

Calendar No. 467

113TH CONGRESS
2D SESSION

S. 2609

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

IN THE SENATE OF THE UNITED STATES

JULY 15, 2014

Mr. ENZI (for himself, Mr. DURBIN, Mr. ALEXANDER, Ms. HEITKAMP, Ms. COLLINS, Mr. PRYOR, Ms. LANDRIEU, Mr. BLUNT, Mr. REED, Mr. WHITEHOUSE, Mr. CARDIN, Mr. JOHNSON of South Dakota, Ms. KLOBUCHAR, and Mr. FRANKEN) introduced the following bill; which was read the first time

JULY 16, 2014

Read the second time and placed on the calendar

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 and Inter-
5 net Tax Fairness Act”.

TITLE I—MARKETPLACE FAIRNESS

SEC. 101. AUTHORIZATION TO REQUIRE COLLECTION OF SALES AND USE TAXES.

(a) STREAMLINED SALES AND USE TAX AGREEMENT.—Each Member State under the Streamlined Sales and Use Tax Agreement is authorized to require all sellers not qualifying for the small seller exception described in subsection (c) to collect and remit sales and use taxes with respect to remote sales sourced to that Member State pursuant to the provisions of the Streamlined Sales and Use Tax Agreement, but only if any changes to the Streamlined Sales and Use Tax Agreement made after the date of the enactment of this Act are not in conflict with the minimum simplification requirements in subsection (b)(2). Subject to section 102(h), a State may exercise authority under this title beginning 180 days after the State publishes notice of the State’s intent to exercise the authority under this title.

(b) ALTERNATIVE.—A State that is not a Member State under the Streamlined Sales and Use Tax Agreement is authorized notwithstanding any other provision of law to require all sellers not qualifying for the small seller exception described in subsection (c) to collect and remit sales and use taxes with respect to remote sales sourced

1 to that State, but only if the State adopts and implements
 2 the minimum simplification requirements in paragraph
 3 (2). Subject to section 102(h), such authority shall com-
 4 mence beginning no earlier than the first day of the cal-
 5 endar quarter that is at least 6 months after the date that
 6 the State—

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

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 title shall not apply; and

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

18 (A) Provide, with respect to all remote
 19 sales sourced to the State—

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

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 title. 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 with respect to prod-
21 ucts and services to which paragraph (1)(B)
22 does not apply.

23 (C) Source all remote sales in compliance
24 with the sourcing definition set forth in section
25 103(7).

1 (D)(i) Make publicly available information
2 indicating the taxability of products and serv-
3 ices along with any product and service exemp-
4 tions from sales and use tax in the State and
5 a rates and boundary database.

6 (ii) Provide software free of charge for re-
7 mote sellers that calculates sales and use taxes
8 due on each transaction at the time the trans-
9 action is completed, that files sales and use tax
10 returns, and that is updated to reflect any rate
11 changes and any changes to the products and
12 services specified under paragraph (1)(B), as
13 described in subparagraph (H); and

14 (iii) Establish certification procedures for
15 persons to be approved as certified software
16 providers, with any software provided by such
17 providers to be capable of calculating and filing
18 sales and use taxes in all States qualified under
19 this title.

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 any
17 rate change or any change to the products and
18 services specified under paragraph (1)(B) by
19 the State or any locality in the State and up-
20 date the information described in subparagraph
21 (D)(i) accordingly and relieve any remote seller
22 or certified software provider from liability for
23 collecting sales and use taxes at the imme-
24 diately preceding effective rate during the 90-

1 day notice period if the required notice is not
2 provided.

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

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

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

19 **SEC. 102. LIMITATIONS.**

20 (a) **IN GENERAL.**—Nothing in this title shall be con-
21 strued as—

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

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

1 (3) enlarging or reducing State authority to im-
2 pose such taxes.

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

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

11 (d) LICENSING AND REGULATORY REQUIRE-
12 MENTS.—Nothing in this title shall be construed as per-
13 mitting or prohibiting a State from—

14 (1) licensing or regulating any person;

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

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

19 (4) exercising authority over matters of inter-
20 state commerce.

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

1 (f) NO EFFECT ON INTRASTATE SALES.—The provi-
 2 sions of this title shall apply only to remote sales and shall
 3 not apply to intrastate sales or intrastate sourcing rules.
 4 States granted authority under section 101(a) shall com-
 5 ply with all intrastate provisions of the Streamlined Sales
 6 and Use Tax Agreement.

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

11 (h) LIMITATION ON INITIAL COLLECTION OF SALES
 12 AND USE TAXES FROM REMOTE SALES.—A State may
 13 not begin to exercise the authority under this title—

14 (1) before the date that is 1 year after the date
 15 of the enactment of this Act; and

16 (2) during the period beginning October 1 and
 17 ending on December 31 of the first calendar year
 18 beginning after the date of the enactment of this
 19 Act.

20 **SEC. 103. DEFINITIONS AND SPECIAL RULES.**

21 In this title:

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

1 (A) provides software to remote sellers to
2 facilitate State and local sales and use tax com-
3 pliance pursuant to section 101(b)(2)(D)(ii);
4 and

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

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

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

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

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

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

23 (5) REMOTE SALE.—The term “remote sale”
24 means a sale into a State, as determined under the
25 sourcing rules under paragraph (7), in which the

1 seller would not legally be required to pay, collect,
2 or remit State or local sales and use taxes unless
3 provided by this title.

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

7 (7) SOURCED.—For purposes of a State grant-
8 ed authority under section 101(b), the location to
9 which a remote sale is sourced refers to the location
10 where the product or service sold is received by the
11 purchaser, based on the location indicated by in-
12 structions for delivery that the purchaser furnishes
13 to the seller. When no delivery location is specified,
14 the remote sale is sourced to the customer’s address
15 that is either known to the seller or, if not known,
16 obtained by the seller during the consummation of
17 the transaction, including the address of the cus-
18 tomer’s payment instrument if no other address is
19 available. If an address is unknown and a billing ad-
20 dress cannot be obtained, the remote sale is sourced
21 to the address of the seller from which the remote
22 sale was made. A State granted authority under sec-
23 tion 101(a) shall comply with the sourcing provisions
24 of the Streamlined Sales and Use Tax Agreement.

1 (8) STATE.—The term “State” means each of
2 the several States, the District of Columbia, the
3 Commonwealth of Puerto Rico, Guam, American
4 Samoa, the United States Virgin Islands, the Com-
5 monwealth of the Northern Mariana Islands, and
6 any other territory or possession of the United
7 States, and any tribal organization (as defined in
8 section 4 of the Indian Self-Determination and Edu-
9 cation Assistance Act (25 U.S.C. 450b)).

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

16 **SEC. 104. SEVERABILITY.**

17 If any provision of this title or the application of such
18 provision to any person or circumstance is held to be un-
19 constitutional, the remainder of this title and the applica-
20 tion of the provisions of such to any person or cir-
21 cumstance shall not be affected thereby.

22 **SEC. 105. PREEMPTION.**

23 Except as otherwise provided in this title, this title
24 shall not be construed to preempt or limit any power exer-
25 cised or to be exercised by a State or local jurisdiction

1 under the law of such State or local jurisdiction or under
2 any other Federal law.

3 **TITLE II—INTERNET TAX**
4 **FREEDOM ACT**

5 **SEC. 201. EXTENSION OF INTERNET TAX FREEDOM ACT.**

6 (a) IN GENERAL.—Section 1101(a) of the Internet
7 Tax Freedom Act (47 U.S.C. 151 note) is amended by
8 striking “November 1, 2014” and inserting “November 1,
9 2024”.

10 (b) GRANDFATHERING OF STATES THAT TAX INTER-
11 NET ACCESS.—Section 1104(a)(2)(A) of such Act is
12 amended by striking “November 1, 2014” and inserting
13 “November 1, 2024”.

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