

110TH CONGRESS  
1ST SESSION

# S. 34

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

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IN THE SENATE OF THE UNITED STATES

MAY 22, 2007

Mr. ENZI introduced the following bill; which was read twice and referred to  
the Committee on Finance

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## 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 “Sales Tax Fairness  
5 and Simplification Act”.

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

7       The Congress consents to the Streamlined Sales and  
8 Use Tax Agreement.

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

2 (a) SALES AND USE TAX SYSTEM.—It is the sense  
3 of the Congress that the sales and use tax system estab-  
4 lished by the Streamlined Sales and Use Tax Agreement,  
5 to the extent that it meets the minimum simplification re-  
6 quirements of section 7, provides sufficient simplification  
7 and uniformity to warrant Federal authorization to Mem-  
8 ber States that are parties to the Agreement to require  
9 remote sellers, subject to the conditions provided in this  
10 Act, to collect and remit the sales and use taxes of such  
11 Member States and of local taxing jurisdictions of such  
12 Member States.

13 (b) PURPOSE.—The purpose of this Act is to—

14 (1) effectuate the limited authority granted to  
15 Member States under the Streamlined Sales and  
16 Use Tax Agreement; and  
17 (2) not grant additional authority unrelated to  
18 the accomplishment of the purpose described in  
19 paragraph (1).

20 **SEC. 4. AUTHORIZATION TO REQUIRE COLLECTION OF  
21 SALES AND USE TAXES.**

22 (a) GRANT OF AUTHORITY.—

23 (1) IN GENERAL.—Each Member State under  
24 the Streamlined Sales and Use Tax Agreement is  
25 authorized, subject to the requirements of this sec-  
26 tion, to require all sellers not qualifying for the

1 small business exception provided under subsection  
2 (d) to collect and remit sales and use taxes with re-  
3 spect to remote sales sourced to that Member State  
4 under the Agreement.

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

8 (A) 10 States comprising at least 20 per-  
9 cent of the total population of all States impos-  
10 ing a sales tax, as determined by the 2000 Fed-  
11 eral census, have petitioned for membership and  
12 have become Member States under the Agree-  
13 ment.

14 (B) The following necessary operational as-  
15 pects of the Agreement have been implemented  
16 by the Governing Board:

17 (i) Provider and system certification.

18 (ii) Setting of monetary allowance by  
19 contract with providers.

20 (iii) Implementation of an on-line  
21 multistate registration system.

22 (iv) Adoption of a standard form for  
23 claiming exemptions electronically.

24 (v) Establishment of advisory coun-  
25 cils.

(vi) Promulgation of rules and procedures for dispute resolution.

3 (vii) Promulgation of rules and proce-  
4 dures for audits.

5 (viii) Provisions for funding and staff-  
6 ing the Governing Board.

7 (C) Each Member State has met the re-  
8 quirements to provide and maintain the data-  
9 bases and the taxability matrix described in the  
10 Agreement, pursuant to requirements of the  
11 Governing Board.

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

14 (A) shall be granted notwithstanding any  
15 other provision of law; and

16 (B) is dependent upon the Agreement, as  
17 amended, meeting the minimum simplification  
18 requirements of section 7.

19 (b) TERMINATION OF AUTHORITY.—

20 (1) IN GENERAL.—The authorization provided  
21 under subsection (a) shall terminate for all States  
22 if—

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

1 (B) any amendment adopted to the Agree-  
2 ment after the date of enactment of this Act is  
3 not within the scope of the administration of  
4 sales and use taxes or taxes on telecommuni-  
5 cations services by the Member States.

11 (c) DETERMINATION OF STATUS.—

12 (1) IN GENERAL.—The Governing Board shall  
13 determine if Member States are in compliance with  
14 the requirements of subsections (a) and (b).

23 (d) SMALL BUSINESS EXCEPTION.—No seller shall  
24 be subject to a requirement of any State to collect and

1 remit sales and use taxes with respect to a remote sale

2 if—

3 (1) the seller and its affiliates collectively had  
4 gross remote taxable sales nationwide of less than  
5 \$5,000,000 in the calendar year preceding the date  
6 of such sale; or

7 (2) the seller and its affiliates collectively meet  
8 the \$5,000,000 threshold of this subsection, but the  
9 seller has less than \$100,000 in gross remote tax-  
10 able sales nationwide.

11 **SEC. 5. TRIBAL GOVERNMENTS.**

12 (a) STATUS AS MEMBER STATE.—

13 (1) IN GENERAL.—Any federally recognized In-  
14 dian Tribe that imposes a generally applicable sales  
15 tax may, if such Tribe complies with the terms of  
16 this Act—

17 (A) petition to become a Member State  
18 under the Agreement; and

19 (B) exercise the authority provided under  
20 section 4.

21 (2) DECISION OF THE GOVERNING BOARD.—

22 (A) IN GENERAL.—If the effect of any fed-  
23 erally recognized Indian Tribe's law, rules, reg-  
24 ulations, and policies is compliant with each of  
25 the terms of the Agreement, and the Indian

1        Tribe has entered an agreement with the pri-  
2        mary State where it is located, the Governing  
3        Board shall consider such Tribe for admission  
4        as a Member State to the Agreement on the  
5        same basis as States.

6 (B) No STATE-TRIBAL AGREEMENT  
7 PRESENT.—If a petitioning Indian Tribe and  
8 the primary State in which it is located have at-  
9 tempted to negotiate, but have not reached, an  
10 agreement as described in subparagraph (A)  
11 within 2 years after the date of the submission  
12 of such petition, the Governing Board shall con-  
13 sider such Tribe for admission as a Member  
14 State to the Agreement on the same basis as  
15 States without regard to the presence of a  
16 State-tribal agreement.

24 (B) MULTIPLE TRIBES.—If 2 or more fed-  
25 erally recognized Indian Tribes are accorded

1       Member State status under the Agreement  
2       under this section, additional representation of  
3       such Tribes on the Governing Board shall be  
4       determined by the Governing Board, in con-  
5       sultation with those Tribes that are Member  
6       States.

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

9               (1) diminishing an Indian Tribe's sovereignty  
10       or characterizing an Indian Tribe as a State for  
11       other purposes;

12               (2) affecting existing tax agreements between  
13       Indian Tribal Governments and States;

14               (3) preventing Indian Tribal Governments and  
15       States from entering into bilateral agreements for  
16       the collection and allocation of sales taxes (whether  
17       or not such bodies are admitted as Member States  
18       to the Agreement); or

19               (4) overriding established principles of Federal  
20       law governing—

21                       (A) the taxing jurisdiction of Indian Tribal  
22       Governments; and

23                       (B) the immunities of Indian Tribal Gov-  
24       ernments and their members from State tax-

1                   ation with respect to on-reservation trans-  
2                   actions.

3                   **SEC. 6. DETERMINATIONS BY GOVERNING BOARD AND JU-**  
4                   **DICIAL REVIEW OF SUCH DETERMINATIONS.**

5                   (a) PETITION.—At any time after the Governing  
6                   Board has made the determination required under section  
7                   4(c)(2), any person who may be affected by the Agreement  
8                   may petition the Governing Board for a determination on  
9                   any issue relating to the implementation of the Agreement.

10                  (b) REVIEW IN COURT OF FEDERAL CLAIMS.—Any  
11                  person who submits a petition under subsection (a) may  
12                  bring an action against the Governing Board in the United  
13                  States Court of Federal Claims for judicial review of the  
14                  action of the Governing Board on that petition if—

15                  (1) the petition relates to an issue of whether—  
16                          (A) a Member State has satisfied or con-  
17                          tinues to satisfy the requirements for Member  
18                          State status under the Agreement;

19                  (B) the Governing Board has performed a  
20                  nondiscretionary duty of the Governing Board  
21                  under the Agreement;

22                  (C) the Agreement continues to satisfy the  
23                  minimum simplification requirements set forth  
24                  in section 7; or

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

8 (c) TIMING OF ACTION FOR REVIEW.—An action for  
9 review under this section shall be initiated not later than  
10 60 days after the denial of the petition by the Governing  
11 Board, or, if the Governing Board failed to act on the peti-  
12 tion, not later than 60 days after the end of the 6-month  
13 period beginning on the day after the date on which the  
14 petition was submitted.

15 (d) STANDARD OF REVIEW.—

1 (e) JURISDICTION.—

7        “The United States Court of Federal Claims shall  
8 have exclusive jurisdiction over actions for judicial review  
9 of determinations of the Governing Board of the Stream-  
10 lined Sales and Use Tax Agreement under the terms and  
11 conditions provided in section 5 of the Sales Tax Fairness  
12 and Simplification Act.”.

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

## 18 SEC. 7. MINIMUM SIMPLIFICATION REQUIREMENTS.

19 (a) IN GENERAL.—The minimum simplification re-  
20 quirements for the Agreement, which shall relate to the  
21 conduct of Member States under the Agreement and to  
22 the administration and supervision of such conduct, are  
23 as follows:

24 (1) A centralized, one-stop, multistate registration system that a seller may elect to use to register  
25

1 with the Member States, provided a seller may also  
2 elect to register directly with a Member State, and  
3 further provided that privacy and confidentiality  
4 controls shall be placed on the multistate registra-  
5 tion system so that it may not be used for any pur-  
6 pose other than the administration of sales and use  
7 taxes. Furthermore, no taxing authority within a  
8 Member State or a Member State that has with-  
9 drawn or been expelled from the Agreement may use  
10 registration with the centralized registration system  
11 for the purpose of, or as a factor in determining,  
12 whether a seller has a nexus with that Member State  
13 for any tax at any time.

14 (2) Uniform definitions of products and prod-  
15 uct-based exemptions from which a Member State  
16 may choose its individual tax base, provided, how-  
17 ever, that all local jurisdictions in that Member  
18 State shall have a common tax base identical to the  
19 State tax base of that Member State. A Member  
20 State may enact other product-based exemptions  
21 without restriction if the Agreement does not have  
22 a definition for the product or for a term that in-  
23 cludes the product. A Member State shall relax the  
24 good faith requirement for acceptance of exemption  
25 certificates in accordance with section 317 of the

1       Agreement, as amended through the date of enact-  
2       ment of this Act.

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

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

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

10               (6) Uniform requirements for tax returns and  
11       remittances.

12               (7) Consistent electronic filing and remittance  
13       methods.

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

18               (9) A single sales and use tax rate per taxing  
19       jurisdiction, except that a State may impose a single  
20       additional rate, which may be zero, on food, food in-  
21       gredients, and drugs, provided that this limitation  
22       does not apply to the items identified in section 308  
23       C of the Agreement, as amended through the date  
24       of enactment of this Act.



(14) As of the day that authority to require collection commences under section 4, each Member State shall provide reasonable compensation for expenses incurred by a seller directly in administering, collecting, and remitting sales and use taxes (other than use taxes on goods and services purchased for the consumption of the seller) to that Member State. Such compensation may vary in each Member State depending on the complexity of the sales and use tax laws in that Member State and may vary by the characteristics of sellers in order to reflect differences in collection costs. Such compensation may be provided to a seller or a third party service provider whom a seller has contracted with to perform all the sales and use tax responsibilities of a seller.

1 (15) Appropriate protections for consumer pri-  
2 vacy.

3 (16) Governance procedures and mechanisms to  
4 ensure timely, consistent, and uniform implementa-  
5 tion and adherence to the principles of the stream-  
6 lined system and the terms of the Agreement.

(17) Each Member State shall apply the simplification requirements of the Agreement to taxes on telecommunications services, except as provided herein. This requirement is applicable to Member States as of July 1, 2010, except that sales and use taxes on telecommunications services shall be subject to the Agreement and the authority granted to the Member States when the requirements of section 4(a) are met. On or after July 1, 2010, for those Member States which meet the requirements of this paragraph, the authority granted such Member States under section 4 may be exercised by such Member States, pursuant to the terms of section 4 and section 6, with respect to taxes on telecommunications services other than sales and use taxes on such services. The following are exceptions to the requirement established under this paragraph:

24 (A) The requirement for one uniform re-  
25 turn shall not apply, provided, however, there

1       shall be one uniform return for each type of tax  
2       on telecommunications services within a State.

3           (B) The requirements for rate simplifica-  
4       tion are modified to require that each taxing ju-  
5       risdiction shall have only one rate for each type  
6       of tax on telecommunications services.

7           (C) The requirements for tax base uni-  
8       formity in section 302 of the Agreement shall  
9       apply to each type of tax on telecommunications  
10       services within a State, but shall not be con-  
11       strued to require that the tax base for different  
12       types of taxes on telecommunications services  
13       must be identical to the tax base for sales and  
14       use taxes imposed on telecommunications serv-  
15       ices.

16           (18) Uniform rules and procedures for “sales  
17       tax holidays”.

18           (19) Uniform rules and procedures to address  
19       refunds and credits for sales taxes relating to cus-  
20       tomer returns, restocking fees, discounts and cou-  
21       pons, and rules to address allocations of shipping  
22       and handling and discounts applied to multiple item  
23       and multiple seller orders.

24           (b) REQUIREMENT TO PROVIDE SIMPLIFIED TAX  
25       SYSTEMS.—

10 (A) to require each Member State to sub-  
11 stantly reduce the administrative burdens as-  
12 sociated with sales and use taxes; and

13 (B) as allowing each Member State to ex-  
14 ercise flexibility in how these requirements are  
15 satisfied.

## 21 SEC. 8. LIMITATION.

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

4 (2) affecting the application of such taxes or re-  
5 quirements or enlarging or reducing the authority of  
6 any Member State to impose such taxes or require-  
7 ments.

8 (b) NO EFFECT ON NEXUS, ETC.—

18 (A) licensing or regulating any person;

19 (B) requiring any person to qualify to  
20 transact intrastate business;

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

23 (D) exercising authority over matters of  
24 interstate commerce

1 **SEC. 9. EXPEDITED JUDICIAL REVIEW.**

2 (a) THREE-JUDGE DISTRICT COURT HEARING.—  
3 Notwithstanding any other provision of law, any civil ac-  
4 tion challenging the constitutionality of this Act, or any  
5 provision thereof, shall be heard by a district court of  
6 three judges convened pursuant to the provisions of sec-  
7 tion 2284 of title 28, United States Code.

8 (b) APPELLATE REVIEW.—

9 (1) IN GENERAL.—Notwithstanding any other  
10 provision of law, an interlocutory or final judgment,  
11 decree, or order of the court of three judges in an  
12 action under subsection (a) holding this Act, or any  
13 provision thereof, unconstitutional shall be review-  
14 able as a matter of right by direct appeal to the Su-  
15 preme Court.

16 (2) 30-DAY TIME LIMIT.—Any appeal under  
17 paragraph (1) shall be filed not more than 30 days  
18 after the date of entry of such judgment, decree, or  
19 order.

20 **SEC. 10. DEFINITIONS.**

21 For the purposes of this Act the following definitions  
22 apply:

23 (1) AFFILIATE.—The term “affiliate” means  
24 any entity that controls, is controlled by, or is under  
25 common control with a seller.

6 (A) means a Member State as that term is  
7 used under the Streamlined Sales and Use Tax  
8 Agreement as of the date of enactment of this  
9 Act;

10 (B) does not include associate members  
11 under the Agreement; and

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

1 a requirement for action by use of the term “shall”,  
2 “will”, or “is required to”.

3 (6) PERSON.—The term “person” means an in-  
4 dividual, trust, estate, fiduciary, partnership, cor-  
5 poration, federally recognized Indian Tribe or Tribal  
6 government, State or local government, or any other  
7 legal entity.

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

18 (8) REMOTE SELLER.—The term “remote sell-  
19 er” means any seller who makes a remote sale.

20 (9) STATE.—The term “State” means any  
21 State of the United States of America and includes  
22 the District of Columbia, Puerto Rico, and any other  
23 territory or possession of the United States.

24 (10) STREAMLINED SALES AND USE TAX  
25 AGREEMENT.—The term “Streamlined Sales and

1       Use Tax Agreement" (or "the Agreement") means  
2       the multistate agreement with that title adopted on  
3       November 12, 2002, as amended through the date of  
4       enactment of this Act and unless the context other-  
5       wise indicates as further amended from time to time.

6                   (11) TAX ON TELECOMMUNICATIONS SERV-  
7       ICES.—The term "tax on telecommunications serv-  
8       ices" or "taxes on telecommunication services" shall  
9       encompass the same taxes, charges, or fees as are  
10      included in section 116 of title 4, United States  
11      Code, except that "telecommunication services" shall  
12      replace "mobile telecommunications services" when-  
13      ever such term appears.

14                   (12) TELECOMMUNICATIONS SERVICE.—

15                   (A) IN GENERAL.—The term "tele-  
16       communications service" means the electronic  
17       transmission, conveyance, or routing of voice,  
18       data, audio, video, or any other information or  
19       signals to a point, or between or among points.

20                   (B) INCLUSION.—The term "telecommuni-  
21       cation service"—

22                   (i) includes transmission services in  
23       which computer processing applications are  
24       used to act on the form, code, or protocol  
25       of the content for purposes of trans-

1 mission, conveyance, or routing without re-  
2 gard to whether such services are referred  
3 to as voice over Internet protocol services  
4 or are classified by the Federal Commu-  
5 nications Commission as enhanced or value  
6 added services; and

7 (ii) does not include the data proc-  
8 essing and information services that allow  
9 data to be generated, acquired, stored,  
10 processed, or retrieved and delivered by an  
11 electronic transmission to a purchaser  
12 where the primary purpose of such pur-  
13 chaser for the underlying transaction is the  
14 processed data or information.

15 **SEC. 11. SENSE OF THE CONGRESS ON DIGITAL GOODS AND  
16 SERVICES.**

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

○