

114TH CONGRESS
2D SESSION

H. R. 5893

To regulate certain State impositions on interstate commerce.

IN THE HOUSE OF REPRESENTATIVES

JULY 14, 2016

Mr. SENSENBRENNER introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To regulate certain State impositions on interstate commerce.

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 “No Regulation Without
5 Representation Act of 2016”.

6 **SEC. 2. MINIMUM JURISDICTIONAL STANDARDS FOR STATE**

7 **AND LOCAL SALES AND USE TAX COLLEC-**
8 **TION.**

9 (a) IN GENERAL.—A State may—

10 (1) impose an obligation on a person for—

11 (A) the collection of a sales, use, or similar
12 tax, or

1 (B) the reporting of any information with
2 respect thereto, on a person,

3 (2) assess a sales, use or similar tax on a per-
4 son, or

5 (3) treat a person as doing business in a State
6 for purposes of such a tax,

7 only if such person had a physical presence in the State
8 during the calendar quarter with respect to which the obli-
9 gation or assessment is imposed.

10 (b) REQUIREMENTS FOR PHYSICAL PRESENCE.—

11 (1) IN GENERAL.—For purposes of subsection

12 (a), a person has a physical presence in a State only
13 if such person's business activities in the State in-
14 clude any of the following during the calendar
15 year—

16 (A) owns, holds a leasehold interest in, or
17 maintains real property such as a retail store,
18 warehouse, distribution center, manufacturing
19 operation, or assembly facility in the State;

20 (B) leases or owns tangible personal prop-
21 erty (other than computer software) of more
22 than de minimis value in the State;

23 (C) has one or more employees, agents or
24 independent contractors present in the State
25 who engage in specific solicitations toward ob-

1 taining product or service orders from cus-
2 tomers in that State, or prospective customers
3 in that State, on behalf of the person;

4 (D) has one or more employees or inde-
5 pendent contractors present in the State who
6 provide on-site design, installation, or repair
7 services on behalf of the remote seller; or

8 (E) maintains an office in the State at
9 which it regularly employs three or more em-
10 ployees for any purpose.

11 (2) DE MINIMIS PHYSICAL PRESENCE.—For
12 purposes of this section, the term “physical pres-
13 ence” shall not include—

14 (A) entering into an agreement under
15 which a person, for a commission or other con-
16 sideration, directly or indirectly refers potential
17 purchasers to a person outside the State,
18 whether by an Internet-based link or platform,
19 Internet Web site or otherwise;

20 (B) any presence in a State, as described
21 in section 2(b)(1), for less than 15 days in a
22 taxable year (or a greater number of days if
23 provided by State law);

1 (C) delivery and product placement serv-
 2 ices offered by an interstate or in-State com-
 3 mon carrier; and

4 (D) Internet advertising services provided
 5 by in-State residents which are not exclusively
 6 directed towards, or do not solicit exclusively,
 7 in-State customers.

8 (c) PROTECTION OF NON-SELLERS.—A State may
 9 not impose a sales or use tax collection obligation, or an
 10 obligation to report any information with respect thereto,
 11 on a person or assess a sales, use or similar tax on any
 12 person other than a purchaser or a seller having a physical
 13 presence in the State.

14 **SEC. 3. DISPUTE RESOLUTION.**

15 The district courts of the United States shall have
 16 original jurisdiction over civil actions to enforce the provi-
 17 sions of this Act, including authority to issue declaratory
 18 judgments pursuant to section 2201 of title 28, United
 19 States Code, and, notwithstanding the provisions of sec-
 20 tion 1341 of such title, injunctive relief, as necessary to
 21 carry out this Act.

22 **SEC. 4. DEFINITIONS AND EFFECTIVE DATE.**

23 (a) DEFINITIONS.—For purposes of this Act:

24 (1) MARKETPLACE PROVIDER.—The term
 25 “marketplace provider” includes any person, other

1 than a seller, who facilitates a sale. For purposes of
2 this subsection, a person facilitates a sale when the
3 person both—

4 (A) lists or advertises tangible personal
5 property and services for sale in any forum, in-
6 cluding a catalog or Internet Web site; and

7 (B) either directly or indirectly through
8 agreements or arrangements with third parties,
9 collects gross receipts from the customer and
10 transmits those receipts to the marketplace sell-
11 er, whether or not such person deducts any fees
12 from the transmission of those receipts to the
13 marketplace seller.

14 (2) MARKETPLACE SELLER.—The term “mar-
15 ketplace seller” means a person that has any sales
16 facilitated by a marketplace provider.

17 (3) REFERRER.—The term “referrer” shall
18 mean every person who—

19 (A) contracts or otherwise agrees with a
20 seller to list multiple items of tangible personal
21 property and services for sale and the sales
22 prices thereof in any forum, including a catalog
23 or Internet Web site;

24 (B) receives a fee, commission, or other
25 consideration from a seller for the listing;

1 (C) transfers, via telephone, Internet link,
2 or otherwise, a customer to the seller or the
3 seller's Web site to complete a purchase; and

4 (D) does not collect receipts from the cus-
5 tomer for the transaction.

6 (4) PERSON.—The term “person” has the
7 meaning given such term by section 1 of title 1 of
8 the United States Code. Each corporation that is a
9 member of a group of affiliated corporations, wheth-
10 er unitary or not, is itself a separate “person”.

11 (5) SELLER.—The term “seller” does not in-
12 clude—

13 (A) any marketplace provider;

14 (B) any referrer;

15 (C) any carrier, in which the seller does
16 not have an ownership interest, providing trans-
17 portation or delivery services with respect to
18 tangible personal property; and

19 (D) any credit card issuer, transaction or
20 billing processor, or other financial inter-
21 mediary.

22 (6) SIMILAR TAX.—The term “similar tax”
23 means a tax that is imposed with respect to the sale
24 or use of a product or service, regardless whether
25 the tax is imposed on the person making the sale or

1 the purchaser, with the right or obligation of the
2 person making the sale to obtain reimbursement for
3 the amount of the tax from the purchaser at the
4 time of the transaction.

5 (7) STATE.—The term “State” means the sev-
6 eral States, the District of Columbia, the Common-
7 wealth of Puerto Rico, Guam, American Samoa, the
8 United States Virgin Islands, the Commonwealth of
9 the Northern Mariana Islands, and any other terri-
10 tory or possession of the United States and includes
11 the State government or political subdivision entity
12 responsible for tax collection and audits.

13 (b) EFFECTIVE DATE.—This Act shall apply with re-
14 spect to calendar quarters beginning on or after January
15 1, 2017.

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