

# Calendar No. 467

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2609

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

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## IN THE SENATE OF THE UNITED STATES

JULY 15, 2014

Mr. ENZI (for himself, Mr. DURBIN, Mr. ALEXANDER, Ms. HEITKAMP, Ms. COLLINS, Mr. PRYOR, Ms. LANDRIEU, Mr. BLUNT, Mr. REED, Mr. WHITEHOUSE, Mr. CARDIN, Mr. JOHNSON of South Dakota, Ms. KLOBUCHAR, and Mr. FRANKEN) introduced the following bill; which was read the first time

JULY 16, 2014

Read the second time and placed on the calendar

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## 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 and Inter-  
5 net Tax Fairness Act".

1                   **TITLE I—MARKETPLACE**  
2                                   **FAIRNESS**

3   **SEC. 101. AUTHORIZATION TO REQUIRE COLLECTION OF**  
4                                   **SALES AND USE TAXES.**

5           (a) STREAMLINED SALES AND USE TAX AGREE-  
6   MENT.—Each Member State under the Streamlined Sales  
7   and Use Tax Agreement is authorized to require all sellers  
8   not qualifying for the small seller exception described in  
9   subsection (c) to collect and remit sales and use taxes with  
10   respect to remote sales sourced to that Member State pur-  
11   suant to the provisions of the Streamlined Sales and Use  
12   Tax Agreement, but only if any changes to the Stream-  
13   lined Sales and Use Tax Agreement made after the date  
14   of the enactment of this Act are not in conflict with the  
15   minimum simplification requirements in subsection (b)(2).  
16   Subject to section 102(h), a State may exercise authority  
17   under this title beginning 180 days after the State pub-  
18   lishes notice of the State’s intent to exercise the authority  
19   under this title.

20           (b) ALTERNATIVE.—A State that is not a Member  
21   State under the Streamlined Sales and Use Tax Agree-  
22   ment is authorized notwithstanding any other provision of  
23   law to require all sellers not qualifying for the small seller  
24   exception described in subsection (c) to collect and remit  
25   sales and use taxes with respect to remote sales sourced

1 to that State, but only if the State adopts and implements  
2 the minimum simplification requirements in paragraph  
3 (2). Subject to section 102(h), such authority shall com-  
4 mence beginning no earlier than the first day of the cal-  
5 endar quarter that is at least 6 months after the date that  
6 the State—

7 (1) enacts legislation to exercise the authority  
8 granted by this title—

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

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

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

18 (A) Provide, with respect to all remote  
19 sales sourced to the State—

20 (i) a single entity within the State re-  
21 sponsible for all State and local sales and  
22 use tax administration, return processing,  
23 and audits;

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

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

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

18          (B) Provide a uniform sales and use tax  
19          base among the State and the local taxing juris-  
20          dictions within the State with respect to prod-  
21          ucts and services to which paragraph (1)(B)  
22          does not apply.

23          (C) Source all remote sales in compliance  
24          with the sourcing definition set forth in section  
25          103(7).

1 (D)(i) Make publicly available information  
2 indicating the taxability of products and serv-  
3 ices along with any product and service exemp-  
4 tions from sales and use tax in the State and  
5 a rates and boundary database.

6 (ii) Provide software free of charge for re-  
7 mote sellers that calculates sales and use taxes  
8 due on each transaction at the time the trans-  
9 action is completed, that files sales and use tax  
10 returns, and that is updated to reflect any rate  
11 changes and any changes to the products and  
12 services specified under paragraph (1)(B), as  
13 described in subparagraph (H); and

14 (iii) Establish certification procedures for  
15 persons to be approved as certified software  
16 providers, with any software provided by such  
17 providers to be capable of calculating and filing  
18 sales and use taxes in all States qualified under  
19 this title.

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

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

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

15 (H) Provide remote sellers and certified  
16 software providers with 90 days notice of any  
17 rate change or any change to the products and  
18 services specified under paragraph (1)(B) by  
19 the State or any locality in the State and up-  
20 date the information described in subparagraph  
21 (D)(i) accordingly and relieve any remote seller  
22 or certified software provider from liability for  
23 collecting sales and use taxes at the imme-  
24 diately preceding effective rate during the 90-

1           day notice period if the required notice is not  
2           provided.

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

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

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

19 **SEC. 102. LIMITATIONS.**

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

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

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

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

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

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

11          (d) LICENSING AND REGULATORY REQUIRE-  
12          MENTS.—Nothing in this title shall be construed as per-  
13          mitting or prohibiting a State from—

14                (1) licensing or regulating any person;

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

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

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

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



1 (f) NO EFFECT ON INTRASTATE SALES.—The provi-  
2 sions of this title shall apply only to remote sales and shall  
3 not apply to intrastate sales or intrastate sourcing rules.  
4 States granted authority under section 101(a) shall com-  
5 ply with all intrastate provisions of the Streamlined Sales  
6 and Use Tax Agreement.

7 (g) NO EFFECT ON MOBILE TELECOMMUNICATIONS  
8 SOURCING ACT.—Nothing in this title 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 (h) LIMITATION ON INITIAL COLLECTION OF SALES  
12 AND USE TAXES FROM REMOTE SALES.—A State may  
13 not begin to exercise the authority under this title—

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

16 (2) during the period beginning October 1 and  
17 ending on December 31 of the first calendar year  
18 beginning after the date of the enactment of this  
19 Act.

20 **SEC. 103. DEFINITIONS AND SPECIAL RULES.**

21 In this title:

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

1 (A) provides software to remote sellers to  
2 facilitate State and local sales and use tax com-  
3 pliance pursuant to section 101(b)(2)(D)(ii);  
4 and

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

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

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

12 (A) means a Member State as that term is  
13 used under the Streamlined Sales and Use Tax  
14 Agreement as in effect on the date of the enact-  
15 ment of this Act; and

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

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

23 (5) REMOTE SALE.—The term “remote sale”  
24 means a sale into a State, as determined under the  
25 sourcing rules under paragraph (7), in which the

1 seller would not legally be required to pay, collect,  
2 or remit State or local sales and use taxes unless  
3 provided by this title.

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

7 (7) SOURCED.—For purposes of a State grant-  
8 ed authority under section 101(b), the location to  
9 which a remote sale is sourced refers to the location  
10 where the product or service sold is received by the  
11 purchaser, based on the location indicated by in-  
12 structions for delivery that the purchaser furnishes  
13 to the seller. When no delivery location is specified,  
14 the remote sale is sourced to the customer’s address  
15 that is either known to the seller or, if not known,  
16 obtained by the seller during the consummation of  
17 the transaction, including the address of the cus-  
18 tomer’s payment instrument if no other address is  
19 available. If an address is unknown and a billing ad-  
20 dress cannot be obtained, the remote sale is sourced  
21 to the address of the seller from which the remote  
22 sale was made. A State granted authority under sec-  
23 tion 101(a) shall comply with the sourcing provisions  
24 of the Streamlined Sales and Use Tax Agreement.

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

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

16 **SEC. 104. SEVERABILITY.**

17           If any provision of this title or the application of such  
18           provision to any person or circumstance is held to be un-  
19           constitutional, the remainder of this title and the applica-  
20           tion of the provisions of such to any person or cir-  
21           cumstance shall not be affected thereby.

22 **SEC. 105. PREEMPTION.**

23           Except as otherwise provided in this title, this title  
24           shall not be construed to preempt or limit any power exer-  
25           cised or to be exercised by a State or local jurisdiction

1 under the law of such State or local jurisdiction or under  
2 any other Federal law.

3           **TITLE II—INTERNET TAX**  
4                   **FREEDOM ACT**

5 **SEC. 201. EXTENSION OF INTERNET TAX FREEDOM ACT.**

6           (a) IN GENERAL.—Section 1101(a) of the Internet  
7 Tax Freedom Act (47 U.S.C. 151 note) is amended by  
8 striking “November 1, 2014” and inserting “November 1,  
9 2024”.

10           (b) GRANDFATHERING OF STATES THAT TAX INTER-  
11 NET ACCESS.—Section 1104(a)(2)(A) of such Act is  
12 amended by striking “November 1, 2014” and inserting  
13 “November 1, 2024”.

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Read the second time and placed on the calendar