

112TH CONGRESS
1ST SESSION

S. 1832

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

NOVEMBER 9, 2011

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

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”.

6 **SEC. 2. SENSE OF CONGRESS.**

7 It is the sense of Congress that States should have
8 the ability to enforce their existing sales and use tax laws
9 and to treat similar sales transactions equally, without re-

1 gard to the manner in which the sale is transacted, and
 2 the right to collect—or decide not to collect—taxes that
 3 are already owed under State law.

4 **SEC. 3. AUTHORIZATION TO REQUIRE COLLECTION OF**
 5 **SALES AND USE TAXES.**

6 (a) STREAMLINED SALES AND USE TAX AGREE-
 7 MENT.—Each Member State under the Streamlined Sales
 8 and Use Tax Agreement is authorized to require all sellers
 9 not qualifying for a small seller exception to collect and
 10 remit sales and use taxes with respect to remote sales
 11 sourced to that Member State pursuant to the provisions
 12 of the Streamlined Sales and Use Tax Agreement. Such
 13 authority shall commence beginning no earlier than the
 14 first day of the calendar quarter that is at least 90 days
 15 after the date of the enactment of this Act.

16 (b) ALTERNATIVE.—

17 (1) IN GENERAL.—A State that is not a Mem-
 18 ber State under the Streamlined Sales and Use Tax
 19 Agreement is authorized to require all sellers not
 20 qualifying for the small seller exception to collect
 21 and remit sales and use taxes with respect to remote
 22 sales sourced to that State, but only if the State
 23 adopts and implements minimum simplification re-
 24 quirements. Such authority shall commence begin-
 25 ning no earlier than the first day of the calendar

1 quarter that is at least 6 months after the date that
2 the State enacts legislation to implement each of the
3 following minimum simplification requirements:

4 (A) Provide—

5 (i) a single State-level agency to ad-
6 minister all sales and use tax laws, includ-
7 ing the collection and administration of all
8 State and applicable locality sales and use
9 taxes for all sales sourced to the State
10 made by remote sellers,

11 (ii) a single audit for all State and
12 local taxing jurisdictions within that State,
13 and

14 (iii) a single sales and use tax return
15 to be used by remote sellers and single and
16 consolidated providers and to be filed with
17 the State-level agency.

18 (B) Provide a uniform sales and use tax
19 base among the State and the local taxing juris-
20 dictions within the State.

21 (C) Require remote sellers and single and
22 consolidated providers to collect sales and use
23 taxes pursuant to the applicable destination
24 rate, which is the sum of the applicable State

1 rate and any applicable rate for the local juris-
2 diction into which the sale is made.

3 (D) Provide—

4 (i) adequate software and services to
5 remote sellers and single and consolidated
6 providers that identifies the applicable des-
7 tination rate, including the State and local
8 sales tax rate (if any), to be applied on
9 sales sourced to the State, and

10 (ii) certification procedures for both
11 single providers and consolidated providers
12 to make software and services available to
13 remote sellers, and hold such providers
14 harmless for any errors or omissions as a
15 result of relying on information provided
16 by the State.

17 (E) Hold remote sellers using a single or
18 consolidated provider harmless for any errors
19 and omissions by that provider.

20 (F) Relieve remote sellers from liability to
21 the State or locality for collection of the incor-
22 rect amount of sales or use tax, including any
23 penalties or interest, if collection of the im-
24 proper amount is the result of relying on infor-
25 mation provided by the State.

1 (G) Provide remote sellers and single and
 2 consolidated providers with 30 days notice of a
 3 rate change by any locality in the State.

4 (2) TREATMENT OF LOCAL RATE CHANGES.—

5 For purposes of this subsection, local rate changes
 6 may only be effective on the first day of a calendar
 7 quarter. Failure to provide notice under paragraph
 8 (1)(G) shall require the State and locality to hold
 9 the remote seller or single or consolidated provider
 10 harmless for collecting tax at the immediately pre-
 11 ceding effective rate during the 30-day period. Each
 12 State must provide updated rate information as part
 13 of the software and services required by paragraph
 14 (1)(D).

15 (c) SMALL SELLER EXCEPTION.—A State shall be
 16 authorized to require a remote seller, or a single or con-
 17 solidated provider acting on behalf of a remote seller, to
 18 collect sales or use tax under this Act if the remote seller
 19 has gross annual receipts in total remote sales in the
 20 United States in the preceding calendar year exceeding
 21 \$500,000. For purposes of determining whether the
 22 threshold in this subsection is met, the sales of all persons
 23 related within the meaning of subsections (b) and (c) of
 24 section 267 or section 707(b)(1) of the Internal Revenue
 25 Code of 1986 shall be aggregated.

1 **SEC. 4. TERMINATION OF AUTHORITY.**

2 The authority granted by this Act shall terminate on
3 the date that the highest court of competent jurisdiction
4 makes a final determination that the State no longer
5 meets the requirements of this Act, and the determination
6 of such court is no longer subject to appeal.

7 **SEC. 5. LIMITATIONS.**

8 (a) IN GENERAL.—Nothing in this Act shall be con-
9 strued as—

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

13 (2) affecting the application of such taxes, or

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

16 (b) NO EFFECT ON NEXUS.—No obligation imposed
17 by virtue of the authority granted by this Act shall be con-
18 sidered in determining whether a seller or any other per-
19 son has a nexus with any State for any tax purpose other
20 than sales and use taxes.

21 (c) LICENSING AND REGULATORY REQUIREMENTS.—
22 Other than the limitation set forth in subsection (a), and
23 section 3, nothing in this Act shall be construed as permit-
24 ting or prohibiting a State from—

25 (1) licensing or regulating any person,

1 (2) requiring any person to qualify to transact
2 intrastate business,

3 (3) subjecting any person to State taxes not re-
4 lated to the sale of goods or services, or

5 (4) exercising authority over matters of inter-
6 state commerce.

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

11 (e) INTRASTATE SALES.—The provisions of this Act
12 shall only apply to remote sales and shall not apply to
13 intrastate sales or intrastate sourcing rules. States grant-
14 ed authority under section 3(a) shall comply with the
15 intrastate provisions of the Streamlined Sales and Use
16 Tax Agreement.

17 **SEC. 6. DEFINITIONS AND SPECIAL RULES.**

18 In this Act:

19 (1) CONSOLIDATED PROVIDER.—The term
20 “consolidated provider” means any person certified
21 by a State who has the rights and responsibilities for
22 sales and use tax administration, collection, remit-
23 tance, and audits for transactions serviced or proc-
24 essed for the sale of goods or services made by re-
25 mote sellers on an aggregated basis.

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

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

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

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

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

17 (5) REMOTE SALE.—The term “remote sale”
 18 means a sale of goods or services attributed to a
 19 State with respect to which a seller does not have
 20 adequate physical presence to establish nexus under
 21 Quill Corp. v. North Dakota, 504 U.S. 298 (1992).

22 (6) REMOTE SELLER.—The term “remote sell-
 23 er” means a person that makes remote sales.

24 (7) SINGLE PROVIDER.—The term “single pro-
 25 vider” means any person certified by a State who

1 has the rights and responsibilities for sales and use
2 tax administration, collection, remittance, and audits
3 for transactions serviced or processed for the sale of
4 goods or services made by remote sellers.

5 (8) SOURCED.—For purposes of a State grant-
6 ed authority under section 3(b), the location to
7 which a remote sale is sourced refers to the location
8 where the item sold is received by the purchaser,
9 based on the location indicated by instructions for
10 delivery that the purchaser furnishes to the seller.
11 When no delivery location is specified, the remote
12 sale is sourced to the customer’s address that is ei-
13 ther known to the seller or, if not known, obtained
14 by the seller during the consummation of the trans-
15 action, including the address of the customer’s pay-
16 ment instrument if no other address is available. If
17 an address is unknown and a billing address cannot
18 be obtained, the remote sale is sourced to the ad-
19 dress of the seller from which the remote sale was
20 made. A State granted authority under section 3(a)
21 shall comply with the sourcing provisions of the
22 Streamlined Sales and Use Tax Agreement.

23 (9) STATE.—The term “State” means each of
24 the several States, the District of Columbia, the
25 Commonwealth of Puerto Rico, Guam, American

1 Samoa, the United States Virgin Islands, the Com-
2 monwealth of the Northern Mariana Islands, and
3 any other territory or possession of the United
4 States.

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

11 **SEC. 7. SEVERABILITY.**

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

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