

108TH CONGRESS
1ST SESSION

S. 1736

To promote simplification and fairness in the administration and collection
of sales and use taxes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 15, 2003

Mr. ENZI (for himself, Mr. DORGAN, Mr. CHAFEE, Mr. HAGEL, Mrs. HUTCHISON, Mr. VOINOVICH, Mr. THOMAS, Mr. BREAUX, Mr. BINGAMAN, Mr. GRAHAM of Florida, Mr. JOHNSON, Mr. NELSON of Nebraska, and Mr. ROCKEFELLER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To promote simplification and fairness in the administration
and collection of sales and use taxes.

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 “Streamlined Sales and
5 Use Tax Act”.

6 **SEC. 2. CONSENT OF CONGRESS.**

7 The Congress consents to the November 12, 2002,
8 Streamlined Sales and Use Tax Agreement.

1 **SEC. 3. SENSE OF THE CONGRESS.**

2 It is the sense of the Congress that the sales and use
3 tax system established by the Streamlined Sales and Use
4 Tax Agreement, to the extent that it meets the minimum
5 simplification requirements of section 6, provides suffi-
6 cient simplification and uniformity to warrant Federal au-
7 thorization to States that are parties to the Agreement
8 to require remote sellers, subject to the conditions pro-
9 vided in this Act, to collect and remit the sales and use
10 taxes of such States and of local taxing jurisdictions of
11 such States. The purpose of this Act is to effectuate that
12 limited authority, and not to grant additional authority
13 unrelated to the accomplishment of that purpose.

14 **SEC. 4. AUTHORIZATION TO REQUIRE COLLECTION OF**
15 **SALES AND USE TAXES.**

16 (a) GRANT OF AUTHORITY.—Once 10 States com-
17 prising at least 20 percent of the total population of all
18 States imposing a sales tax, as determined by the 2000
19 Federal census, have petitioned for membership under the
20 Streamlined Sales and Use Tax Agreement in the manner
21 required by the Agreement, have been found to be in com-
22 pliance with the Agreement pursuant to the terms of the
23 Agreement, have become Member States under the Agree-
24 ment, and the necessary operational aspects of the Agree-
25 ment have been implemented, any Member State under
26 the Agreement is authorized, notwithstanding any other

1 provision of law, to require all sellers not qualifying for
2 the small business exception provided under subsection (b)
3 to collect and remit sales and use taxes with respect to
4 remote sales to purchasers located in such State. Such au-
5 thorization shall terminate for all States if the require-
6 ments of the preceding sentence cease to be met or if the
7 Agreement, as amended, no longer meets the minimum
8 simplification requirements of section 6. Such authoriza-
9 tion shall also terminate for any Member State if such
10 Member State no longer complies with the requirements
11 for Member State status under the terms of the Agree-
12 ment. Determinations regarding compliance with the re-
13 quirements of this subsection shall be made by the Gov-
14 erning Board (or, prior to the establishment of the Gov-
15 erning Board, by the States petitioning for membership
16 under the Agreement) subject to section 5.

17 (b) SMALL BUSINESS EXCEPTION.—No seller shall
18 be subject to a requirement of any State to collect and
19 remit sales and use taxes with respect to a remote sale
20 where the seller and its affiliates collectively had gross re-
21 mote taxable sales nationwide of less than \$5,000,000 in
22 the calendar year preceding the date of such sale. No seller
23 shall be subject to a requirement of any State to collect
24 and remit sales and use taxes with respect to a remote
25 sale where the seller and its affiliates collectively meet the

1 \$5,000,000 threshold of this subsection but the seller has
 2 less than \$100,000 in gross remote taxable sales nation-
 3 wide.

4 (c) REASONABLE SELLER COMPENSATION.—The au-
 5 thority provided in subsection (a) is conditioned on accept-
 6 ance and implementation by each Member State of a re-
 7 quirement that the State provide reasonable compensation
 8 for expenses incurred by sellers related to the administra-
 9 tion, collection and remittance of sales and use taxes. Fur-
 10 thermore, the State shall provide compensation that covers
 11 all tax processing costs of remote sellers. The additional
 12 compensation provided to remote sellers shall remain in
 13 effect for a period of 4 years from the date that a State
 14 is granted the authority under this Act to require remote
 15 sellers to collect and remit sales taxes with respect to re-
 16 mote purchasers located in such State.

17 **SEC. 5. DETERMINATION BY GOVERNING BOARD AND JUDI-**
 18 **CIAL REVIEW OF THAT DETERMINATION.**

19 (a) PETITION.—Any person who may be affected by
 20 the Agreement may petition the Governing Board for a
 21 determination on any issue relating to the implementation
 22 of the Agreement.

23 (b) REVIEW IN COURT OF FEDERAL CLAIMS.—Any
 24 person who submits a petition under subsection (a) may
 25 bring an action against the Governing Board in the United

1 States Court of Federal Claims for judicial review of the
2 action of the Governing Board on that petition if—

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

4 (A) a State has met or continues to meet
5 the requirements for Member State status
6 under the Agreement;

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

10 (C) the Agreement continues to meet the
11 minimum simplification requirements set forth
12 in section 6; or

13 (D) any other requirement of section 4 has
14 been met; and

15 (2) the petition is denied by the Governing
16 Board in whole or in part with respect to that issue,
17 or the Governing Board fails to act on the petition
18 with respect to that issue not later than six months
19 after the date on which the petition is submitted.

20 (c) TIMING OF ACTION FOR REVIEW.—An action for
21 review under this section shall be initiated not later than
22 60 days after the Governing Board's denial of the petition,
23 or, if the Governing Board failed to act on the petition,
24 within 60 days after the end of the six-month period be-

1 ginning on the day after the date on which the petition
2 was submitted.

3 (d) STANDARD OF REVIEW.—In any action for review
4 under this section, the court shall set aside the actions,
5 findings, and conclusions of the Governing Board found
6 to be arbitrary, capricious, an abuse of discretion, or oth-
7 erwise not in accordance with law.

8 (e) JURISDICTION.—

9 (1) GENERALLY.—Chapter 91 of title 28 of the
10 United States Code is amended by adding at the end
11 thereof:

12 **“§ 1510. Jurisdiction regarding the streamlined sales**
13 **and use tax agreement**

14 “The United States Court of Federal Claims shall
15 have exclusive jurisdiction over actions for judicial review
16 of determinations of the Governing Board of the Stream-
17 lined Sales and Use Tax Agreement under the terms and
18 conditions provided in section 5 of the Simplified Sales
19 and Use Tax Act.”.

20 (2) CONFORMING AMENDMENT TO TABLE OF
21 SECTIONS.—The table of sections at the beginning
22 of chapter 91 of title 28, United States Code, is
23 amended by adding at the end the following new
24 item:

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

1 **SEC. 6. MINIMUM SIMPLIFICATION REQUIREMENTS.**

2 The following criteria are the minimum simplification
3 requirements for the Agreement:

4 (1) A centralized, one-stop, multistate registra-
5 tion system that sellers may elect to use to register
6 with the Member States; provided the seller may
7 also elect to register directly with a Member State;
8 and further provided that privacy and confidentiality
9 controls shall be placed on the multistate registra-
10 tion system so that it may not be used for any pur-
11 pose other than the administration of sales and use
12 taxes.

13 (2) Uniform definitions of products and prod-
14 uct-based exemptions from which the Member States
15 may choose their individual tax bases; Member
16 States may enact other product-based exemptions
17 without restriction if the Agreement does not have
18 a definition for the product or for a term that in-
19 cludes the product.

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 State sales and
25 use tax rates and taxability.

26 (5) Uniform rules for bad debts.

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

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

5 (8) Single, State-level administration of all
6 State and local sales and use taxes, and a single fil-
7 ing for each State.

8 (9) A single sales and use tax rate per taxing
9 jurisdiction for items other than those listed in sec-
10 tion 308 C of the Agreement as adopted on Novem-
11 ber 12, 2002, except that a State may impose a sec-
12 ond sales and use tax rate for items satisfying the
13 Agreement's definition for food, food ingredients, or
14 drugs.

15 (10) A provision that relieves a seller or service
16 provider from liability for collection of the incorrect
17 amount of sales or use tax, provided such seller has
18 relied on information provided by the Member States
19 regarding tax rates, boundaries, or taxing jurisdic-
20 tion assignments.

21 (11) Uniform audit procedures for sellers, in-
22 cluding an option under which a seller may elect, by
23 notifying the Governing Board, to be subject to a
24 single audit on behalf of all the Member States or
25 a single audit on behalf of each Member State.

1 (12) Reasonable compensation for all sellers
2 that administer, collect and remit sales and use tax,
3 with requirements for remote seller compensation as
4 provided in section 4(d) of this Act.

5 (13) Appropriate protections for consumer pri-
6 vacy.

7 (14) Governance procedures and mechanisms to
8 ensure timely, consistent, and uniform implementa-
9 tion and adherence to the principles of the stream-
10 lined system and the terms of the Agreement.

11 (15) The Member States apply the minimum
12 simplification requirements under this subsection to
13 transaction taxes on communications by January 1,
14 2006, except that the requirement for one uniform
15 return shall not apply and the requirements for rate
16 simplification are modified to require one rate for
17 each type of transaction tax per jurisdiction.
18 “Transaction tax” as used in this provision shall
19 have the same meaning as in section 116 of title 4,
20 United States Code, except that “communications
21 services” shall replace “mobile telecommunications
22 services” whenever such term appears.

23 (16) Uniform rules for “sales tax holidays” that
24 provide alternative mechanisms for remote sellers to
25 participate.

1 (17) Uniform rules and procedures to address
2 refunds and credits for sales taxes relating to cus-
3 tomer returns, restocking fees, discounts and cou-
4 pons, and rules to address allocations of shipping
5 and handling and discounts applied to multiple item
6 and multiple seller orders and sourcing rules that
7 contain provisions to prevent double taxation in situ-
8 ations where a foreign country has imposed a trans-
9 action tax on a digital good or service.

10 (18) Each amendment hereafter adopted to the
11 Agreement is within the scope of the subject matter
12 currently covered by the agreement.

13 **SEC. 7. LIMITATION.**

14 (a) IN GENERAL.—Nothing in this Act shall be con-
15 strued as subjecting sellers to franchise taxes, income
16 taxes, or licensing requirements of a State or political sub-
17 division thereof, nor shall anything in this Act be con-
18 strued as affecting the application of such taxes or re-
19 quirements or enlarging or reducing the authority of any
20 State to impose such taxes or requirements.

21 (b) NO EFFECT ON NEXUS, ETC.—No obligation im-
22 posed by virtue of the authority granted by section 4 shall
23 be considered in determining whether a seller has a nexus
24 with any State for any other tax purpose. Except as pro-

1 vided in subsection (a), and in section 4, nothing in this
2 Act permits or prohibits a State's—

3 (1) licensing or regulating any person;

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

6 (3) subjecting any person to State taxes not re-
7 lated to the sale of goods or services; or

8 (4) exercising authority over matters of inter-
9 state commerce.

10 **SEC. 8. EXPEDITED JUDICIAL REVIEW.**

11 (a) **THREE-JUDGE DISTRICT COURT HEARING.**—

12 Notwithstanding any other provision of law, any civil ac-
13 tion challenging the constitutionality, on its face, of this
14 Act, or any provision thereof, shall be heard by a district
15 court of three judges convened pursuant to the provisions
16 of section 2284 of title 28, United States Code.

17 (b) **APPELLATE REVIEW.**—Notwithstanding any

18 other provision of law, an interlocutory or final judgment,
19 decree, or order of the court of three judges in an action
20 under subsection (a) holding this Act, or any provision
21 thereof, unconstitutional shall be reviewable as a matter
22 of right by direct appeal to the Supreme Court. Any such
23 appeal shall be filed not more than 20 days after entry
24 of such judgment, decree, or order.

1 **SEC. 9. DEFINITIONS.**

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

4 (1) **AFFILIATE.**—The term “affiliate” means
5 any entity that controls, is controlled by, or is under
6 common control with a seller.

7 (2) **GOVERNING BOARD.**—The term “Governing
8 Board” means the governing board established by
9 the Streamlined Sales and Use Tax Agreement.

10 (3) **MEMBER STATE.**—The term “Member
11 State” means a member state under the Streamlined
12 Sales and Use Tax Agreement.

13 (4) **NATIONWIDE.**—The term “nationwide”
14 means throughout the territory of the United States,
15 including any of its territories and possessions.

16 (5) **PERSON.**—The term “person” means an in-
17 dividual, trust, estate, fiduciary, partnership, cor-
18 poration, or any other legal entity, and includes a
19 State or local government.

20 (6) **REMOTE SALE AND REMOTE SELLER.**—The
21 terms “remote sale” and “remote seller” refer to a
22 sale of goods or services attributed to a particular
23 taxing jurisdiction with respect to which the seller
24 did not have adequate physical presence to establish
25 nexus under the law existing on the day before the
26 date of enactment of this Act so as to allow such ju-

1 jurisdiction to require the seller to collect and remit
2 sales or use taxes with respect to such sale.

3 (7) STATE.—The term “State” means any
4 State of the United States of America and includes
5 the District of Columbia, Puerto Rico, and any other
6 territory or possession of the United States.

7 (8) STREAMLINED SALES AND USE TAX AGREE-
8 MENT.—The term “Streamlined Sales and Use Tax
9 Agreement” (or “the Agreement”) means the
10 multistate agreement with that title adopted on No-
11 vember 12, 2002, and as amended from time to
12 time.

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