

long as it's a fair fight. Also, the bill is not asking for a new tax; it's asking that the existing tax is applied fairly and uniformly and doesn't put the burden on the consumer to reimburse the state. That's not too much to ask.

[From the Northwest Herald, May 2, 2013]  
WHAT'S FAIR FOR BUSINESS  
(Editorial Board)

The scenario described by Play It Again Sports' owner Bob Ruer happens all too often in local businesses.

A customer comes into his Crystal Lake store, looks around, maybe tries out the wares, and then heads home to buy the same product online. Why? Because Internet retailers aren't required to collect sales tax at the buyer's local rate.

U.S. Sen. Dick Durbin, D-Ill., is pushing to end that with the Marketplace Fairness Act. We support Durbin's effort and encourage lawmakers in Washington to pass the act.

The legislation would put the initial costs on the states to provide retailers with the appropriate software to collect taxes. Internet retailers with less than \$1 million in annual sales would be granted an exemption.

Opponents of the bill, including large online retailers such as eBay and Overstock.com, have taken issue with the \$1 million exemption and suggested it should be bumped higher.

The bill has the support of big-box stores such as Walmart, Best Buy and Target and online giant Amazon.

Beyond the unlevel playing field for businesses, the situation causes the state of Illinois to lose out on a great deal of revenue.

Now, Illinois taxpayers are on an honor system when it comes to paying state sales tax for online purchases. Residents are supposed to note the sales tax they owe from Internet purchases on their state income-tax return. Durbin estimates that only 5 percent of Illinois taxpayers do so. Gov. Pat Quinn said the state stands to collect an additional \$200 million annually in sales-tax revenue if the bill passed.

This is not a tax increase. It's not a new tax. These sales taxes and tax rates are already in place.

This is a needed law to level the playing field for local businesses who've been good corporate citizens, hired local employees and paid property taxes that support local schools and other taxing districts.

Mr. DURBIN. Mr. President, what is happening with Internet sales? They are growing dramatically. Listen to these numbers. In 2012 online sales accounted for \$225 billion in sales in America. In the next 5 years it will double to \$435 billion. It is an endeavor that has become part of our lives. What we are asking in this bill is that those selling on the Internet be treated the same as those selling on the corners of our streets, to make sure the brick-and-mortar businesses have a level playing field. That is all we are asking.

This bill contains no new Federal tax, no new State and local tax. What it does is collect taxes already owed. It simplifies the system by saying there will only be one taxing entity that identifies the taxes to be charged in every single State, one audit from each State. It tries to provide for the retailers the basic software they need to get the job done.

This is a fascinating bill. For those who follow the Senate, it is a rare op-

portunity for us to have Republicans and Democrats together on the floor supporting a bill that has the endorsement of business and labor and local officials all across the United States. It is clearly an idea whose time has come. I hope we can pass it with a good strong vote and encourage our friends in the House to take it up quickly.

I close by thanking my colleague from Wyoming. He has been a great partner in this effort. He came to it before I did. I replaced Senator Dorgan after Senator Dorgan's retirement and tried to keep this moving forward. Today is our day for a vote. I thank him for all of his hard work on his side of the aisle.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I thank all of the people who have participated, particularly Senator DURBIN who has helped to coalesce things, Senator ALEXANDER who came up with the idea for having a shorter bill, only 11 pages—never see it in the Senate—written in plain English, and it is States rights.

This does not cause the Federal Government to do anything. What it allows is for the States to do what they have already passed laws on. I can see this from the standpoint of an individual. I know in Wyoming if you buy something on the Internet and you are not charged a tax, you are supposed to fill out a form and send it in. That is a difficult thing to do, hard to even keep track of. This will eliminate that problem of individuals wanting to pay the tax but not knowing exactly how to do it.

I know it from the standpoint of a small businessman, if they had the experience of somebody coming in, trying on the goods, finding out exactly what they want, the color, the style, the feel, everything, and then ordering it on the Internet. The even more ironic part of it is when they have a problem with it, they bring it back to the local retailer to fix it.

I have seen it from the standpoint of a mayor. I know in Wyoming at least 30 percent and up to 70 percent of the revenue of the municipalities comes from the sales tax. That is on a declining basis at the moment. That is not only what they run the city's streets and snow removal on; a lot of the police, the fire protection, even education is affected by the sales tax.

I have seen it from the standpoint of a legislator as well. I know when we passed those taxes, we did not say: Okay, we want to discriminate against the local business that pays the property tax, hires people locally, and participates in all the community stuff. If you are out of State, we are going to let you off the hook.

No legislator ever passed a bill like that. This is one that corrects all of those things and brings fairness to the marketplace. I think it will make a significant difference, particularly in

communities where they will still be able to help out some of the charitable organizations and activities that would have to go by the wayside if this bill were not to pass.

I look forward to working with people on the House side. I wish to thank Senator DURBIN, Senator ALEXANDER, and Senator HEITKAMP, particularly, for all of their efforts on this bill. I thank Senator HEITKAMP for her persistence over 22 years and knowing the intricacies of how it works on the Canadian border, as well as having been involved in the original case where the Supreme Court challenged us to fix this problem.

Today we have a chance to fix this problem. I ask my colleagues to vote for the bill.

I yield the floor.

## CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

## MARKETPLACE FAIRNESS ACT OF 2013

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 743, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 743) to restore States' sovereign rights to enforce State and local sales and use tax laws, and for other purposes.

Pending:

Reid (for Enzi) amendment No. 741, of a perfecting nature.

Durbin amendment No. 745 (to amendment No. 741), to change the enactment date.

The PRESIDING OFFICER. Under the previous order, all postcloture time is considered expired.

Under the previous order, amendment No. 745 is withdrawn.

The question is on agreeing to amendment No. 741, offered by the Senator from Nevada, Mr. REID.

Mr. ALEXANDER. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. LAUTENBERG) and the Senator from Alaska (Mr. BEGICH) are necessarily absent.

Mr. THUNE. The following Senators are necessarily absent: the Senator from North Carolina (Mr. BURR), the Senator from Texas (Mr. CORNYN), the Senator from South Carolina (Mr. GRAHAM), and the Senator from Kansas (Mr. MORAN).

Further, if present and voting, the Senator from Texas (Mr. CORNYN) would have voted "nay."

The PRESIDING OFFICER (Mr. DONNELLY). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 70, nays 24, as follows:

[Rollcall Vote No. 112 Leg.]

YEAS—70

Alexander	Fischer	Murphy
Baldwin	Franken	Murray
Bennet	Gillibrand	Nelson
Blumenthal	Grassley	Portman
Blunt	Hagan	Pryor
Boozman	Harkin	Reed
Boxer	Heinrich	Reid
Brown	Heitkamp	Risch
Cantwell	Hirono	Rockefeller
Cardin	Hoeven	Sanders
Carper	Isakson	Schatz
Casey	Johanns	Schumer
Chambliss	Johnson (SD)	Sessions
Coats	Kaine	Shelby
Cochran	King	Stabenow
Collins	Klobuchar	Thune
Coons	Landrieu	Udall (CO)
Corker	Leahy	Udall (NM)
Cowan	Levin	Warner
Crapo	Manchin	Warren
Donnelly	McCain	Whitehouse
Durbin	McCasikill	Wicker
Enzi	Menendez	
Feinstein	Mikulski	

NAYS—24

Ayotte	Inhofe	Roberts
Barrasso	Johnson (WI)	Rubio
Baucus	Kirk	Scott
Coburn	Lee	Shaheen
Cruz	McConnell	Tester
Flake	Merkley	Toomey
Hatch	Murkowski	Vitter
Heller	Paul	Wyden

NOT VOTING—6

Begich	Cornyn	Lautenberg
Burr	Graham	Moran

The amendment (No. 741) was agreed to.

UNANIMOUS CONSENT REQUEST—H. CON. RES. 25

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, this afternoon I offered a consent agreement dealing with the budget. I withdrew that because we did not have anyone here to object, and I had an inkling there would be an objection if a Republican were here.

We have been asked to move with regular order. We have done that. We have done our very best to do that. People wanted amendments. We have done our best to have bills with amendments. We have been asked, let's do as much work as we can with committees, and we have done that. We have bills reported out from the committee. Those are the bills we have handled here, with rare exception.

Now we have had our Republican friends saying for months and months, let's do things with regular order. We know how hard it was to get a budget passed. We have had over 100 amendments on which we actually voted. We were here until 5 o'clock in the morning. We got a budget, even though—you know, we have been through this before. We do not need to go into more detail. We had a law signed by the President of the United States that gave us our budget allocations for several years. But we decided to do a resolution. It didn't have to be signed by the President. I am glad we did. It was hard. Senators MURRAY and SESSIONS did a good job allowing us to move forward on that, so now it is time to go forward. We have a budget resolution

we passed in the Senate. We want to meet with the House and work out our differences. That is what we have done here for two centuries. We should do it on this bill.

I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 33, H. Con. Res. 25; that the amendment which is at the desk, the text of S. Con. Res. 8, the budget resolution passed by the Senate, be inserted in lieu thereof; that H. Con. Res. 25, as amended, be agreed to, with the motions to reconsider being considered made and laid on the table; that the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses, and the Chair be authorized to appoint conferees on the part of the Senate, all without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

The Senator from Texas.

Mr. CRUZ. Mr. President, reserving the right to object, one of my concerns is that this conference report could be used to pass a reconciliation bill that would increase the debt ceiling without sufficient input from the minority party and without addressing the fundamental structural spending problems we have in the Federal Government that are leading to our unsustainable debt. I believe this concern is well founded in history in that reconciliation bills have been used to increase the debt ceiling at least three times—in 1986, 1990, and in 1993. So for that reason, reserving the right to object, I ask consent that the leader modify his request so that it not be in order for the Senate to consider a conference report that includes tax increases or reconciliation instructions to increase taxes or to raise the debt limit.

The PRESIDING OFFICER. Is there objection to the modified request?

Mr. REID. I would make a comment before making a decision on that.

The PRESIDING OFFICER. The majority leader.

Mr. REID. The Senate considered the budget—and that is an understatement. We voted on more than 100 amendments, as I mentioned a few minutes ago. It was hard. The votes were hard. The Senate passed its budget. It should now go to conference, that which the Senate passed. It is our budget. The Senator from Texas was on the losing side. He had his view and it lost, but now he wants us to agree by consent to adopt the losing side's view or else he is not going to allow us to go to conference.

For more than two centuries, I repeat, the two bodies have been able to go work out their differences. The Senate passes something. The House passes something. You talk about regular order, that is it. We are able at that time to sit down and talk about the differences. The debt ceiling—he wants to talk about that. He wants to talk about taxes. We are happy to do that, but let's do it in the context of regular

order. That is what we should be doing around here.

My friend from Texas is like the schoolyard bully. He pushes everybody around and is losing, and instead of playing the game according to the rules, he not only takes the ball home with him but changes the rules. That way, no one wins—except the bully who tries to indicate to people that he has won. We are asking the Republicans to play by the rules and let us go to conference.

I don't think it takes a lot of wizardry to figure out that we know how the American people feel about what they want done in this country. They want us to get on a pathway of growth and economic vitality. It has been hindered.

The Republicans have things they want to do. We have things we want to do. Why can't we sit down as reasonable men and women and work out our differences? That is what a conference is all about.

I object to what my friend suggests. It is actually fairly ridiculous, if you want the truth: Before we go to conference, determine what you are going to do or not do in the conference. That is not how we do things around here.

The PRESIDING OFFICER. Objection is heard.

Is there objection to the original request? The Senator from Texas.

Mr. CRUZ. Mr. President, I was not aware we were at a schoolyard.

Mr. REID. Mr. President, is there an objection or no objection? Let's hear about it. We have had enough.

Mrs. BOXER. Regular order.

Mr. CRUZ. Reserving the right to object.

Mr. REID. Mr. President, there is no such thing.

The PRESIDING OFFICER. Is there objection?

Mr. CRUZ. Yes. I object.

The PRESIDING OFFICER. The clerk will read the bill for a third time.

The bill was ordered to be engrossed for a third reading and was read the third time.

IMPLEMENTATION

Ms. COLLINS. Mr. President, I rise to speak on the Marketplace Fairness Act. I applaud Senator ENZI for his many years of work on this legislation, of which I am a cosponsor. This bill rectifies a fundamental unfairness in our current system. Right now, out-of-State Internet sellers, so-called remote sellers, have an advantage over Main Street businesses. Main Street businesses have to collect sales taxes on every transaction. Because remote sellers don't have to charge this tax, they enjoy a price advantage over the mom-and-pop businesses that form the backbone of our communities. This bill would allow States to collect sales taxes on remote sales, thereby leveling the playing field with Main Street businesses.

It is important to recognize that this bill does not authorize any new or higher tax, nor does it impose an Internet tax. It simply helps ensure that taxes already owed are paid.

I would like to engage Senator ENZI in a colloquy regarding the manner in which the bill is to be implemented. As introduced, the bill would require some businesses to start collecting sales taxes in as little as 90 days. I hope that my colleague from Wyoming would agree that is too short a time period, and I appreciate the fact that he has offered an amendment that includes a 6-month delay. I believe, however, that a delay of at least 1 year is needed to allow businesses time to implement the new systems and software necessary for compliance. I do appreciate that the Senator from Wyoming exempted small businesses with sales under \$1 million, as I had urged.

Nevertheless, from a covered seller's perspective, complying with the Marketplace Fairness Act requires more than just installing new software. Multichannel retailers—those who sell online, through catalogs, over the phones, and in stores—have their own unique order processing systems. Tax collection software must be programmed to link to each component of their order processing systems. This step alone could involve considerable programming time for each online retailer.

Each retailer's tax department, or outside consultants, will be required to research and develop a comprehensive understanding of the unique sales and use tax policies in every State where their online customers reside to make sure the programming for their tax collection software is correct. That involves answering a number of questions for each State.

The differing treatment of athletic apparel provides a great example of the complexity involved. In some States, clothing and athletic footwear are exempt from tax. In others, they are exempt only up to a certain price level. Yet other States make a distinction between clothing and footwear used for athletic purposes—which they tax—and clothing and footwear used for general purposes—which they do not tax. In those States, systems must be programmed to correctly treat articles that can be viewed as either athletic apparel or general clothing, depending on the user. Board shorts, sneakers, and windbreakers are just a few examples of common items that give rise to substantial complexity.

Retailers will need to invest additional hours in tax analyst and programmer time to ensure their systems are able to address these issues seamlessly. Even with a 1-year delay, retailers will have to begin early, and move quickly, to implement the Marketplace Fairness Act.

Mr. ENZI. I thank my friend from Maine, and wholeheartedly agree with her conclusion that we must ensure that the Marketplace Fairness Act is correctly implemented. I have spent

many years working on this legislation and strongly believe that leveling the playing field for Main Street businesses is the right thing to do. We must implement the solution to that problem in a reasonable manner, and I agree with the Senator that the 1-year delay she proposes is appropriate to do this.

Ms. COLLINS. I would also like to note that the collection of sales taxes online will be new not only for many retailers, but also for consumers who are used to the current system. It is important to implement the new law correctly, from the outset, for these retailers and their customers.

In this regard, I believe that it is also important to make sure that the implementation of the new law does not disrupt the busy holiday season. For this reason, I believe that States should be prohibited from exercising their new authority under the Marketplace Fairness Act during the last quarter of the first year after enactment.

Mr. ENZI. I think both the proposals made by my friend from Maine are commonsense items that will improve the Marketplace Fairness Act. As this bill moves through the legislative process, I suggest my colleagues on both sides of the aisle—and in both Chambers—adopt a 1-year delay in implementation and prohibit States from beginning to exercise their new authority to require the collection of sales taxes during the holiday season.

The PRESIDING OFFICER. Under the previous order, the question is on passage of S. 743, as amended.

Mr. REID. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Alaska (Mr. BEGICH) and the Senator from New Jersey (Mr. LAUTENBERG) are necessarily absent.

Mr. THUNE. The following Senators are necessarily absent: the Senator from Texas (Mr. CORNYN) and the Senator from Kansas (Mr. MORAN).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 69, nays 27, as follows:

[Rollcall Vote No. 113 Leg.]

YEAS—69

Alexander	Cochran	Heinrich
Baldwin	Collins	Heitkamp
Bennet	Coons	Hirono
Blumenthal	Corker	Hoehn
Blunt	Cowan	Isakson
Boozman	Donnelly	Johanns
Boxer	Durbin	Johnson (SD)
Brown	Enzi	Kaine
Burr	Feinstein	King
Cantwell	Fischer	Klobuchar
Cardin	Franken	Landrieu
Carper	Gillibrand	Leahy
Casey	Graham	Levin
Chambliss	Hagan	Manchin
Coats	Harkin	McCain

McCaskill	Reed	Stabenow
Menendez	Reid	Thune
Mikulski	Rockefeller	Udall (CO)
Murphy	Sanders	Udall (NM)
Murray	Schatz	Warner
Nelson	Schumer	Warren
Portman	Sessions	Whitehouse
Pryor	Shelby	Wicker

NAYS—27

Ayotte	Heller	Risch
Barrasso	Inhofe	Roberts
Baucus	Johnson (WI)	Rubio
Coburn	Kirk	Scott
Crapo	Lee	Shaheen
Cruz	McConnell	Tester
Flake	Merkley	Toomey
Grassley	Murkowski	Vitter
Hatch	Paul	Wyden

NOT VOTING—4

Begich	Lautenberg
Cornyn	Moran

The bill (S. 743), as amended, was passed, as follows:

S. 743

*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 “Marketplace Fairness Act of 2013”.

#### SEC. 2. 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). A State may exercise authority under this Act beginning 180 days after the State publishes notice of the State's intent to exercise the authority under this Act, but no earlier than the first day of the calendar quarter that is at least 180 days after the date of the enactment of this Act.

(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 to that State, but only if the State adopts and implements the minimum simplification requirements in paragraph (2). Such authority shall commence beginning no earlier than the first day of the calendar quarter that is at least 6 months after the date that the State—

(1) enacts legislation to exercise the authority granted by this Act—

(A) specifying the tax or taxes to which such authority and the minimum simplification requirements in paragraph (2) shall apply; and

(B) specifying the products and services otherwise subject to the tax or taxes identified by the State under subparagraph (A) to which the authority of this Act shall not apply; and

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

(A) Provide—

(i) a single entity within the State responsible for all State and local sales and use tax administration, return processing, and audits for remote sales sourced to the State;

(ii) a single audit of a remote seller for all State and local taxing jurisdictions within that State; and

(iii) a single sales and use tax return to be used by remote sellers to be filed with the single entity responsible for tax administration.

A State may not require a remote seller to file sales and use tax returns any more frequently than returns are required for non-remote sellers or impose requirements on remote sellers that the State does not impose on nonremote sellers with respect to the collection of sales and use taxes under this Act. No local jurisdiction may require a remote seller to submit a sales and use tax return or to collect sales and use taxes other than as provided by this paragraph.

(B) Provide a uniform sales and use tax base among the State and the local taxing jurisdictions within the State pursuant to paragraph (1).

(C) Source all remote sales in compliance with the sourcing definition set forth in section 4(7).

(D) Provide—

(i) information indicating the taxability of products and services along with any product and service exemptions from sales and use tax in the State and a rates and boundary database;

(ii) software free of charge for remote sellers that calculates sales and use taxes due on each transaction at the time the transaction is completed, that files sales and use tax returns, and that is updated to reflect rate changes as described in subparagraph (H); and

(iii) certification procedures for persons to be approved as certified software providers. For purposes of clause (iii), the software provided by certified software providers shall be capable of calculating and filing sales and use taxes in all States qualified under this Act.

(E) Relieve remote sellers from liability to the State or locality for the incorrect collection, remittance, or noncollection of sales and use taxes, including any penalties or interest, if the liability is the result of an error or omission made by a certified software provider.

(F) Relieve certified software providers from liability to the State or locality for the incorrect collection, remittance, or noncollection of sales and use taxes, including any penalties or interest, if the liability is the result of misleading or inaccurate information provided by a remote seller.

(G) Relieve remote sellers and certified software providers from liability to the State or locality for incorrect collection, remittance, or noncollection of sales and use taxes, including any penalties or interest, if the liability is the result of incorrect information or software provided by the State.

(H) Provide remote sellers and certified software providers with 90 days notice of a rate change by the State or any locality in the State and update the information described in subparagraph (D)(i) accordingly and relieve any remote seller or certified software provider from liability for collecting sales and use taxes at the immediately preceding effective rate during the 90-day notice period if the required notice is not provided.

(c) **SMALL SELLER EXCEPTION.**—A State is authorized to require a remote seller to collect sales and use taxes under this Act only if the remote seller has gross annual receipts in total remote sales in the United States in the preceding calendar year exceeding \$1,000,000. For purposes of determining whether the threshold in this section is met, the gross annual receipts from remote sales of 2 or more persons shall be aggregated if—

(1) such persons are related to the remote seller within the meaning of subsections (b) and (c) of section 267 or section 707(b)(1) of the Internal Revenue Code of 1986; or

(2) such persons have 1 or more ownership relationships and such relationships were designed with a principal purpose of avoiding the application of these rules.

### SEC. 3. LIMITATIONS.

(a) **IN GENERAL.**—Nothing in this Act shall be construed as—

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

(2) affecting the application of such taxes; or

(3) enlarging or reducing State authority to impose such taxes.

(b) **NO EFFECT ON NEXUS.**—This Act shall not be construed to create any nexus or alter the standards for determining nexus between a person and a State or locality.

(c) **NO EFFECT ON SELLER CHOICE.**—Nothing in this Act shall be construed to deny the ability of a remote seller to deploy and utilize a certified software provider of the seller's choice.

(d) **LICENSING AND REGULATORY REQUIREMENTS.**—Nothing in this Act shall be construed as permitting or prohibiting a State from—

(1) licensing or regulating any person;

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

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

(4) exercising authority over matters of interstate commerce.

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

(f) **NO EFFECT ON INTRASTATE SALES.**—The provisions of this Act shall apply only to remote sales and shall not apply to intrastate sales or intrastate sourcing rules. States granted authority under section 2(a) shall comply with all intrastate provisions of the Streamlined Sales and Use Tax Agreement.

(g) **NO EFFECT ON MOBILE TELECOMMUNICATIONS SOURCING ACT.**—Nothing in this Act shall be construed as altering in any manner or preempting the Mobile Telecommunications Sourcing Act (4 U.S.C. 116-126).

### SEC. 4. DEFINITIONS AND SPECIAL RULES.

In this Act:

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

(A) provides software to remote sellers to facilitate State and local sales and use tax compliance pursuant to section 2(b)(2)(D)(ii); and

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

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

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

(A) means a Member State as that term is used under the Streamlined Sales and Use Tax Agreement as in effect on the date of the enactment of this Act; and

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

(4) **PERSON.**—The term “person” means an individual, trust, estate, fiduciary, partnership, corporation, limited liability company, or other legal entity, and a State or local government.

(5) **REMOTE SALE.**—The term “remote sale” means a sale into a State, as determined

under the sourcing rules under paragraph (7), in which the seller would not legally be required to pay, collect, or remit State or local sales and use taxes unless provided by this Act.

(6) **REMOTE SELLER.**—The term “remote seller” means a person that makes remote sales in the State.

(7) **SOURCED.**—For purposes of a State granted authority under section 2(b), the location to which a remote sale is sourced refers to the location where the product or service sold is received by the purchaser, based on the location indicated by instructions for delivery that the purchaser furnishes to the seller. When no delivery location is specified, the remote sale is sourced to the customer's address that is either known to the seller or, if not known, obtained by the seller during the consummation of the transaction, including the address of the customer's payment instrument if no other address is available. If an address is unknown and a billing address cannot be obtained, the remote sale is sourced to the address of the seller from which the remote sale was made. A State granted authority under section 2(a) shall comply with the sourcing provisions of the Streamlined Sales and Use Tax Agreement.

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

(9) **STREAMLINED SALES AND USE TAX AGREEMENT.**—The term “Streamlined Sales and Use Tax Agreement” means the multi-State agreement with that title adopted on November 12, 2002, as in effect on the date of the enactment of this Act and as further amended from time to time.

### SEC. 5. SEVERABILITY.

If any provision of this Act or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act and the application of the provisions of such to any person or circumstance shall not be affected thereby.

### SEC. 6. PREEMPTION.

Except as otherwise provided in this Act, this Act shall not be construed to preempt or limit any power exercised or to be exercised by a State or local jurisdiction under the law of such State or local jurisdiction or under any other Federal law.

The PRESIDING OFFICER. The majority leader.

### MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business, with Senators allowed to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

### RECOGNIZING SERVICE OF CHARLES HOUY

Mr. REID. President, today I rise to recognize one of Congress' longest-serving and loyal staffers, Charlie Houy. After three decades of service under Senators Ted Stevens, John Stennis