

## Calendar No. 41

113TH CONGRESS  
1ST SESSION**S. 743**

To restore States' sovereign rights to enforce State and local sales and use tax laws, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 16, 2013

Mr. ENZI (for himself, Mr. DURBIN, Mr. ALEXANDER, and Ms. HEITKAMP)  
introduced the following bill; which was read the first time

APRIL 17, 2013

Read the second time and placed on the calendar

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**A BILL**

To restore States' sovereign rights to enforce State and local 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 Fairness  
5 Act of 2013".

1 **SEC. 2. AUTHORIZATION TO REQUIRE COLLECTION OF**  
2 **SALES AND USE TAXES.**

3 (a) STREAMLINED SALES AND USE TAX AGREE-  
4 MENT.—Each Member State under the Streamlined Sales  
5 and Use Tax Agreement is authorized to require all sellers  
6 not qualifying for the small seller exception described in  
7 subsection (c) to collect and remit sales and use taxes with  
8 respect to remote sales sourced to that Member State pur-  
9 suant to the provisions of the Streamlined Sales and Use  
10 Tax Agreement, but only if the Streamlined Sales and Use  
11 Tax Agreement includes the minimum simplification re-  
12 quirements in subsection (b)(2). A State may exercise au-  
13 thority under this Act beginning 90 days after the State  
14 publishes notice of the State’s intent to exercise the au-  
15 thority under this Act, but no earlier than the first day  
16 of the calendar quarter that is at least 90 days after the  
17 date of the enactment of this Act.

18 (b) ALTERNATIVE.—A State that is not a Member  
19 State under the Streamlined Sales and Use Tax Agree-  
20 ment is authorized notwithstanding any other provision of  
21 law to require all sellers not qualifying for the small seller  
22 exception described in subsection (c) to collect and remit  
23 sales and use taxes with respect to remote sales sourced  
24 to that State, but only if the State adopts and implements  
25 the minimum simplification requirements in paragraph  
26 (2). Such authority shall commence beginning no earlier

1 than the first day of the calendar quarter that is at least  
2 6 months after the date that the State—

3 (1) enacts legislation to exercise the authority  
4 granted by this Act—

5 (A) specifying the tax or taxes to which  
6 such authority and the minimum simplification  
7 requirements in paragraph (2) shall apply; and

8 (B) specifying the products and services  
9 otherwise subject to the tax or taxes identified  
10 by the State under subparagraph (A) to which  
11 the authority of this Act shall not apply; and

12 (2) implements each of the following minimum  
13 simplification requirements:

14 (A) Provide—

15 (i) a single entity within the State re-  
16 sponsible for all State and local sales and  
17 use tax administration, return processing,  
18 and audits for remote sales sourced to the  
19 State;

20 (ii) a single audit of a remote seller  
21 for all State and local taxing jurisdictions  
22 within that State; and

23 (iii) a single sales and use tax return  
24 to be used by remote sellers to be filed

1 with the single entity responsible for tax  
2 administration.

3 A State may not require a remote seller to file  
4 sales and use tax returns any more frequently  
5 than returns are required for nonremote sellers.  
6 No local jurisdiction may require a remote sell-  
7 er to submit a sales and use tax return or to  
8 collect sales and use taxes other than as pro-  
9 vided by this paragraph.

10 (B) Provide a uniform sales and use tax  
11 base among the State and the local taxing jurisd-  
12 dictions within the State pursuant to paragraph  
13 (1).

14 (C) Source all interstate sales in compli-  
15 ance with the sourcing definition set forth in  
16 section 4(7).

17 (D) Provide—

18 (i) information indicating the tax-  
19 ability of products and services along with  
20 any product and service exemptions from  
21 sales and use tax in the State and a rates  
22 and boundary database;

23 (ii) software free of charge for remote  
24 sellers that calculates sales and use taxes  
25 due on each transaction at the time the

1 transaction is completed, that files sales  
2 and use tax returns, and that is updated to  
3 reflect rate changes as described in sub-  
4 paragraph (H); and

5 (iii) certification procedures for per-  
6 sons to be approved as certified software  
7 providers.

8 For purposes of clause (iii), the software pro-  
9 vided by certified software providers shall be ca-  
10 pable of calculating and filing sales and use  
11 taxes in all States qualified under this Act.

12 (E) Relieve remote sellers from liability to  
13 the State or locality for the incorrect collection,  
14 remittance, or noncollection of sales and use  
15 taxes, including any penalties or interest, if the  
16 liability is the result of an error or omission  
17 made by a certified software provider.

18 (F) Relieve certified software providers  
19 from liability to the State or locality for the in-  
20 correct collection, remittance, or noncollection  
21 of sales and use taxes, including any penalties  
22 or interest, if the liability is the result of mis-  
23 leading or inaccurate information provided by a  
24 remote seller.

1           (G) Relieve remote sellers and certified  
2 software providers from liability to the State or  
3 locality for incorrect collection, remittance, or  
4 noncollection of sales and use taxes, including  
5 any penalties or interest, if the liability is the  
6 result of incorrect information or software pro-  
7 vided by the State.

8           (H) Provide remote sellers and certified  
9 software providers with 90 days notice of a rate  
10 change by the State or any locality in the State  
11 and update the information described in sub-  
12 paragraph (D)(i) accordingly and relieve any re-  
13 mote seller or certified software provider from  
14 liability for collecting sales and use taxes at the  
15 immediately preceding effective rate during the  
16 90-day notice period if the required notice is  
17 not provided.

18       (c) **SMALL SELLER EXCEPTION.**—A State is author-  
19 ized to require a remote seller to collect sales and use taxes  
20 under this Act only if the remote seller has gross annual  
21 receipts in total remote sales in the United States in the  
22 preceding calendar year exceeding \$1,000,000. For pur-  
23 poses of determining whether the threshold in this sub-  
24 section is met—

1           (1) the sales of all persons related within the  
2 meaning of subsections (b) and (c) of section 267 or  
3 section 707(b)(1) of the Internal Revenue Code of  
4 1986 shall be aggregated; or

5           (2) persons with 1 or more ownership relation-  
6 ships shall also be aggregated if such relationships  
7 were designed with a principal purpose of avoiding  
8 the application of these rules.

9 **SEC. 3. LIMITATIONS.**

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

12           (1) subjecting a seller or any other person to  
13 franchise, income, occupation, or any other type of  
14 taxes, other than sales and use taxes;

15           (2) affecting the application of such taxes; or

16           (3) enlarging or reducing State authority to im-  
17 pose such taxes.

18       (b) NO EFFECT ON NEXUS.—This Act shall not be  
19 construed to create any nexus between a person and a  
20 State or locality.

21       (c) LICENSING AND REGULATORY REQUIREMENTS.—  
22 Nothing in this Act shall be construed as permitting or  
23 prohibiting a State from—

24           (1) licensing or regulating any person;

1           (2) requiring any person to qualify to transact  
2 intrastate business;

3           (3) subjecting any person to State or local taxes  
4 not related to the sale of goods or services; or

5           (4) exercising authority over matters of inter-  
6 state commerce.

7           (d) **NO NEW TAXES.**—Nothing in this Act shall be  
8 construed as encouraging a State to impose sales and use  
9 taxes on any goods or services not subject to taxation prior  
10 to the date of the enactment of this Act.

11          (e) **NO EFFECT ON INTRASTATE SALES.**—The provi-  
12 sions of this Act shall apply only to remote sales and shall  
13 not apply to intrastate sales or intrastate sourcing rules.  
14 States granted authority under section 2(a) shall comply  
15 with all intrastate provisions of the Streamlined Sales and  
16 Use Tax Agreement.

17          (f) **NO EFFECT ON MOBILE TELECOMMUNICATIONS**  
18 **SOURCING ACT.**—Nothing in this Act shall be construed  
19 as altering in any manner or preempting the Mobile Tele-  
20 communications Sourcing Act (4 U.S.C. 116–126).

21 **SEC. 4. DEFINITIONS AND SPECIAL RULES.**

22          In this Act:

23           (1) **CERTIFIED SOFTWARE PROVIDER.**—The  
24 term “certified software provider” means a person  
25 that—



1 (A) provides software to remote sellers to  
2 facilitate State and local sales and use tax com-  
3 pliance pursuant to section 2(b)(2)(D); and

4 (B) is certified by a State to so provide  
5 such software.

6 (2) LOCALITY; LOCAL.—The terms “locality”  
7 and “local” refer to any political subdivision of a  
8 State.

9 (3) MEMBER STATE.—The term “Member  
10 State”—

11 (A) means a Member State as that term is  
12 used under the Streamlined Sales and Use Tax  
13 Agreement as in effect on the date of the enact-  
14 ment of this Act; and

15 (B) does not include any associate member  
16 under the Streamlined Sales and Use Tax  
17 Agreement.

18 (4) PERSON.—The term “person” means an in-  
19 dividual, trust, estate, fiduciary, partnership, cor-  
20 poration, limited liability company, or other legal en-  
21 tity, and a State or local government.

22 (5) REMOTE SALE.—The term “remote sale”  
23 means a sale into a State in which the seller would  
24 not legally be required to pay, collect, or remit State

1 or local sales and use taxes unless provided by this  
2 Act.

3 (6) REMOTE SELLER.—The term “remote sell-  
4 er” means a person that makes remote sales in the  
5 State.

6 (7) SOURCED.—For purposes of a State grant-  
7 ed authority under section 2(b), the location to  
8 which a remote sale is sourced refers to the location  
9 where the item sold is received by the purchaser,  
10 based on the location indicated by instructions for  
11 delivery that the purchaser furnishes to the seller.  
12 When no delivery location is specified, the remote  
13 sale is sourced to the customer’s address that is ei-  
14 ther known to the seller or, if not known, obtained  
15 by the seller during the consummation of the trans-  
16 action, including the address of the customer’s pay-  
17 ment instrument if no other address is available. If  
18 an address is unknown and a billing address cannot  
19 be obtained, the remote sale is sourced to the ad-  
20 dress of the seller from which the remote sale was  
21 made. A State granted authority under section 2(a)  
22 shall comply with the sourcing provisions of the  
23 Streamlined Sales and Use Tax Agreement.

24 (8) 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 (9) STREAMLINED SALES AND USE TAX AGREE-  
7 MENT.—The term “Streamlined Sales and Use Tax  
8 Agreement” means the multi-State agreement with  
9 that title adopted on November 12, 2002, as in ef-  
10 fect on the date of the enactment of this Act and as  
11 further amended from time to time.

12 **SEC. 5. SEVERABILITY.**

13 If any provision of this Act or the application of such  
14 provision to any person or circumstance is held to be un-  
15 constitutional, the remainder of this Act and the applica-  
16 tion of the provisions of such to any person or cir-  
17 cumstance shall not be affected thereby.

18 **SEC. 6. PREEMPTION.**

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

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