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 Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Remote Transactions Parity Act of 2017”.

4 SEC. 2. AUTHORIZATION TO REQUIRE COLLECTION OF SALES AND USE TAXES.

5 (a) Streamlined Sales and Use Tax Agreement.—Each Member State under the Streamlined Sales
and Use Tax Agreement is authorized notwithstanding any other provision of law to require all remote sellers not qualifying for the small remote seller exception described in subsection (c) to collect and remit sales and use taxes with respect to remote sales sourced to that Member State pursuant to the provisions of the Streamlined Sales and Use Tax Agreement, but only if any changes to the Streamlined Sales and Use Tax Agreement made after the date of enactment of this Act, are not in conflict with the minimum simplification requirements in subsection (b)(2).

A State may exercise authority under this Act on the 1st day of a month beginning 180 days after the State publishes notice of the State’s intent to exercise the authority under this Act, but no earlier than the date provided in section 3(h).

(b) ALTERNATIVE.—A State that is not a Member State under the Streamlined Sales and Use Tax Agreement is authorized notwithstanding any other provision of law to require all remote sellers not qualifying for the small remote seller exception described in subsection (c) to collect and remit sales and use taxes with respect to remote sales sourced to that State, but only if the State adopts and implements the minimum simplification requirements in paragraph (2). Such authority shall only begin on the 1st day of a month and commence beginning
no earlier than the first day of the calendar quarter that
is at least 180 days after the date that the State—

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

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

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

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

    (A) Provide—

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

        (ii) except as provided in clause (iii)
            and section 3(I), a single audit of a remote
            seller for all State and local taxing juris-
            dictions within that State;

        (iii) unless there is reasonable sus-
            picion that the remote seller has engaged
in intentional misrepresentation, if a remote seller utilizes a certified software provider as described in section 4(1), the State requesting the audit shall, at the option of the remote seller, first contact the certified software provider who shall have the responsibility to provide the State with complete records of transactions processed for the remote seller and who will represent the remote seller during the State’s audit and be responsible for the audit findings except as provided in subparagraphs (F), (G), and (H) (Nothing herein shall prevent the remote seller from contesting audit findings, and the remote seller utilizing a certified software provider shall not be contacted by a State requesting an audit unless the remote seller either was reasonably suspected of intentional misrepresentation or has declined to have a certified software provider represent it during the audit.); and

(iv) a single sales and use tax return to be used by remote sellers to be filed
with the single entity responsible for tax
administration.

A State may not require a remote seller to file
sales and use tax returns any more frequently
than returns are required for nonremote sellers.
No local jurisdiction may require a remote sell-
er to submit a sales and use tax return or to
collect sales and use taxes other than as pro-
vided by this paragraph.

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

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

(D) Provide—

(i) a publicly available taxability and
exemption table which can be downloaded
in an easily usable format and accessed
electronically which indicates the taxability
of products and services along with any
product and service exemptions from sales
and use tax in the State, and which is up-
dated each calendar quarter for any
changes to the products and services specified under paragraph (1)(B);

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

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

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

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

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

(IV) report all transactions processed to the remote seller;
(V) respond to sales and use tax audit requests by States for remote sellers; and

(VI) provide safeguards and protection of consumer privacy in any data stored by the certified software provider; and

(iv) certification procedures for persons to be approved as certified software providers.

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

(E) Relieve remote sellers from liability to the State or locality for the incorrect collection, remittance, or noncollection of sales and use taxes, including any penalties or interest, if the liability is the result of an error or omission made by a certified software provider unless the error or omission is the result of misleading, incomplete, or inaccurate information provided to
the certified software provider by the remote seller.

(F) Relieve certified software providers from liability to the State or locality for the incorrect collection, remittance, or noncollection of sales and use taxes, including any penalties or interest, if the liability is the result of misleading, incomplete, or inaccurate information provided by a remote seller.

(G) Relieve remote sellers and certified software providers from liability to the State or locality for incorrect collection, remittance, or noncollection of sales and use taxes, including any penalties or interest, if the liability is the result of incorrect information or software provided or certified by the State.

(H) Provide remote sellers and certified software providers with 90-days notice of rate and boundary changes and any changes to the products and services specified under paragraph (1)(B) by the State or any locality in the State and update the information described in clauses (i) and (ii) of subparagraph (D) accordingly and relieve any remote seller or certified software provider from liability for collecting sales
and use taxes at the immediately preceding ef-
fective rate during the 90-day notice period if
the required notice is not provided.

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

(i) That a person, other than the
State itself, may not pursue any cause of
action against a remote seller for under-
collected or over-collected sales or use tax
unless the remote seller has received writ-
ten notice from the person that the remote
seller has over-collected or under-collected
sales and use tax, the notice contains in-
formation sufficient to determine the valid-
ity of the refund request or asserted
under-collection, and the remote seller has
not, within 60 days of receipt of the notice,
refunded affected customers the amount of
the over-collected sales and use tax or paid
the under-collected amount of sales and
use tax to the State. No penalties may be
imposed during the 60-day period in excess
of the penalties that would otherwise be
imposed by the State had no notice been
provided pursuant to this paragraph.

(ii) That a notice of over-collection
from a person is only valid if received within
the applicable statute of limitations for
filing refunds for sales and use tax, and
that a notice of under-collection from a
person is only valid if received within the
applicable statute of limitations for assessing underpayments of sales and use tax.

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

(iv) That a person, other than the
State itself, may pursue a cause of action
against a remote seller for under-collected
or over-collected sales or use tax if the remote seller knew or should have known that it had under-collected or over-collected and did not, within 60 days of its determination, refund affected customers the amount of the over-collected sales and use tax or pay the amount of under-collected sales and use tax to the State.

(J) Accepts registrations at no charge to certified software provider or remote seller from a central online registration system that allows a remote seller to register to collect and remit sales and use taxes in all States that have exercised authority under this Act.

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

(c) Small Remote Seller Phase-In.—

(1) Collection Authorized.—A State is authorized to require the collection of sales and use taxes by a remote seller under this Act only as follows:

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(A) For the 1st calendar year following the effective date, if the remote seller—
  (i) has gross annual receipts exceeding $10,000,000 in the calendar year preceding the date of enactment; or
  (ii) utilizes an electronic marketplace for the purpose of making products or services available for sale to the public.

(B) For the 2d calendar year following the effective date, if the remote seller—
  (i) has gross annual receipts exceeding $5,000,000 in the immediately preceding calendar year; or
  (ii) utilizes an electronic marketplace for the purpose of making products or services available for sale to the public.

(C) For the 3d calendar year following the effective date, if the remote seller—
  (i) has gross annual receipts exceeding $1,000,000 in the immediately preceding calendar year; or
  (ii) utilizes an electronic marketplace for the purpose of making products or services available for sale to the public.
(2) Determination of threshold.—For purposes of determining whether the threshold in this paragraph (1) is met—

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

(B) persons with one or more ownership relationships shall also be aggregated if such relationships were designed with a principal purpose of avoiding the application of these rules.

SEC. 3. LIMITATIONS.

(a) In general.—Nothing in this Act shall be construed as—

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

(2) affecting the application of such taxes; or

(3) enlarging or reducing State authority to impose such taxes.

(b) No effect on nexus.—This Act shall not be construed to create any nexus between a person and a State or locality.
(c) Licensing and Regulatory Requirements.—Nothing in this Act shall be construed as permitting or prohibiting a State from—

(1) licensing or regulating any person;

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

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

(4) exercising authority over matters of interstate commerce.

(d) No New Taxes.—Nothing in this Act shall be construed as encouraging a State to impose sales and use taxes on any goods or services not subject to a sales and use tax prior to the date of the enactment of this Act.

(e) No Effect on Intrastate Sales.—The provisions of this Act shall apply only to remote sales and shall not apply to intrastate sales or intrastate sourcing rules. States granted authority under section 2(a) shall comply with all intrastate provisions of the Streamlined Sales and Use Tax Agreement.

(f) No Effect on Mobile Telecommunications Sourcing Act.—Nothing in this Act shall be construed as altering in any manner or preempting the Mobile Telecommunications Sourcing Act (4 U.S.C. 116–126).
(g) Certification Requirements.—A State may not exercise authority under this Act unless the following requirements are satisfied:

(1) The State provides certification procedures for persons to be approved as certified software providers. A State may delegate the certification procedures so long as the State retains final approval over any certification decisions.

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

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

(4) The State provides compensation for certified software providers. A State may delegate the authority to negotiate the compensation so long as
the State retains final approval of the compensation rate(s).

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

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

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

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

(1) may not audit a remote seller that—

(A) has registered in the State under section 2(b)(2)(J); and

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

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

(2) may not have audits of remote sellers conducted by persons whose compensation is contingent upon audit findings.
(j) Limitation on Time Period To Assess Remote Sellers and Certified Software Providers.—A State may not hold a remote seller or certified software provider liable for the incorrect collection, remittance, or noncollection of sales and use taxes, including any penalties or interest, if the liability is for a sales or use tax assessed under the authority of this Act more than 3 years after the later of the due date or the filing of the sales and use tax return applicable to the sales and use tax assessed.

(k) Remote Seller Compensation.—A State must provide remote sellers with compensation equaling no less than the amount, if any, the State provides to non-remote sellers within the State.

SEC. 4. DEFINITIONS AND SPECIAL RULES.

In this Act:

(1) Certified Software Provider.—The term “certified software provider” means a person that—

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

(B) is certified by a State or on a State’s behalf to so provide such software.
(2) **Effective Date.**—The term “effective date” means the date that is 1 year after the date of the enactment of this Act. However, if the date that is 1 year after the date of the enactment of this Act falls during the period beginning October 1 and ending on December 31, the effective date shall be January 1 of the immediately following year.

(3) **Electronic Marketplace.**—The term “electronic marketplace” means a digital marketing platform where—

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

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

(4) **Locality; Local.**—The terms “locality” and “local” refer to any political subdivision of a State.

(5) **Member State.**—The term “Member State”—

(A) means a Member State as that term is used under the Streamlined Sales and Use Tax Agreement as in effect on the date of the enactment of this Act; and
(B) does not include any associate member or a member that is not a full member under the Streamlined Sales and Use Tax Agreement.

(6) **National Certified Software Provider.**—The term “national certified software provider” means a certified software provider that has been certified by all States that are certifying States. A “certifying State” is a State that has a generally applicable sales and use tax, that has met the requirements set forth under section 3(g)(1), and that has not violated the requirements set forth in section 3(g)(2). Once a certified software provider is a national certified software provider, it shall not lose its status as such when a State becomes a certifying State so long as the national certified software provider requested certification from the new certifying State within 30 days from the date that the State became a certifying State and the certifying State has not violated section 3(g)(2).

(7) **Person.**—The term “person” means an individual, trust, estate, fiduciary, partnership, corporation, limited liability company, or other legal entity, and a State or local government.

(8) **Remote Sale.**—The term “remote sale” means a sale that originates in one State and is
sourced to another State as provided in section
4(10) which the seller would not legally be required
to pay, collect, or remit State or local sales and use
taxes without the authority provided by this Act.

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

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

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

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

For purposes of this paragraph, the term “physical
presence” shall not include presence in a State for
less than 15 days in a taxable year (or a greater
number of days if provided by State law), or pres-
ence in a State to conduct limited or transient busi-
ness activity.

(10) SOURCED.—For purposes of a State
granted authority under section 2(b), the location to
which a remote sale is sourced refers to the location
where the product or service sold is received by the
purchaser, based on the location indicated by in-
structions for delivery that the purchaser furnishes
to the seller. When no delivery location is specified,
the remote sale is sourced to the customer’s address,
including the customer’s place of primary use that
is either known to the seller or, if not known, ob-
tained by the seller during the consummation of the
transaction, including the address of the customer’s
payment instrument if no other address is available.
If an address or place of primary use is unknown
and a billing address cannot be obtained, the remote
sale is sourced to the address of the seller from
which the remote sale was made. The term “re-
ceived” means taking possession of product or mak-
ing first use of services. A State granted authority
under section 2(a) shall comply with the sourcing
provisions of the Streamlined Sales and Use Tax
Agreement.
(11) STATE.—The term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States.

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

SEC. 5. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance, is held to be unconstitutional, then the remainder of this Act, and the application of the provisions of such to any person or circumstance, shall not be affected thereby.