

115TH 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, 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 2017".

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
10 and Use Tax Agreement is authorized to require all sellers

1 not qualifying for the small seller exception described in
2 subsection (c) to collect and remit sales and use taxes with
3 respect to remote sales sourced to that Member State pur-
4 suant to the provisions of the Streamlined Sales and Use
5 Tax Agreement, but only if any changes to the Stream-
6 lined Sales and Use Tax Agreement made after the date
7 of the enactment of this Act are not in conflict with the
8 minimum simplification requirements in subsection (b)(2).
9 Subject to section 3(h), a State may exercise authority
10 under this Act beginning 180 days after the State pub-
11 lishes notice of the State's intent to exercise the authority
12 under this Act, but no earlier than the first day of the
13 calendar quarter that is at least 180 days after the date
14 of the enactment of this Act.

15 (b) ALTERNATIVE.—A State that is not a Member
16 State under the Streamlined Sales and Use Tax Agree-
17 ment is authorized notwithstanding any other provision of
18 law to require all sellers not qualifying for the small seller
19 exception described in subsection (c) to collect and remit
20 sales and use taxes with respect to remote sales sourced
21 to that State, but only if the State adopts and implements
22 the minimum simplification requirements in paragraph
23 (2). Subject to section 3(h), such authority shall com-
24 mence beginning no earlier than the first day of the cal-

1 endar quarter that is at least 6 months after the date that
2 the State—

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

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

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

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

14 (A) Provide—

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

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

23 (iii) a single sales and use tax return
24 to be used by remote sellers to be filed

1 with the single entity responsible for tax
2 administration.

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

13 (B) Provide a uniform sales and use tax
14 base among the State and the local taxing juris-
15 dictions within the State pursuant to paragraph
16 (1).

17 (C) Source all remote sales in compliance
18 with the sourcing definition set forth in section
19 4(7).

20 (D) Provide—

21 (i) information indicating the tax-
22 ability of products and services along with
23 any product and service exemptions from
24 sales and use tax in the State and a rates
25 and boundary database;

1 (ii) software free of charge for remote
2 sellers that calculates sales and use taxes
3 due on each transaction at the time the
4 transaction is completed, that files sales
5 and use tax returns, and that is updated to
6 reflect rate changes as described in sub-
7 paragraph (H); and

8 (iii) certification procedures for per-
9 sons to be approved as certified software
10 providers.

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

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

21 (F) Relieve certified software providers
22 from liability to the State or locality for the in-
23 correct collection, remittance, or noncollection
24 of sales and use taxes, including any penalties
25 or interest, if the liability is the result of mis-

1 leading or inaccurate information provided by a
2 remote seller.

3 (G) Relieve remote sellers and certified
4 software providers from liability to the State or
5 locality for incorrect collection, remittance, or
6 noncollection of sales and use taxes, including
7 any penalties or interest, if the liability is the
8 result of incorrect information or software pro-
9 vided by the State.

10 (H) Provide remote sellers and certified
11 software providers with 90 days notice of a rate
12 change by the State or any locality in the State
13 and update the information described in sub-
14 paragraph (D)(i) accordingly and relieve any re-
15 mote seller or certified software provider from
16 liability for collecting sales and use taxes at the
17 immediately preceding effective rate during the
18 90-day notice period if the required notice is
19 not provided.

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

1 is met, the gross annual receipts from remote sales of 2
2 or more persons shall be aggregated if—

3 (1) such persons are related to the remote seller
4 within the meaning of subsections (b) and (c) of sec-
5 tion 267 or section 707(b)(1) of the Internal Rev-
6 enue Code of 1986; or

7 (2) such persons have 1 or more ownership re-
8 lationships and such relationships were designed
9 with a principal purpose of avoiding the application
10 of these rules.

11 **SEC. 3. LIMITATIONS.**

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

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

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

18 (3) enlarging or reducing State authority to im-
19 pose such taxes.

20 (b) **NO EFFECT ON NEXUS.**—This Act shall not be
21 construed to create any nexus or alter the standards for
22 determining nexus between a person and a State or local-
23 ity.

24 (c) **NO EFFECT ON SELLER CHOICE.**—Nothing in
25 this Act shall be construed to deny the ability of a remote

1 seller to deploy and utilize a certified software provider
2 of the seller's choice.

3 (d) LICENSING AND REGULATORY REQUIRE-
4 MENTS.—Nothing in this Act shall be construed as permit-
5 ting or prohibiting a State from—

6 (1) licensing or regulating any person;

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

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

11 (4) exercising authority over matters of inter-
12 state commerce.

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

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

23 (g) NO EFFECT ON MOBILE TELECOMMUNICATIONS
24 SOURCING ACT.—Nothing in this Act shall be construed

1 as altering in any manner or preempting the Mobile Tele-
2 communications Sourcing Act (4 U.S.C. 116–126).

3 (h) LIMITATION ON INITIAL COLLECTION OF SALES
4 AND USE TAXES FROM REMOTE SALES.—A State may
5 not begin to exercise the authority under this Act—

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

8 (2) during the period beginning October 1 and
9 ending on December 31 of the first calendar year
10 beginning after the date of the enactment of this
11 Act.

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

13 In this Act:

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

17 (A) provides software to remote sellers to
18 facilitate State and local sales and use tax com-
19 pliance pursuant to section 2(b)(2)(D)(ii); and

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

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

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

3 (A) means a Member State as that term is
4 used under the Streamlined Sales and Use Tax
5 Agreement as in effect on the date of the enact-
6 ment of this Act; and

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

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

14 (5) REMOTE SALE.—The term “remote sale”
15 means a sale into a State, as determined under the
16 sourcing rules under paragraph (7), in which the
17 seller would not legally be required to pay, collect,
18 or remit State or local sales and use taxes unless
19 provided by this Act.

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

23 (7) SOURCED.—For purposes of a State grant-
24 ed authority under section 2(b), the location to
25 which a remote sale is sourced refers to the location

1 where the product or service sold is received by the
2 purchaser, based on the location indicated by in-
3 structions for delivery that the purchaser furnishes
4 to the seller. When no delivery location is specified,
5 the remote sale is sourced to the customer's address
6 that is either known to the seller or, if not known,
7 obtained by the seller during the consummation of
8 the transaction, including the address of the cus-
9 tomer's payment instrument, if no other address is
10 available. If an address is unknown and a billing ad-
11 dress cannot be obtained, the remote sale is sourced
12 to the address of the seller from which the remote
13 sale was made. A State granted authority under sec-
14 tion 2(a) shall comply with the sourcing provisions
15 of the Streamlined Sales and Use Tax Agreement.

16 (8) STATE.—The term “State” means each of
17 the several States, the District of Columbia, the
18 Commonwealth of Puerto Rico, Guam, American
19 Samoa, the United States Virgin Islands, the Com-
20 monwealth of the Northern Mariana Islands, and
21 any other territory or possession of the United
22 States, and any tribal organization (as defined in
23 section 4 of the Indian Self-Determination and Edu-
24 cation Assistance Act (25 U.S.C. 450b)).

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

7 **SEC. 5. SEVERABILITY.**

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

13 **SEC. 6. PREEMPTION.**

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