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115TH CONGRESS
2D SESSION

H. R. 7184

To provide for a ban on the retroactive taxation of internet commerce, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 28, 2018

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

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A BILL

To provide for a ban on the retroactive taxation of internet commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''No Retroactive Online Taxation Act of 2018''.

SEC. 2. BAN ON RETROACTIVE TAXATION OF INTERNET COMMERCE.

(a) IN GENERAL.—A State may not impose a sales tax collection duty on a remote seller for any sale that occurred prior to June 21, 2018.

(b) RULE REGARDING PRIOR COLLECTION.—Subsection (a) does not apply in the case of any sales tax collected or paid by a remote seller prior to June 21, 2018.

SEC. 3. DEFINITIONS.

In this Act:

(1) PHYSICAL PRESENCE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘‘physical presence’’ means, with respect to a person, that a person's business activities in the State must include at least one of the following during such person's taxable year:

(i) Being an individual physically in the State, or assigning one or more employees to be in the State.

(ii) Using the services of an agent (excluding an employee) to establish or maintain a market in the State, if such agent does not perform services in the State for any other person during such taxable year.

(iii) The leasing or owning of tangible personal property (other than software, digital or alphanumeric data, or tangible personal property temporarily stored by an unrelated person providing fulfillment services) or of real property in the State.

(B) EXCEPTION.—A person does not have physical presence in a State if the person's physical presence in the State under subparagraph (A) was for less than 15 days in a taxable year (or a greater number of days if provided by State law), or if the person's physical presence in the State was solely for the purpose of conducting limited or transient business activity.

(2) REMOTE SELLER.—The term ''remote seller'' means a person without a physical presence in a State who makes a sale into the State.

(3) SALES TAX COLLECTION DUTY.—The term ''sales tax collection duty'' means—

(A) an obligation imposed on a person, including a person other than the actual seller, to—

(i) pay or collect a sales, use, or similar tax upon the sale of a good or service; or

(ii) report any information with respect to such sale of a good or service; or

(B) the assessment of a sales, use or similar tax on a person.

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