

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To perfect the bill.

**IN THE SENATE OF THE UNITED STATES—113th Cong., 1st Sess.**

**S. 743**

To restore States' sovereign rights to enforce State and local sales and use tax laws, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by \_\_\_\_\_

Viz:

1       Beginning on page 2, line 10, strike “if the Stream-  
2 lined” and all that follows through page 11, line 5, and  
3 insert the following:  
4 if any changes to the Streamlined Sales and Use Tax  
5 Agreement made after the date of the enactment of this  
6 Act are not in conflict with the minimum simplification  
7 requirements in subsection (b)(2). A State may exercise  
8 authority under this Act beginning 180 days after the  
9 State publishes notice of the State’s intent to exercise the  
10 authority under this Act, but no earlier than the first day  
11 of the calendar quarter that is at least 180 days after the  
12 date of the enactment of this Act.

1           (b) ALTERNATIVE.—A State that is not a Member  
2 State under the Streamlined Sales and Use Tax Agree-  
3 ment is authorized notwithstanding any other provision of  
4 law to require all sellers not qualifying for the small seller  
5 exception described in subsection (c) to collect and remit  
6 sales and use taxes with respect to remote sales sourced  
7 to that State, but only if the State adopts and implements  
8 the minimum simplification requirements in paragraph  
9 (2). Such authority shall commence beginning no earlier  
10 than the first day of the calendar quarter that is at least  
11 6 months after the date that the State—

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

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

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

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

23           (A) Provide—

24           (i) a single entity within the State re-  
25 sponsible for all State and local sales and

1 use tax administration, return processing,  
2 and audits for remote sales sourced to the  
3 State;

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

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

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

21 (B) Provide a uniform sales and use tax  
22 base among the State and the local taxing juris-  
23 dictions within the State pursuant to paragraph  
24 (1).

1 (C) Source all remote sales in compliance  
2 with the sourcing definition set forth in section  
3 4(7).

4 (D) Provide—

5 (i) information indicating the tax-  
6 ability of products and services along with  
7 any product and service exemptions from  
8 sales and use tax in the State and a rates  
9 and boundary database;

10 (ii) software free of charge for remote  
11 sellers that calculates sales and use taxes  
12 due on each transaction at the time the  
13 transaction is completed, that files sales  
14 and use tax returns, and that is updated to  
15 reflect rate changes as described in sub-  
16 paragraph (H); and

17 (iii) certification procedures for per-  
18 sons to be approved as certified software  
19 providers.

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

24 (E) Relieve remote sellers from liability to  
25 the State or locality for the incorrect collection,

1 remittance, or noncollection of sales and use  
2 taxes, including any penalties or interest, if the  
3 liability is the result of an error or omission  
4 made by a certified software provider.

5 (F) Relieve certified software providers  
6 from liability to the State or locality for the in-  
7 correct collection, remittance, or noncollection  
8 of sales and use taxes, including any penalties  
9 or interest, if the liability is the result of mis-  
10 leading or inaccurate information provided by a  
11 remote seller.

12 (G) Relieve remote sellers and certified  
13 software providers from liability to the State or  
14 locality for incorrect collection, remittance, or  
15 noncollection of sales and use taxes, including  
16 any penalties or interest, if the liability is the  
17 result of incorrect information or software pro-  
18 vided by the State.

19 (H) Provide remote sellers and certified  
20 software providers with 90 days notice of a rate  
21 change by the State or any locality in the State  
22 and update the information described in sub-  
23 paragraph (D)(i) accordingly and relieve any re-  
24 mote seller or certified software provider from  
25 liability for collecting sales and use taxes at the

1 immediately preceding effective rate during the  
2 90-day notice period if the required notice is  
3 not provided.

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

12 (1) such persons are related to the remote seller  
13 within the meaning of subsections (b) and (c) of sec-  
14 tion 267 or section 707(b)(1) of the Internal Rev-  
15 enue Code of 1986; or

16 (2) such persons have 1 or more ownership re-  
17 lationships and such relationships were designed  
18 with a principal purpose of avoiding the application  
19 of these rules.

20 **SEC. 3. LIMITATIONS.**

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

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

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

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

4       (b) NO EFFECT ON NEXUS.—This Act shall not be  
5       construed to create any nexus or alter the standards for  
6       determining nexus between a person and a State or local-  
7       ity.

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

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

15           (1) licensing or regulating any person;

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

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

20           (4) exercising authority over matters of inter-  
21      state commerce.

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

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

7 (g) NO EFFECT ON MOBILE TELECOMMUNICATIONS  
8 SOURCING ACT.—Nothing in this Act shall be construed  
9 as altering in any manner or preempting the Mobile Tele-  
10 communications Sourcing Act (4 U.S.C.116–126).

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

12 In this Act:

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

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

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

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

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

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

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

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

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

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

21 (7) SOURCED.—For purposes of a State grant-  
22 ed authority under section 2(b), the location to  
23 which a remote sale is sourced refers to the location  
24 where the product or service sold is received by the  
25 purchaser, based on the location indicated by in-

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

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