

113TH CONGRESS
1ST SESSION

S. _____

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

Mr. ENZI (for himself, Mr. DURBIN, Mr. ALEXANDER, Mr. JOHNSON of South Dakota, Mr. BOOZMAN, Mr. REED, Mr. BLUNT, Mr. WHITEHOUSE, Mr. CORKER, Mr. PRYOR, Mr. ROCKEFELLER, Ms. KLOBUCHAR, Mr. FRANKEN, and Ms. HEITKAMP) introduced the following bill; which was read twice and referred to the Committee on _____

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 Fairness
5 Act of 2013”.

6 **SEC. 2. AUTHORIZATION TO REQUIRE COLLECTION OF**
7 **SALES AND USE TAXES.**

8 (a) STREAMLINED SALES AND USE TAX AGREE-
9 MENT.—Each Member State under the Streamlined Sales

1 and Use Tax Agreement is authorized to require all sellers
2 not qualifying for the small seller exception described in
3 subsection (c) to collect and remit sales and use taxes with
4 respect to remote sales sourced to that Member State pur-
5 suant to the provisions of the Streamlined Sales and Use
6 Tax Agreement, but only if the Streamlined Sales and Use
7 Tax Agreement includes the minimum simplification re-
8 quirements in subsection (b)(2). A State may exercise au-
9 thority under this Act beginning 90 days after the State
10 publishes notice of the State's intent to exercise the au-
11 thority under this Act, but no earlier than the first day
12 of the calendar quarter that is at least 90 days after the
13 date of the enactment of this Act.

14 (b) ALTERNATIVE.—A State that is not a Member
15 State under the Streamlined Sales and Use Tax Agree-
16 ment is authorized notwithstanding any other provision of
17 law to require all sellers not qualifying for the small seller
18 exception described in subsection (c) to collect and remit
19 sales and use taxes with respect to remote sales sourced
20 to that State, but only if the State adopts and implements
21 the minimum simplification requirements in paragraph
22 (2). Such authority shall commence beginning no earlier
23 than the first day of the calendar quarter that is at least
24 6 months after the date that the State—

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

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

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

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

12 (A) Provide—

13 (i) a single entity within the State re-
14 sponsible for all State and local sales and
15 use tax administration, return processing,
16 and audits for remote sales sourced to the
17 State;

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

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

1 A State may not require a remote seller to file
2 sales and use tax returns any more frequently
3 than returns are required for nonremote sellers.
4 No local jurisdiction may require a remote sell-
5 er to submit a sales and use tax return or to
6 collect sales and use taxes other than as pro-
7 vided by this paragraph.

8 (B) Provide a uniform sales and use tax
9 base among the State and the local taxing juris-
10 dictions within the State pursuant to paragraph
11 (1).

12 (C) Source all interstate sales in compli-
13 ance with the sourcing definition set forth in
14 section 4(7).

15 (D) Provide—

16 (i) information indicating the tax-
17 ability of products and services along with
18 any product and service exemptions from
19 sales and use tax in the State and a rates
20 and boundary database;

21 (ii) software free of charge for remote
22 sellers that calculates sales and use taxes
23 due on each transaction at the time the
24 transaction is completed, that files sales
25 and use tax returns, and that is updated to

1 reflect rate changes as described in sub-
2 paragraph (H); and

3 (iii) certification procedures for per-
4 sons to be approved as certified software
5 providers.

6 For purposes of clause (iii), the software pro-
7 vided by certified software providers shall be ca-
8 pable of calculating and filing sales and use
9 taxes in all States qualified under this Act.

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

16 (F) Relieve certified software providers
17 from liability to the State or locality for the in-
18 correct collection, remittance, or noncollection
19 of sales and use taxes, including any penalties
20 or interest, if the liability is the result of mis-
21 leading or inaccurate information provided by a
22 remote seller.

23 (G) Relieve remote sellers and certified
24 software providers from liability to the State or
25 locality for incorrect collection, remittance, or

1 noncollection of sales and use taxes, including
2 any penalties or interest, if the liability is the
3 result of incorrect information or software pro-
4 vided by the State.

5 (H) Provide remote sellers and certified
6 software providers with 90 days notice of a rate
7 change by the State or any locality in the State
8 and update the information described in sub-
9 paragraph (D)(i) accordingly and relieve any re-
10 mote seller or certified software provider from
11 liability for collecting sales and use taxes at the
12 immediately preceding effective rate during the
13 90-day notice period if the required notice is
14 not provided.

15 (c) SMALL SELLER EXCEPTION.—A State is author-
16 ized to require a remote seller to collect sales and use taxes
17 under this Act only if the remote seller has gross annual
18 receipts in total remote sales in the United States in the
19 preceding calendar year exceeding \$1,000,000. For pur-
20 poses of determining whether the threshold in this sub-
21 section is met—

22 (1) the sales of all persons related within the
23 meaning of subsections (b) and (c) of section 267 or
24 section 707(b)(1) of the Internal Revenue Code of
25 1986 shall be aggregated; or

1 (2) persons with 1 or more ownership relation-
2 ships shall also be aggregated if such relationships
3 were designed with a principal purpose of avoiding
4 the application of these rules.

5 **SEC. 3. LIMITATIONS.**

6 (a) **IN GENERAL.**—Nothing in this Act shall be con-
7 strued as—

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

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

12 (3) enlarging or reducing State authority to im-
13 pose such taxes.

14 (b) **NO EFFECT ON NEXUS.**—This Act shall not be
15 construed to create any nexus between a person and a
16 State or locality.

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

20 (1) licensing or regulating any person;

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

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

1 (4) exercising authority over matters of inter-
2 state commerce.

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

7 (e) **NO EFFECT ON INTRASTATE SALES.**—The provi-
8 sions of this Act shall apply only to remote sales and shall
9 not apply to intrastate sales or intrastate sourcing rules.
10 States granted authority under section 2(a) shall comply
11 with all intrastate provisions of the Streamlined Sales and
12 Use Tax Agreement.

13 (f) **NO EFFECT ON MOBILE TELECOMMUNICATIONS**
14 **SOURCING ACT.**—Nothing in this Act shall be construed
15 as altering in any manner or preempting the Mobile Tele-
16 communications Sourcing Act (4 U.S.C. 116–126).

17 **SEC. 4. DEFINITIONS AND SPECIAL RULES.**

18 In this Act:

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

22 (A) provides software to remote sellers to
23 facilitate State and local sales and use tax com-
24 pliance pursuant to section 2(b)(2)(D); and

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

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

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

8 (A) means a Member State as that term is
9 used under the Streamlined Sales and Use Tax
10 Agreement as in effect on the date of the enact-
11 ment of this Act; and

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

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

19 (5) REMOTE SALE.—The term “remote sale”
20 means a sale into a State in which the seller would
21 not legally be required to pay, collect, or remit State
22 or local sales and use taxes unless provided by this
23 Act.

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

4 (7) SOURCED.—For purposes of a State grant-
5 ed authority under section 2(b), the location to
6 which a remote sale is sourced refers to the location
7 where the item sold is received by the purchaser,
8 based on the location indicated by instructions for
9 delivery that the purchaser furnishes to the seller.
10 When no delivery location is specified, the remote
11 sale is sourced to the customer’s address that is ei-
12 ther known to the seller or, if not known, obtained
13 by the seller during the consummation of the trans-
14 action, including the address of the customer’s pay-
15 ment instrument if no other address is available. If
16 an address is unknown and a billing address cannot
17 be obtained, the remote sale is sourced to the ad-
18 dress of the seller from which the remote sale was
19 made. A State granted authority under section 2(a)
20 shall comply with the sourcing provisions of the
21 Streamlined Sales and Use Tax Agreement.

22 (8) STATE.—The term “State” means each of
23 the several States, the District of Columbia, the
24 Commonwealth of Puerto Rico, Guam, American
25 Samoa, the United States Virgin Islands, the Com-

1 monwealth of the Northern Mariana Islands, and
2 any other territory or possession of the United
3 States.

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

10 **SEC. 5. SEVERABILITY.**

11 If any provision of this Act or the application of such
12 provision to any person or circumstance is held to be un-
13 constitutional, the remainder of this Act and the applica-
14 tion of the provisions of such to any person or cir-
15 cumstance shall not be affected thereby.

16 **SEC. 6. PREEMPTION.**

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