

113TH CONGRESS  
1ST SESSION

# S. 743

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IN THE HOUSE OF REPRESENTATIVES

MAY 20, 2013

Referred to the Committee on the Judiciary

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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Marketplace Fairness  
3 Act of 2013”.

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

6 (a) STREAMLINED SALES AND USE TAX AGREE-  
7 MENT.—Each Member State under the Streamlined Sales  
8 and Use Tax Agreement is authorized to require all sellers  
9 not qualifying for the small seller exception described in  
10 subsection (c) to collect and remit sales and use taxes with  
11 respect to remote sales sourced to that Member State pur-  
12 suant to the provisions of the Streamlined Sales and Use  
13 Tax Agreement, but only if any changes to the Stream-  
14 lined Sales and Use Tax Agreement made after the date  
15 of the enactment of this Act are not in conflict with the  
16 minimum simplification requirements in subsection (b)(2).  
17 A State may exercise authority under this Act beginning  
18 180 days after the State publishes notice of the State’s  
19 intent to exercise the authority under this Act, but no ear-  
20 lier than the first day of the calendar quarter that is at  
21 least 180 days after the date of the enactment of this Act.

22 (b) ALTERNATIVE.—A State that is not a Member  
23 State under the Streamlined Sales and Use Tax Agree-  
24 ment is authorized notwithstanding any other provision of  
25 law to require all sellers not qualifying for the small seller  
26 exception described in subsection (c) to collect and remit

1 sales and use taxes with respect to remote sales sourced  
2 to that State, but only if the State adopts and implements  
3 the minimum simplification requirements in paragraph  
4 (2). Such authority shall commence beginning no earlier  
5 than the first day of the calendar quarter that is at least  
6 6 months after the date that the State—

7 (1) enacts legislation to exercise the authority  
8 granted by this Act—

9 (A) specifying the tax or taxes to which  
10 such authority and the minimum simplification  
11 requirements in paragraph (2) shall apply; and

12 (B) specifying the products and services  
13 otherwise subject to the tax or taxes identified  
14 by the State under subparagraph (A) to which  
15 the authority of this Act shall not apply; and

16 (2) implements each of the following minimum  
17 simplification requirements:

18 (A) Provide—

19 (i) a single entity within the State re-  
20 sponsible for all State and local sales and  
21 use tax administration, return processing,  
22 and audits for remote sales sourced to the  
23 State;

1 (ii) a single audit of a remote seller  
2 for all State and local taxing jurisdictions  
3 within that State; and

4 (iii) a single sales and use tax return  
5 to be used by remote sellers to be filed  
6 with the single entity responsible for tax  
7 administration.

8 A State may not require a remote seller to file  
9 sales and use tax returns any more frequently  
10 than returns are required for nonremote sellers  
11 or impose requirements on remote sellers that  
12 the State does not impose on nonremote sellers  
13 with respect to the collection of sales and use  
14 taxes under this Act. No local jurisdiction may  
15 require a remote seller to submit a sales and  
16 use tax return or to collect sales and use taxes  
17 other than as provided by this paragraph.

18 (B) Provide a uniform sales and use tax  
19 base among the State and the local taxing juris-  
20 dictions within the State pursuant to paragraph  
21 (1).

22 (C) Source all remote sales in compliance  
23 with the sourcing definition set forth in section  
24 4(7).

25 (D) Provide—

1 (i) information indicating the tax-  
2 ability of products and services along with  
3 any product and service exemptions from  
4 sales and use tax in the State and a rates  
5 and boundary database;

6 (ii) software free of charge for remote  
7 sellers that calculates sales and use taxes  
8 due on each transaction at the time the  
9 transaction is completed, that files sales  
10 and use tax returns, and that is updated to  
11 reflect rate changes as described in sub-  
12 paragraph (H); and

13 (iii) certification procedures for per-  
14 sons to be approved as certified software  
15 providers.

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

20 (E) Relieve remote sellers from liability to  
21 the State or locality for the incorrect collection,  
22 remittance, or noncollection of sales and use  
23 taxes, including any penalties or interest, if the  
24 liability is the result of an error or omission  
25 made by a certified software provider.

1 (F) Relieve certified software providers  
2 from liability to the State or locality for the in-  
3 correct collection, remittance, or noncollection  
4 of sales and use taxes, including any penalties  
5 or interest, if the liability is the result of mis-  
6 leading or inaccurate information provided by a  
7 remote seller.

8 (G) Relieve remote sellers and certified  
9 software providers from liability to the State or  
10 locality for incorrect collection, remittance, or  
11 noncollection of sales and use taxes, including  
12 any penalties or interest, if the liability is the  
13 result of incorrect information or software pro-  
14 vided by the State.

15 (H) Provide remote sellers and certified  
16 software providers with 90 days notice of a rate  
17 change by the State or any locality in the State  
18 and update the information described in sub-  
19 paragraph (D)(i) accordingly and relieve any re-  
20 mote seller or certified software provider from  
21 liability for collecting sales and use taxes at the  
22 immediately preceding effective rate during the  
23 90-day notice period if the required notice is  
24 not provided.

1 (c) SMALL SELLER EXCEPTION.—A State is author-  
2 ized to require a remote seller to collect sales and use taxes  
3 under this Act only if the remote seller has gross annual  
4 receipts in total remote sales in the United States in the  
5 preceding calendar year exceeding \$1,000,000. For pur-  
6 poses of determining whether the threshold in this section  
7 is met, the gross annual receipts from remote sales of 2  
8 or more persons shall be aggregated if—

9 (1) such persons are related to the remote seller  
10 within the meaning of subsections (b) and (c) of sec-  
11 tion 267 or section 707(b)(1) of the Internal Rev-  
12 enue Code of 1986; or

13 (2) such persons have 1 or more ownership re-  
14 lationships and such relationships were designed  
15 with a principal purpose of avoiding the application  
16 of these rules.

17 **SEC. 3. LIMITATIONS.**

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

20 (1) subjecting a seller or any other person to  
21 franchise, income, occupation, or any other type of  
22 taxes, other than sales and use taxes;

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

24 (3) enlarging or reducing State authority to im-  
25 pose such taxes.

1 (b) NO EFFECT ON NEXUS.—This Act shall not be  
2 construed to create any nexus or alter the standards for  
3 determining nexus between a person and a State or local-  
4 ity.

5 (c) NO EFFECT ON SELLER CHOICE.—Nothing in  
6 this Act shall be construed to deny the ability of a remote  
7 seller to deploy and utilize a certified software provider  
8 of the seller’s choice.

9 (d) LICENSING AND REGULATORY REQUIRE-  
10 MENTS.—Nothing in this Act shall be construed as permit-  
11 ting or prohibiting a State from—

12 (1) licensing or regulating any person;

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

15 (3) subjecting any person to State or local taxes  
16 not related to the sale of products or services; or

17 (4) exercising authority over matters of inter-  
18 state commerce.

19 (e) NO NEW TAXES.—Nothing in this Act shall be  
20 construed as encouraging a State to impose sales and use  
21 taxes on any products or services not subject to taxation  
22 prior to the date of the enactment of this Act.

23 (f) NO EFFECT ON INTRASTATE SALES.—The provi-  
24 sions of this Act shall apply only to remote sales and shall  
25 not apply to intrastate sales or intrastate sourcing rules.

1 States granted authority under section 2(a) shall comply  
2 with all intrastate provisions of the Streamlined Sales and  
3 Use Tax Agreement.

4 (g) NO EFFECT ON MOBILE TELECOMMUNICATIONS  
5 SOURCING ACT.—Nothing in this Act shall be construed  
6 as altering in any manner or preempting the Mobile Tele-  
7 communications Sourcing Act (4 U.S.C. 116–126).

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

9 In this Act:

10 (1) CERTIFIED SOFTWARE PROVIDER.—The  
11 term “certified software provider” means a person  
12 that—

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

16 (B) is certified by a State to so provide  
17 such software.

18 (2) LOCALITY; LOCAL.—The terms “locality”  
19 and “local” refer to any political subdivision of a  
20 State.

21 (3) MEMBER STATE.—The term “Member  
22 State”—

23 (A) means a Member State as that term is  
24 used under the Streamlined Sales and Use Tax

1 Agreement as in effect on the date of the enact-  
2 ment of this Act; and

3 (B) does not include any associate member  
4 under the Streamlined Sales and Use Tax  
5 Agreement.

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

10 (5) REMOTE SALE.—The term “remote sale”  
11 means a sale into a State, as determined under the  
12 sourcing rules under paragraph (7), in which the  
13 seller would not legally be required to pay, collect,  
14 or remit State or local sales and use taxes unless  
15 provided by this Act.

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

19 (7) SOURCED.—For purposes of a State grant-  
20 ed authority under section 2(b), the location to  
21 which a remote sale is sourced refers to the location  
22 where the product or service sold is received by the  
23 purchaser, based on the location indicated by in-  
24 structions for delivery that the purchaser furnishes  
25 to the seller. When no delivery location is specified,

1 the remote sale is sourced to the customer’s address  
2 that is either known to the seller or, if not known,  
3 obtained by the seller during the consummation of  
4 the transaction, including the address of the cus-  
5 tomer’s payment instrument if no other address is  
6 available. If an address is unknown and a billing ad-  
7 dress cannot be obtained, the remote sale is sourced  
8 to the address of the seller from which the remote  
9 sale was made. A State granted authority under sec-  
10 tion 2(a) shall comply with the sourcing provisions  
11 of the Streamlined Sales and Use Tax Agreement.

12 (8) STATE.—The term “State” means each of  
13 the several States, the District of Columbia, the  
14 Commonwealth of Puerto Rico, Guam, American  
15 Samoa, the United States Virgin Islands, the Com-  
16 monwealth of the Northern Mariana Islands, and  
17 any other territory or possession of the United  
18 States, and any tribal organization (as defined in  
19 section 4 of the Indian Self-Determination and Edu-  
20 cation Assistance Act (25 U.S.C. 450b)).

21 (9) STREAMLINED SALES AND USE TAX AGREE-  
22 MENT.—The term “Streamlined Sales and Use Tax  
23 Agreement” means the multi-State agreement with  
24 that title adopted on November 12, 2002, as in ef-

1       fect on the date of the enactment of this Act and as  
2       further amended from time to time.

3 **SEC. 5. SEVERABILITY.**

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

9 **SEC. 6. PREEMPTION.**

10       Except as otherwise provided in this Act, this Act  
11       shall not be construed to preempt or limit any power exer-  
12       cised or to be exercised by a State or local jurisdiction  
13       under the law of such State or local jurisdiction or under  
14       any other Federal law.

Passed the Senate May 6, 2013.

Attest:

NANCY ERICKSON,

*Secretary.*