.
- Sec. 5. Tribal governments.

Sec. 6. Determinations by governing board and judicial review of such determinations.

Sec. 7. Minimum simplification requirements.

Sec. 8. Limitation.

Sec. 9. Expedited judicial review.

Sec. 10. Definitions.

Sec. 11. Sense of Congress on digital goods and services.

1 **SEC. 2. CONSENT OF CONGRESS.**

2 Congress consents to the Streamlined Sales and Use
3 Tax Agreement.

4 **SEC. 3. FINDINGS.**

5 Congress makes the following findings:

6 (1) States should be encouraged to simplify
7 their sales and use tax systems.

8 (2) As a matter of economic policy and basic
9 fairness, similar sales transactions should be treated
10 equally, without regard to the manner in which sales
11 are transacted, whether in person, through the mail,
12 over the telephone, on the Internet, or by other
13 means.

14 (3) Congress may facilitate such equal taxation
15 consistent with the United States Supreme Court's
16 decision in *Quill Corp. v. North Dakota*.

17 (4) States that voluntarily and adequately sim-
18 plify their tax systems should be authorized to cor-
19 rect the present inequities in taxation through re-
20 quiring sellers to collect taxes on sales of goods or
21 services delivered in-state, without regard to the lo-
22 cation of the seller.

1 (5) The States have experience, expertise, and
2 a vital interest in the collection of sales and use
3 taxes, and thus should take the lead in developing
4 and implementing sales and use tax collection sys-
5 tems that are fair, efficient, and non-discriminatory
6 in their application and that will simplify the process
7 for both sellers and buyers.

8 (6) Online consumer privacy is of paramount
9 importance to the growth of electronic commerce
10 and must be protected.

11 **SEC. 4. AUTHORIZATION TO REQUIRE COLLECTION OF**
12 **SALES AND USE TAXES.**

13 (a) GRANT OF AUTHORITY.—

14 (1) IN GENERAL.—Each Member State under
15 the Streamlined Sales and Use Tax Agreement is
16 authorized, subject to the requirements of this sec-
17 tion, to require all sellers not qualifying for the
18 small seller exception to collect and remit sales and
19 use taxes with respect to remote sales sourced to
20 that Member State under the Agreement.

21 (2) REQUIREMENTS FOR AUTHORITY.—The au-
22 thorization provided under paragraph (1) shall be
23 granted once all of the following have occurred:

24 (A) Ten States comprising at least 20 per-
25 cent of the total population of all States impos-

1 ing a sales tax, as determined by the most re-
2 cent Federal census, have petitioned for mem-
3 bership and have become Member States under
4 the Agreement.

5 (B) The following necessary operational as-
6 pects of the Agreement have been implemented
7 by the Governing Board:

8 (i) Provider and system certification.

9 (ii) Setting of monetary allowance by
10 contract with providers.

11 (iii) Implementation of an online
12 multistate registration system.

13 (iv) Adoption of a standard form for
14 claiming exemptions electronically.

15 (v) Establishment of advisory coun-
16 cils.

17 (vi) Promulgation of rules and proce-
18 dures for dispute resolution.

19 (vii) Promulgation of rules and proce-
20 dures for audits.

21 (viii) Provisions for funding and staff-
22 ing the Governing Board.

23 (C) Each Member State has met the re-
24 quirements to provide and maintain the data-
25 bases and the taxability matrix described in the

1 Agreement, pursuant to requirements of the
2 Governing Board.

3 (3) LIMITATION OF AUTHORITY.—The author-
4 ization provided under paragraph (1)—

5 (A) shall be granted notwithstanding any
6 other provision of law; and

7 (B) is dependent upon the Agreement, as
8 amended, meeting the minimum simplification
9 requirements of section 7.

10 (b) TERMINATION OF AUTHORITY.—

11 (1) IN GENERAL.—The authorization provided
12 under subsection (a) shall terminate for all States
13 if—

14 (A) the requirements contained in sub-
15 section (a) cease to be satisfied; or

16 (B) any amendment adopted to the Agree-
17 ment after the date of the enactment of this
18 Act is—

19 (i) not within the scope of the admin-
20 istration of sales and use taxes by the
21 Member States; or

22 (ii) inconsistent with the provisions of
23 this Act.

24 (2) LOSS OF MEMBER STATE STATUS.—The au-
25 thorization provided under subsection (a) shall ter-

1 minate for a Member State, if such Member State
2 no longer meets the requirements for Member State
3 status under the terms of the Agreement or the pro-
4 visions of this Act.

5 (c) DETERMINATION OF STATUS.—

6 (1) IN GENERAL.—The Governing Board shall
7 determine if Member States are in compliance with
8 the requirements of subsections (a) and (b) and
9 whether each Member State meets the minimum
10 simplification requirements of section 7, and shall
11 reevaluate such determination on an annual basis.

12 (2) COMPLIANCE DETERMINATION.—Upon the
13 determination of the Governing Board that all the
14 requirements of subsection (a) have been satisfied,
15 the authority to require a seller to collect and remit
16 sales and use taxes shall commence on the first day
17 of a calendar quarter at least 6 months after the
18 date the Governing Board makes its determination.

19 (3) NONCOMPLIANCE DETERMINATION.—Upon
20 a final determination by the Governing Board that
21 a Member State is not in compliance with the min-
22 imum simplification requirements of section 7 or is
23 otherwise not in compliance with the Agreement,
24 that Member State shall lose its remote seller collec-
25 tion authority on the earlier of—

1 (A) the date specified by the Governing
2 Board; or

3 (B) the later of—

4 (i) the first day of January at least 2
5 years after the Governing Board finally de-
6 termined the State was not compliant; or

7 (ii) the first day of a calendar quarter
8 following the end of one full session of the
9 State’s legislature beginning after the Gov-
10 erning Board finally determined the State
11 was not compliant.

12 For purposes of this section, the terms “final
13 determination” or “finally determined” shall
14 mean that all appeals processes provided for in
15 the Agreement have been exhausted or the time
16 for pursuing such appeals has expired. An ac-
17 tion before the Federal Court of Claims pursu-
18 ant to section 6 shall not operate to stay a
19 State’s loss of collection authority.

20 (4) RESTORATION OF AUTHORITY.—Any Mem-
21 ber State that loses its collection authority under
22 this section must comply with all provisions of this
23 section to have its remote seller collection authority
24 restored.

1 **SEC. 5. TRIBAL GOVERNMENTS.**

2 (a) STATUS AS MEMBER STATE.—

3 (1) IN GENERAL.—Any federally recognized In-
4 dian tribe that imposes a generally applicable sales
5 tax may, if such tribe complies with the terms of
6 this Act—

7 (A) petition to become a Member State
8 under the Agreement; and

9 (B) if granted Member State status pursu-
10 ant to paragraph (2), exercise the authority
11 provided under section 4.

12 (2) DECISION OF THE GOVERNING BOARD.—

13 (A) IN GENERAL.—If the effect of any fed-
14 erally recognized Indian tribe’s laws, rules, reg-
15 ulations, and policies is compliant with each of
16 the terms of the Agreement, and the Indian
17 tribe has entered into an agreement with the
18 primary State where such tribe is located, the
19 Governing Board shall consider such tribe for
20 admission as a Member State to the Agreement
21 on the same basis as States.

22 (B) NO STATE-TRIBAL AGREEMENT
23 PRESENT.—If a petitioning Indian tribe and the
24 primary State in which such tribe is located
25 have attempted to negotiate, but have not
26 reached, an agreement as described in subpara-

1 graph (A) within 2 years after the date of the
2 submission of such petition, the Governing
3 Board shall consider such tribe for admission as
4 a Member State to the Agreement on the same
5 basis as States without regard to the presence
6 of a State-tribal agreement.

7 (3) MEMBERSHIP ON THE GOVERNING
8 BOARD.—

9 (A) IN GENERAL.—If any federally recog-
10 nized Indian tribe is accorded Member State
11 status under the Agreement under this section,
12 such tribe shall be represented on the Gov-
13 erning Board by at least 1 member.

14 (B) MULTIPLE TRIBES.—If 2 or more fed-
15 erally recognized Indian tribes are accorded
16 Member State status under the Agreement
17 under this section, additional representation of
18 such tribes on the Governing Board shall be de-
19 termined by the Governing Board, in consulta-
20 tion with those tribes that are Member States.

21 (b) RULE OF CONSTRUCTION.—Nothing in this Act
22 or the Agreement shall be construed as—

23 (1) diminishing an Indian tribe's sovereignty or
24 characterizing an Indian tribe as a State for other
25 purposes;

1 (2) affecting existing tax agreements between
2 Indian tribal governments and States;

3 (3) preventing Indian tribal governments and
4 States from entering into bilateral agreements for
5 the collection and allocation of sales taxes (whether
6 or not such bodies are admitted as Member States
7 to the Agreement); or

8 (4) overriding established principles of Federal
9 law governing—

10 (A) the taxing jurisdiction of Indian tribal
11 governments; and

12 (B) the immunities of Indian tribal govern-
13 ments and their members from State taxation
14 with respect to on-reservation transactions.

15 **SEC. 6. DETERMINATIONS BY GOVERNING BOARD AND JU-**
16 **DICIAL REVIEW OF SUCH DETERMINATIONS.**

17 (a) PETITION.—At any time after the Governing
18 Board has made the determinations required under section
19 4(c), any person who may be affected by the Agreement
20 may petition the Governing Board for a determination on
21 any issue related to the implementation of the Agreement
22 or on a Member State’s compliance with this Act or the
23 Agreement.

24 (b) REVIEW IN COURT OF FEDERAL CLAIMS.—Any
25 person who submits a petition under subsection (a) may

1 bring an action against the Governing Board in the United
2 States Court of Federal Claims for judicial review of the
3 action of the Governing Board on that petition if—

4 (1) the petition relates to an issue of whether—

5 (A) a Member State has satisfied or con-
6 tinues to satisfy the requirements for Member
7 State status under the Agreement;

8 (B) the Governing Board has performed a
9 nondiscretionary duty of the Governing Board
10 under the Agreement;

11 (C) the Agreement—

12 (i) continues to satisfy the minimum
13 simplification requirements of section 7; or

14 (ii) otherwise continues to be con-
15 sistent with the provisions of this Act; or

16 (D) any other requirement of section 4 has
17 been satisfied; and

18 (2) the petition is denied by the Governing
19 Board in whole or in part with respect to that issue,
20 or the Governing Board fails to act on the petition
21 with respect to that issue not later than the 6-month
22 period beginning on the day after the date on which
23 the petition was submitted.

24 (c) TIMING OF ACTION FOR REVIEW.—An action for
25 review under this section shall be initiated not later than

1 60 days after the denial of the petition by the Governing
2 Board, or, if the Governing Board fails to act on the peti-
3 tion, not later than 60 days after the end of the 6-month
4 period beginning on the day after the date on which the
5 petition was submitted.

6 (d) STANDARD OF REVIEW.—

7 (1) IN GENERAL.—In any action for review
8 under this section, the court shall set aside the ac-
9 tions, findings, and conclusions of the Governing
10 Board found to be arbitrary, capricious, an abuse of
11 discretion, or otherwise not in accordance with law.

12 (2) REMAND.—If the court sets aside any ac-
13 tion, finding, or conclusion of the Governing Board
14 under paragraph (1), the court shall remand the
15 case to the Governing Board for further action con-
16 sistent with the decision of the court.

17 (3) NONMONETARY RELIEF.—In connection
18 with any remand under paragraph (2), the court
19 may not award monetary relief, but may award de-
20 claratory and injunctive relief.

21 (e) JURISDICTION.—

22 (1) GENERALLY.—Chapter 91 of title 28,
23 United States Code, is amended by adding at the
24 end the following new section:

1 **“SEC. 1510. JURISDICTION REGARDING THE STREAMLINED**
 2 **SALES AND USE TAX AGREEMENT.**

3 “The United States Court of Federal Claims shall
 4 have exclusive jurisdiction over actions for judicial review
 5 of determinations of the Governing Board of the Stream-
 6 lined Sales and Use Tax Agreement under the terms and
 7 conditions provided in section 6 of the Main Street Fair-
 8 ness Act.”.

9 (2) CONFORMING AMENDMENT TO TABLE OF
 10 SECTIONS.—The table of sections for chapter 91 of
 11 title 28, United States Code, is amended by adding
 12 at the end the following new item:

“1510. Jurisdiction regarding the streamlined sales and use tax agreement.”.

13 **SEC. 7. MINIMUM SIMPLIFICATION REQUIREMENTS.**

14 (a) IN GENERAL.—The minimum simplification re-
 15 quirements for the Agreement are as follows:

16 (1) A centralized, one-stop, multistate registra-
 17 tion system that a seller may elect to use to register
 18 with the Member States, provided a seller may also
 19 elect to register directly with a Member State, and
 20 further provided that privacy and confidentiality
 21 controls shall be placed on the multistate registra-
 22 tion system so that it may not be used for any pur-
 23 pose other than the administration of sales and use
 24 taxes. Furthermore, no taxing authority within a
 25 Member State or a Member State that has with-

1 drawn or been expelled from the Agreement may use
2 registration with the centralized registration system
3 for the purpose of, or as a factor in determining,
4 whether a seller has a nexus with that Member State
5 for any tax at any time.

6 (2) Uniform definitions of products and prod-
7 uct-based exemptions from which a Member State
8 may choose its individual tax base, provided, how-
9 ever, that all local jurisdictions in that Member
10 State with respect to which a tax is imposed or col-
11 lected, shall have a common tax base identical to the
12 State tax base of that Member State. A Member
13 State may enact product-based exemptions without
14 restriction if the Agreement does not have a defini-
15 tion for the product or for a term that includes the
16 product. A Member State shall relax the good faith
17 requirement for acceptance of exemption certificates
18 in accordance with section 317 of the Agreement, as
19 in effect on the date of the enactment of this Act.

20 (3) Uniform rules for sourcing and attributing
21 transactions to particular taxing jurisdictions.

22 (4) Uniform procedures for the certification of
23 service providers and software on which a seller may
24 elect to rely in order to determine Member State
25 sales and use tax rates and taxability.

1 (5) Uniform rules for bad debts and rounding.

2 (6) Uniform requirements for tax returns and
3 remittances.

4 (7) Consistent electronic filing and remittance
5 methods.

6 (8) Single, State-level administration of all
7 Member State and local sales and use taxes, includ-
8 ing a requirement for a State-level filing of tax re-
9 turns in each Member State.

10 (9) A single sales and use tax rate per taxing
11 jurisdiction, except as provided in section 308 of the
12 Agreement.

13 (10) A provision requiring the elimination by
14 each Member State of caps and thresholds on the
15 application of sales and use tax rates and exemp-
16 tions based on value, provided that this limitation
17 does not apply to the items identified in sections
18 308C, 322, and 323 of the Agreement, as in effect
19 on the date of the enactment of this Act.

20 (11) A provision requiring each Member State
21 to complete a taxability matrix, as adopted by the
22 Governing Board. The matrix shall include informa-
23 tion regarding terms defined by the Agreement in
24 the Library of Definitions. The matrix shall also in-
25 clude, pursuant to the requirements of the Gov-

1 erning Board, information on use-, entity-, and
2 product-based exemptions.

3 (12) A provision requiring that each Member
4 State relieves a seller or service provider from liabil-
5 ity to that Member State and local jurisdiction for
6 collection of the incorrect amount of sales or use tax,
7 and relieves the purchaser from penalties stemming
8 from such liability, provided that collection of the
9 improper amount is the result of relying on informa-
10 tion provided by that Member State regarding tax
11 rates, boundaries, or taxing jurisdiction assignments,
12 or in the taxability matrix regarding terms defined
13 by the Agreement in the Library of Definitions.

14 (13) Audit procedures for sellers, including an
15 option under which a seller not qualifying for the
16 small business exception may request, by notifying
17 the Governing Board, to be subject to a single audit
18 on behalf of all Member States for sales and use
19 taxes. The Governing Board, in its discretion, may
20 authorize such a single audit.

21 (14) Effective on the date authority to require
22 collection commences under section 4, each Member
23 State shall provide reasonable compensation for ex-
24 penses incurred by all sellers in administering, col-
25 lecting, and remitting sales and use taxes (other

1 than use taxes on goods and services purchased for
2 the consumption of the seller) to that Member State.
3 Such compensation may vary in each Member State
4 depending on the complexity of the sales and use tax
5 laws in that Member State and may vary by the
6 characteristics of sellers in order to reflect dif-
7 ferences in collection costs. Such compensation may
8 be provided to a seller or a third-party service pro-
9 vider whom a seller has contracted with to perform
10 all the sales and use tax responsibilities of a seller.

11 (15) Appropriate protections for consumer pri-
12 vacy.

13 (16) Governance procedures and mechanisms to
14 ensure timely, consistent, and uniform implementa-
15 tion and adherence to the principles of the stream-
16 lined system and the terms of the Agreement.

17 (17) A uniform rule to establish a small seller
18 exception to a requirement to collect authorized by
19 this Act.

20 (18) Uniform rules and procedures for sales tax
21 holidays.

22 (19) Uniform rules and procedures to address
23 refunds and credits for sales taxes relating to cus-
24 tomer returns, restocking fees, discounts and cou-
25 pons, and rules to address allocations of shipping

1 and handling and discounts applied to multiple item
2 and multiple seller orders.

3 (b) APPLICATION OF MINIMUM SIMPLIFICATION RE-
4 QUIREMENTS TO TAXES ON COMMUNICATIONS SERV-
5 ICES.—Each Member State shall apply the minimum sim-
6 plification requirements of subsection (a) to sales and use
7 taxes on communications services.

8 (c) REQUIREMENT TO PROVIDE SIMPLIFIED TAX
9 SYSTEMS.—

10 (1) IN GENERAL.—The requirements of this
11 section are intended to ensure that each Member
12 State provides and maintains the necessary sim-
13 plification to its sales and use tax system to warrant
14 the collection authority granted to such Member
15 State in section 4.

16 (2) REDUCTION OF ADMINISTRATIVE BUR-
17 DENS.—The requirements of this section should be
18 construed—

19 (A) to require each Member State to sub-
20 stantially reduce the administrative burdens as-
21 sociated with sales and use taxes; and

22 (B) as allowing each Member State to ex-
23 ercise flexibility in how these requirements are
24 satisfied.

1 (3) EXCEPTION.—In instances where exceptions
2 to the requirements of this section can be exercised
3 in a manner that does not materially increase the
4 administrative burden on a seller obligated to collect
5 or pay the taxes, such exceptions are permissible.

6 (d) NO REQUIREMENT TO EXEMPT FROM OR IM-
7 POSE TAX.—Nothing in this Act or the Agreement shall
8 require any Member State or any local taxing jurisdiction
9 to exempt, or to impose a tax on any product, or to adopt
10 any particular type of tax, or to impose the same rate of
11 tax as any other taxing jurisdiction.

12 **SEC. 8. LIMITATION.**

13 (a) IN GENERAL.—Nothing in this Act shall be con-
14 strued as—

15 (1) subjecting a seller to franchise taxes, in-
16 come taxes, or licensing requirements of a Member
17 State or political subdivision thereof; or

18 (2) affecting the application of such taxes or re-
19 quirements or enlarging or reducing the authority of
20 any Member State to impose such taxes or require-
21 ments.

22 (b) NO EFFECT ON NEXUS, ETC.—

23 (1) IN GENERAL.—No obligation imposed by
24 virtue of the authority granted by section 4 shall be
25 considered in determining whether a seller has a

1 nexus with any Member State for any other tax pur-
2 pose.

3 (2) PERMISSIBLE MEMBER STATE AUTHOR-
4 ITY.—Except as provided in subsection (a), and in
5 section 4, nothing in this Act permits or prohibits a
6 Member State from—

7 (A) licensing or regulating any person;

8 (B) requiring any person to qualify to
9 transact intrastate business;

10 (C) subjecting any person to State taxes
11 not related to the sale of goods or services; or

12 (D) exercising authority over matters of
13 interstate commerce.

14 **SEC. 9. EXPEDITED JUDICIAL REVIEW.**

15 (a) THREE-JUDGE DISTRICT COURT HEARING.—
16 Notwithstanding any other provision of law, any civil ac-
17 tion challenging the constitutionality of this Act, or any
18 provision thereof, shall be heard by a district court of 3
19 judges convened pursuant to the provisions of section
20 2284 of title 28, United States Code.

21 (b) APPELLATE REVIEW.—

22 (1) IN GENERAL.—Notwithstanding any other
23 provision of law, an interlocutory or final judgment,
24 decree, or order of the court of 3 judges in an action
25 under subsection (a) holding this Act, or any provi-

1 sion thereof, unconstitutional shall be reviewable as
2 a matter of right by direct appeal to the United
3 States Supreme Court.

4 (2) 30-DAY TIME LIMIT.—Any appeal under
5 paragraph (1) shall be filed not more than 30 days
6 after the date of entry of such judgment, decree, or
7 order.

8 **SEC. 10. DEFINITIONS.**

9 For the purposes of this Act the following definitions
10 apply:

11 (1) GOVERNING BOARD.—The term “Governing
12 Board” means the governing board established by
13 the Streamlined Sales and Use Tax Agreement.

14 (2) MEMBER STATE.—The term “Member
15 State”—

16 (A) means a Member State as that term is
17 used under the Streamlined Sales and Use Tax
18 Agreement as in effect on the date of the enact-
19 ment of this Act;

20 (B) does not include associate members
21 under the Agreement; and

22 (C) includes any federally recognized In-
23 dian Tribe that is accorded Member State sta-
24 tus under the Agreement pursuant to section 5.

1 (3) NONDISCRETIONARY DUTY OF THE GOV-
2 ERNING BOARD.—The term “nondiscretionary duty
3 of the Governing Board” means any duty of the
4 Governing Board specified in the Agreement as a re-
5 quirement for action by use of the term “shall”,
6 “will”, or “is required to”.

7 (4) PERSON.—The term “person” means an in-
8 dividual, trust, estate, fiduciary, partnership, cor-
9 poration, limited liability company, or any other
10 legal entity, and includes a State or local govern-
11 ment.

12 (5) REMOTE SALE.—The term “remote sale”
13 refers to a sale of goods or services attributed to a
14 particular Member State with respect to which a
15 seller does not have adequate physical presence to
16 establish nexus under the law existing on the day be-
17 fore the date of the enactment of this Act so as to
18 allow such Member State to require, without regard
19 to the authority granted by this Act, the seller to
20 collect and remit taxes covered by this Act with re-
21 spect to such sale.

22 (6) REMOTE SELLER.—The term “remote sell-
23 er” means any seller who makes a remote sale.

24 (7) STATE.—The term “State” means each of
25 the several States, the District of Columbia, the

1 Commonwealth of Puerto Rico, Guam, American
2 Samoa, the United States Virgin Islands, the Com-
3 monwealth of the Northern Mariana Islands, and
4 any other territory or possession of the United
5 States.

6 (8) STREAMLINED SALES AND USE TAX AGREE-
7 MENT.—The term “Streamlined Sales and Use Tax
8 Agreement” (or “the Agreement”) means the
9 multistate agreement with that title adopted on No-
10 vember 12, 2002, as in effect on the date of the en-
11 actment of this Act and unless the context otherwise
12 indicates as further amended from time to time.

13 **SEC. 11. SENSE OF CONGRESS ON DIGITAL GOODS AND**
14 **SERVICES.**

15 It is the sense of Congress that each Member State
16 that is a party to the Agreement should work with other
17 Member States that are also parties to the Agreement to
18 prevent double taxation in situations where a foreign coun-
19 try has imposed a transaction tax on a digital good or
20 service.

○