

115TH CONGRESS
1ST SESSION

H. R. 2193

To grant States authority to enforce State and local sales and use tax laws on remote transactions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2017

Mrs. NOEM (for herself, Mr. WOMACK, Mr. CHAFFETZ, Mr. STIVERS, Mr. BARLETTA, Mr. CONYERS, Ms. SPEIER, Ms. DELBENE, Mr. WELCH, and Mr. CICILLINE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To grant States authority to enforce State and local sales and use tax laws on remote transactions, 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 “Remote Transactions
5 Parity 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

1 and Use Tax Agreement is authorized notwithstanding
2 any other provision of law to require all remote sellers not
3 qualifying for the small remote seller exception described
4 in subsection (c) to collect and remit sales and use taxes
5 with respect to remote sales sourced to that Member State
6 pursuant to the provisions of the Streamlined Sales and
7 Use Tax Agreement, but only if any changes to the
8 Streamlined Sales and Use Tax Agreement made after the
9 date of enactment of this Act, are not in conflict with the
10 minimum simplification requirements in subsection (b)(2).
11 A State may exercise authority under this Act on the 1st
12 day of a month beginning 180 days after the State pub-
13 lishes notice of the State's intent to exercise the authority
14 under this Act, but no earlier than the date provided in
15 section 3(h).

16 (b) ALTERNATIVE.—A State that is not a Member
17 State under the Streamlined Sales and Use Tax Agree-
18 ment is authorized notwithstanding any other provision of
19 law to require all remote sellers not qualifying for the
20 small remote seller exception described in subsection (c)
21 to collect and remit sales and use taxes with respect to
22 remote sales sourced to that State, but only if the State
23 adopts and implements the minimum simplification re-
24 quirements in paragraph (2). Such authority shall only
25 begin on the 1st day of a month and commence beginning

1 no earlier than the first day of the calendar quarter that
2 is at least 180 days after the date that 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) except as provided in clause (iii)
21 and section 3(I), a single audit of a remote
22 seller for all State and local taxing juris-
23 dictions within that State;

24 (iii) unless there is reasonable sus-
25 picion that the remote seller has engaged

1 in intentional misrepresentation, if a re-
2 mote seller utilizes a certified software pro-
3 vider as described in section 4(1), the
4 State requesting the audit shall, at the op-
5 tion of the remote seller, first contact the
6 certified software provider who shall have
7 the responsibility to provide the State with
8 complete records of transactions processed
9 for the remote seller and who will rep-
10 resent the remote seller during the State's
11 audit and be responsible for the audit find-
12 ings except as provided in subparagraphs
13 (F), (G), and (H) (Nothing herein shall
14 prevent the remote seller from contesting
15 audit findings, and the remote seller uti-
16 lizing a certified software provider shall
17 not be contacted by a State requesting an
18 audit unless the remote seller either was
19 reasonably suspected of intentional mis-
20 representation or has declined to have a
21 certified software provider represent it dur-
22 ing the audit.); and

23 (iv) 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 No local jurisdiction may require a remote sell-
7 er to submit a sales and use tax return or to
8 collect sales and use taxes other than as pro-
9 vided by this paragraph.

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

14 (C) Source all remote sales in compliance
15 with the sourcing definition set forth in section
16 4(10).

17 (D) Provide—

18 (i) a publicly available taxability and
19 exemption table which can be downloaded
20 in an easily usable format and accessed
21 electronically which indicates the taxability
22 of products and services along with any
23 product and service exemptions from sales
24 and use tax in the State, and which is up-
25 dated each calendar quarter for any

1 changes to the products and services speci-
2 fied under paragraph (1)(B);

3 (ii) a rates and boundary database in
4 an easily downloadable format and which is
5 updated each calendar quarter for rate and
6 boundary changes;

7 (iii) free access to all of the national
8 certified software providers that have been
9 approved pursuant to section (3)(g) and
10 that can determine the proper sales and
11 use tax in every State qualified under this
12 Act and that will—

13 (I) determine the correct sales
14 and use tax rate based on sourcing
15 rules in section 4(10) and calculate
16 the sales and use tax due at the time
17 of sale;

18 (II) generate and file sales and
19 use tax returns electronically;

20 (III) remit the sales and use
21 taxes to States electronically;

22 (IV) report all transactions proc-
23 essed to the remote seller;

1 (V) respond to sales and use tax
2 audit requests by States for remote
3 sellers; and

4 (VI) provide safeguards and pro-
5 tection of consumer privacy in any
6 data stored by the certified software
7 provider; and

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

11 Such free access shall include installation, setup
12 and maintenance of the automated system into
13 the remote seller's system. For purposes of
14 clause (iii), the software provided by national
15 certified software providers shall be capable of
16 calculating and filing sales and use taxes in all
17 States qualified under this Act.

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

1 the certified software provider by the remote
2 seller.

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

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

17 (H) Provide remote sellers and certified
18 software providers with 90-days notice of rate
19 and boundary changes and any changes to the
20 products and services specified under paragraph
21 (1)(B) by the State or any locality in the State
22 and update the information described in clauses
23 (i) and (ii) of subparagraph (D) accordingly
24 and relieve any remote seller or certified soft-
25 ware provider from liability for collecting sales

1 and use taxes at the immediately preceding ef-
2 fective rate during the 90-day notice period if
3 the required notice is not provided.

4 (I) Provide the following, but only if the
5 law of a State allows a person, other than the
6 State itself, to pursue a cause of action against
7 a seller for under-collected or over-collected
8 sales or use tax:

9 (i) That a person, other than the
10 State itself, may not pursue any cause of
11 action against a remote seller for under-
12 collected or over-collected sales or use tax
13 unless the remote seller has received writ-
14 ten notice from the person that the remote
15 seller has over-collected or under-collected
16 sales and use tax, the notice contains in-
17 formation sufficient to determine the valid-
18 ity of the refund request or asserted
19 under-collection, and the remote seller has
20 not, within 60 days of receipt of the notice,
21 refunded affected customers the amount of
22 the over-collected sales and use tax or paid
23 the under-collected amount of sales and
24 use tax to the State. No penalties may be
25 imposed during the 60-day period in excess

1 of the penalties that would otherwise be
2 imposed by the State had no notice been
3 provided pursuant to this paragraph.

4 (ii) That a notice of over-collection
5 from a person is only valid if received with-
6 in the applicable statute of limitations for
7 filing refunds for sales and use tax, and
8 that a notice of under-collection from a
9 person is only valid if received within the
10 applicable statute of limitations for assess-
11 ing underpayments of sales and use tax.

12 (iii) That a person, other than the
13 State itself, may not pursue any cause of
14 action against a certified software provider
15 for its activities conducted for a remote
16 seller described in clause (i) unless the re-
17 mote seller provides a copy of the written
18 notice to the certified software provider
19 within a reasonable time for the certified
20 software provider to be able to assist the
21 remote seller in making the payments with-
22 in the timeframe described in clause (i).

23 (iv) That a person, other than the
24 State itself, may pursue a cause of action
25 against a remote seller for under-collected

1 or over-collected sales or use tax if the re-
2 mote seller knew or should have known
3 that it had under-collected or over-collected
4 and did not, within 60 days of its deter-
5 mination, refund affected customers the
6 amount of the over-collected sales and use
7 tax or pay the amount of under-collected
8 sales and use tax to the State.

9 (J) Accepts registrations at no charge to
10 certified software provider or remote seller from
11 a central online registration system that allows
12 a remote seller to register to collect and remit
13 sales and use taxes in all States that have exer-
14 cised authority under this Act.

15 (K) Relieve remote sellers and certified
16 software providers, except in cases of fraud,
17 from liability for tax, penalty, and interest on
18 transactions if the purchaser provides to the re-
19 mote seller the necessary documentation to
20 claim an exemption within 90 days of the sale.

21 (c) SMALL REMOTE SELLER PHASE-IN.—

22 (1) COLLECTION AUTHORIZED.—A State is au-
23 thorized to require the collection of sales and use
24 taxes by a remote seller under this Act only as fol-
25 lows:

1 (A) For the 1st calendar year following the
2 effective date, if the remote seller—

3 (i) has gross annual receipts exceed-
4 ing \$10,000,000 in the calendar year pre-
5 ceding the date of enactment; or

6 (ii) utilizes an electronic marketplace
7 for the purpose of making products or
8 services available for sale to the public.

9 (B) For the 2d calendar year following the
10 effective date, if the remote seller—

11 (i) has gross annual receipts exceed-
12 ing \$5,000,000 in the immediately pre-
13 ceding calendar year; or

14 (ii) utilizes an electronic marketplace
15 for the purpose of making products or
16 services available for sale to the public.

17 (C) For the 3d calendar year following the
18 effective date, if the remote seller—

19 (i) has gross annual receipts exceed-
20 ing \$1,000,000 in the immediately pre-
21 ceding calendar year; or

22 (ii) utilizes an electronic marketplace
23 for the purpose of making products or
24 services available for sale to the public.

1 (2) DETERMINATION OF THRESHOLD.—For
2 purposes of determining whether the threshold in
3 this paragraph (1) is met—

4 (A) the sales of all persons related within
5 the meaning of subsections (b) and (c) of sec-
6 tion 267, or section 707(b)(1), of the Internal
7 Revenue Code of 1986 shall be aggregated; or

8 (B) persons with one or more ownership
9 relationships shall also be aggregated if such re-
10 lationships were designed with a principal pur-
11 pose of avoiding the application of these rules.

12 **SEC. 3. LIMITATIONS.**

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

15 (1) subjecting a remote seller or any other per-
16 son to franchise, income, occupation, or any other
17 type of taxes, other than sales and use taxes;

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

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

21 (b) NO EFFECT ON NEXUS.—This Act shall not be
22 construed to create any nexus between a person and a
23 State or locality.

1 (c) LICENSING AND REGULATORY REQUIREMENTS.—

2 Nothing in this Act shall be construed as permitting or
3 prohibiting a State from—

4 (1) licensing or regulating any person;

5 (2) requiring any person to qualify to transact
6 intrastate business;

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

9 (4) exercising authority over matters of inter-
10 state commerce.

11 (d) NO NEW TAXES.—Nothing in this Act shall be
12 construed as encouraging a State to impose sales and use
13 taxes on any goods or services not subject to a sales and
14 use tax prior to the date of the enactment of this Act.

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

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

1 (g) CERTIFICATION REQUIREMENTS.—A State may
2 not exercise authority under this Act unless the following
3 requirements are satisfied:

4 (1) The State provides certification procedures
5 for persons to be approved as certified software pro-
6 viders. A State may delegate the certification proce-
7 dures so long as the State retains final approval over
8 any certification decisions.

9 (2) The State (or its delegate) does not deny or
10 revoke certification to a software provider without a
11 reasonable basis, or arbitrarily or capriciously. A
12 State must complete the certification review of the
13 software provider no later than the first day of the
14 calendar quarter that is at least 180 days after the
15 software provider requests certification by that
16 State.

17 (3) The State has certified multiple national
18 certified software providers, and the certifications
19 are in effect. Nothing in this Act shall be construed
20 to deny the ability of a remote seller to deploy and
21 utilize a certified software provider of the seller's
22 choice.

23 (4) The State provides compensation for cer-
24 tified software providers. A State may delegate the
25 authority to negotiate the compensation so long as

1 the State retains final approval of the compensation
2 rate(s).

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 title—

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 (i) LIMITATION ON AUDITS OF REMOTE SELLERS.—
13 A State exercising authority under this Act—

14 (1) may not audit a remote seller that—

15 (A) has registered in the State under sec-
16 tion 2(b)(2)(J); and

17 (B) has gross annual receipts of less than
18 \$5,000,000 in the taxable year as aggregated in
19 subsection (c) of section 2,

20 unless there is reasonable suspicion that such remote
21 seller has engaged in intentional misrepresentation
22 or fraud; and

23 (2) may not have audits of remote sellers con-
24 ducted by persons whose compensation is contingent
25 upon audit findings.

1 (j) LIMITATION ON TIME PERIOD TO ASSESS RE-
 2 MOTE SELLERS AND CERTIFIED SOFTWARE PRO-
 3 VIDERS.—A State may not hold a remote seller or certified
 4 software provider liable for the incorrect collection, remit-
 5 tance, or noncollection of sales and use taxes, including
 6 any penalties or interest, if the liability is for a sales or
 7 use tax assessed under the authority of this Act more than
 8 3 years after the later of the due date or the filing of
 9 the sales and use tax return applicable to the sales and
 10 use tax assessed.

11 (k) REMOTE SELLER COMPENSATION.—A State
 12 must provide remote sellers with compensation equaling
 13 no less than the amount, if any, the State provides to non-
 14 remote sellers within the State.

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

16 In this Act:

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

20 (A) provides software or access to software
 21 to remote sellers to facilitate State and local
 22 sales and use tax compliance; and

23 (B) is certified by a State or on a State’s
 24 behalf to so provide such software.

1 (2) EFFECTIVE DATE.—The term “effective
2 date” means the date that is 1 year after the date
3 of the enactment of this Act. However, if the date
4 that is 1 year after the date of the enactment of this
5 Act falls during the period beginning October 1 and
6 ending on December 31, the effective date shall be
7 January 1 of the immediately following year.

8 (3) ELECTRONIC MARKETPLACE.—The term
9 “electronic marketplace” means a digital marketing
10 platform where—

11 (A) products or services are offered for
12 sale by more than 1 remote seller; and

13 (B) buyers may purchase such products or
14 services through a common system of financial
15 transaction processing.

16 (4) LOCALITY; LOCAL.—The terms “locality”
17 and “local” refer to any political subdivision of a
18 State.

19 (5) MEMBER STATE.—The term “Member
20 State”—

21 (A) means a Member State as that term is
22 used under the Streamlined Sales and Use Tax
23 Agreement as in effect on the date of the enact-
24 ment of this Act; and

1 (B) does not include any associate member
2 or a member that is not a full member under
3 the Streamlined Sales and Use Tax Agreement.

4 (6) NATIONAL CERTIFIED SOFTWARE PRO-
5 VIDER.—The term “national certified software pro-
6 vider” means a certified software provider that has
7 been certified by all States that are certifying
8 States. A “certifying State” is a State that has a
9 generally applicable sales and use tax, that has met
10 the requirements set forth under section 3(g)(1),
11 and that has not violated the requirements set forth
12 in section 3(g)(2). Once a certified software provider
13 is a national certified software provider, it shall not
14 lose its status as such when a State becomes a certi-
15 fying State so long as the national certified software
16 provider requested certification from the new certi-
17 fying State within 30 days from the date that the
18 State became a certifying State and the certifying
19 State has not violated section 3(g)(2).

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

24 (8) REMOTE SALE.—The term “remote sale”
25 means a sale that originates in one State and is

1 sourced to another State as provided in section
2 4(10) which the seller would not legally be required
3 to pay, collect, or remit State or local sales and use
4 taxes without the authority provided by this Act.

5 (9) REMOTE SELLER.—The term “remote sell-
6 er” means a person that makes remote sales in the
7 State without a physical presence. For purposes of
8 this paragraph, a person has a physical presence in
9 a State only if such person’s business activities in
10 the State include any of the following during such
11 person’s taxable year:

12 (A) Being an individual physically in the
13 State, or assigning one or more employees to be
14 in the State.

15 (B) Using the services of an agent (exclud-
16 ing an employee) to establish or maintain the
17 market in the State, if such agent does not per-
18 form business services in the State for any
19 other person during such taxable year.

20 (C) The leasing or owning of tangible per-
21 sonal property or of real property in the State.

22 For purposes of this paragraph, the term “physical
23 presence’ ” shall not include presence in a State for
24 less than 15 days in a taxable year (or a greater
25 number of days if provided by State law), or pres-

1 ence in a State to conduct limited or transient busi-
2 ness activity.

3 (10) SOURCED.—For purposes of a State
4 granted authority under section 2(b), the location to
5 which a remote sale is sourced refers to the location
6 where the product or service sold is received by the
7 purchaser, based on the location indicated by in-
8 structions for delivery that the purchaser furnishes
9 to the seller. When no delivery location is specified,
10 the remote sale is sourced to the customer’s address,
11 including the customer’s place of primary use that
12 is either known to the seller or, if not known, ob-
13 tained by the seller during the consummation of the
14 transaction, including the address of the customer’s
15 payment instrument if no other address is available.
16 If an address or place of primary use is unknown
17 and a billing address cannot be obtained, the remote
18 sale is sourced to the address of the seller from
19 which the remote sale was made. The term “re-
20 ceived” means taking possession of product or mak-
21 ing first use of services. A State granted authority
22 under section 2(a) shall comply with the sourcing
23 provisions of the Streamlined Sales and Use Tax
24 Agreement.

1 (11) STATE.—The term “State” means any 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, or any
6 territory or possession of the United States.

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

13 **SEC. 5. SEVERABILITY.**

14 If any provision of this Act, or the application of such
15 provision to any person or circumstance, is held to be un-
16 constitutional, then the remainder of this Act, and the ap-
17 plication of the provisions of such to any person or cir-
18 cumstance, shall not be affected thereby.

○