

112TH CONGRESS
1ST SESSION

H. R. 3179

To improve the States' rights to enforce the collection of State sales and use tax laws, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 13, 2011

Mr. WOMACK (for himself, Ms. SPEIER, Mr. POE of Texas, Mr. DIAZ-BALART, Mr. ROSS of Florida, Mrs. MALONEY, Mr. WELCH, Ms. MCCOLLUM, Mr. DUNCAN of Tennessee, and Mr. MILLER of North Carolina) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To improve the States' rights to enforce the collection of State sales and use tax laws, 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.**

4 This Act may be cited as the "Marketplace Equity
5 Act of 2011".

6 **SEC. 2. AUTHORIZATION FOR STATES TO REQUIRE COLLEC-**
7 **TION OF SALES AND USE TAXES.**

8 (a) GRANT OF AUTHORITY.—Notwithstanding any
9 other provision of law, a State electing, individually or

1 through an agreement with one or more of the several
2 States, to satisfy the requirements of subsection (b) is au-
3 thorized to require all sellers not qualifying for the small
4 seller exception to collect and remit sales and use taxes
5 with respect to remote sales into the State without regard
6 to the location of the seller.

7 (b) REQUIREMENTS FOR AUTHORITY.—The author-
8 ization provided under paragraph (1) shall be granted
9 once the State implements a simplified system for admin-
10 istration of sales and use tax collection with respect to
11 remote sellers, which includes the following minimum re-
12 quirements:

13 (1) SMALL SELLER EXCEPTION.—An exception
14 for remote sellers with gross annual receipts in the
15 preceding calendar year from remote sales of items,
16 services, and other products in the United States not
17 exceeding \$1,000,000 (or such greater amount as
18 determined by the State involved) or in the State not
19 exceeding \$100,000 (or such greater amount as de-
20 termined by the State).

21 (2) FORM AND FILING.—A sales and use tax re-
22 turn for use by remote sellers and a single revenue
23 authority within the State with which remote sellers
24 are required to file the return. A State may not re-
25 quire that remote sellers submit any other sales and

1 use tax return other than the sales and use tax re-
2 turn applicable to remote sellers. A remote seller
3 may not be required to file sales and use tax returns
4 any more frequently than returns are required for
5 other sellers. No local jurisdiction may require a re-
6 mote seller to submit a sales and use tax return or
7 to collect sales and use tax other than as provided
8 by this paragraph.

9 (3) DEFINITION OF TAX BASE.—With respect
10 to remote sellers—

11 (A) products and services subject to tax
12 must be identical throughout the State, and

13 (B) any exemptions must be identical
14 throughout the State and may not include ex-
15 emptions for products and services that are not
16 exempt when sold by other than remote sellers.

17 (4) SALES AND USE TAX RATE STRUCTURE.—

18 (A) Except as provided in subparagraph
19 (B) of this paragraph, remote sellers must col-
20 lect sales and use tax under one of three rate
21 structures—

22 (i) a single State-wide blended rate
23 that includes both the State rate and ap-
24 plicable rates of local jurisdictions, as de-
25 termined by the State;

1 (ii) the maximum State rate, which is
2 the highest rate at which sellers are re-
3 quired by the State to collect tax, exclusive
4 of tax imposed by or for the specific ben-
5 efit of local jurisdictions; or

6 (iii) the applicable destination rate,
7 which is the sum of the State rate and any
8 applicable rate for the local jurisdiction
9 into which the sale was made. If a State
10 requires that remote sellers collect at the
11 applicable destination rate, the State must
12 make available adequate software to re-
13 mote sellers that substantially eases the
14 burden of collecting at multiple rates with-
15 in the State, and any State providing such
16 software must relieve remote sellers from
17 liability to that State for collection of the
18 incorrect amount of sales or use tax, in-
19 cluding any penalties or interest, provided
20 that collection of the improper amount is
21 the result of relying on information pro-
22 vided by that State.

23 (B) A State that generally imposes a lower
24 sales and use tax rate for sales of food or drugs

1 and medicine, or both, may require remote sell-
2 ers to collect sales and use tax at such rates.

3 (C) The rates described in clause (i) and
4 (ii) must not exceed the respective average
5 State and locality rates applicable to sellers
6 other than remote sellers.

7 (c) COMMENCEMENT OF AUTHORITY.—

8 (1) IN GENERAL.—A State satisfying the re-
9 quirements of subsection (b) may exercise the au-
10 thority granted in subsection (a) beginning on the
11 first day of the calendar quarter at least six months
12 after the date that the State publishes the public no-
13 tice described in paragraph (2).

14 (2) NOTICE REQUIREMENTS.—The public notice
15 required in paragraph (1) must include the following
16 information for remote sellers:

17 (A) The title and reference to the legisla-
18 tion that the State has enacted requiring re-
19 mote sellers to collect sales and use tax.

20 (B) The criteria under which remote sell-
21 ers are required to collect sales and use tax
22 under the State legislation.

23 (C) The rate or rates at which affected re-
24 mote sellers will be required to collect sales and
25 use tax.

1 (D) The date upon which affected remote
2 sellers will be required to begin collecting sales
3 and use tax.

4 (E) References to compliance information
5 and the form to be filed by remote sellers.

6 (d) **TERMINATION OF AUTHORITY.**—The authoriza-
7 tion provided under subsection (a) shall terminate for a
8 State that no longer satisfies the requirements of sub-
9 section (b) on the date that—

10 (1) a court of competent jurisdiction determines
11 that the State’s simplified system of administration
12 no longer meets the minimum requirements set forth
13 in subsection (b); and

14 (2) the determination of such court is no longer
15 subject to appeal.

16 **SEC. 3. PREEMPTION.**

17 Except as otherwise provided in this Act, this Act
18 shall not be construed to preempt or limit any power exer-
19 cised or to be exercised by a State or local jurisdiction
20 under the law of such State or local jurisdiction or under
21 any other Federal law.

22 **SEC. 4. LIMITATIONS.**

23 (a) **IN GENERAL.**—Nothing in this Act shall be con-
24 strued as—

1 (1) subjecting a seller to franchise taxes, in-
2 come taxes, or licensing requirements of a State or
3 political subdivision thereof;

4 (2) affecting the application of such taxes or re-
5 quirements or enlarging or reducing the authority of
6 any State to impose such taxes or requirements;

7 (3) requiring any State or any local taxing ju-
8 risdiction to exempt, or to impose a tax on any prod-
9 uct, or to adopt any particular type of tax, or to im-
10 pose the same rate of tax as any other taxing juris-
11 diction; or

12 (4) permitting or prohibiting a State from—

13 (A) licensing or regulating any person;

14 (B) requiring any person to qualify to
15 transact intrastate business;

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

18 (D) exercising authority over matters of
19 interstate commerce.

20 (b) NO EFFECT ON NEXUS.—No obligation imposed
21 by virtue of the authority granted by section 2 shall be
22 considered in determining whether a seller has a nexus
23 with any State for any other tax purpose.

1 **SEC. 5. DEFINITIONS.**

2 For purposes of this Act, the following definitions
3 shall apply:

4 (1) STATE.—The term “State” means each of
5 the several States, the District of Columbia, the
6 Commonwealth of Puerto Rico, Guam, American
7 Samoa, the United States Virgin Islands, the Com-
8 monwealth of the Northern Mariana Islands, any
9 other territory or possession of the United States,
10 and any Indian country as defined in section 1151
11 of title 18 of the United States Code.

12 (2) LOCAL JURISDICTION.—The term “local ju-
13 risdiction” means any political subdivision of a
14 State.

15 (3) PERSON.—The term “person” means an in-
16 dividual, trust, estate, fiduciary, partnership, cor-
17 poration, limited liability company, or any other
18 legal entity, and includes a State or local govern-
19 ment.

20 (4) SALE INTO THE STATE.—The term “sale
21 into the State” means a sale where the item sold is
22 received by the purchaser in the State, based on the
23 location indicated by instructions for delivery that
24 the purchaser furnishes to the seller. When no deliv-
25 ery location is specified, the sale occurs in the State
26 if the customer’s billing address is in the State.

1 (5) REMOTE SALE.—The term “remote sale”
2 means a sale of goods or services attributed to a
3 State with respect to which a seller does not have
4 adequate physical presence to establish nexus under
5 the law existing on the day before the date of the
6 enactment of this Act so as to allow such State to
7 require, without regard to the authority granted by
8 this Act, the seller to collect and remit taxes covered
9 by this Act with respect to such sale.

10 (6) REMOTE SELLER.—The term “remote sell-
11 er” means a person that makes remote sales.

12 (7) SALES TAX.—The term “sales tax” means
13 a tax that is—

14 (A) imposed on or incident to the sale of
15 tangible or intangible personal property or serv-
16 ices as may be defined or specified under the
17 laws imposing such tax; and

18 (B) measured by the amount of the sales
19 price, cost, charge, or other value of or for such
20 property or services.

21 (8) USE TAX.—The term “use tax” means a
22 tax that is—

23 (A) imposed on the purchase, storage, con-
24 sumption, distribution, or other use of tangible
25 or intangible personal property or services as

1 may be defined or specified under the laws im-
2 posing such tax; and

3 (B) measured by the purchase price of
4 such property or services.

5 **SEC. 6. SEVERABILITY.**

6 If any provision of this Act or the application of such
7 provision to any person or circumstance is held to be un-
8 constitutional, the remainder of this Act and the applica-
9 tion of the provisions of such to any person or cir-
10 cumstance shall not be affected thereby.

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