

116TH CONGRESS
1ST SESSION

S. 2350

To prohibit States from retroactively imposing a sales tax collection duty on a remote seller, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 31, 2019

Mrs. SHAHEEN (for herself, Mr. WYDEN, Ms. HASSAN, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To prohibit States from retroactively imposing a sales tax collection duty on a remote seller, 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 “Online Sales Simplicity
5 and Small Business Relief Act of 2019”.

6 **SEC. 2. BAN ON RETROACTIVE TAXATION OF INTERNET**
7 **COMMERCE.**

8 A State may not impose a sales tax collection duty
9 on a remote seller for any sale that occurred prior to June
10 21, 2018.

1 **SEC. 3. ORDERLY PHASE-IN OF COMPLIANCE OBLIGATIONS.**

2 A State may impose a sales tax collection duty on
3 a remote seller only for a sale that occurs after January
4 1, 2021.

5 **SEC. 4. SMALL BUSINESS REMOTE SELLER EXEMPTION.**

6 In the case of a sale made by a small business remote
7 seller, no State may impose a sales tax collection duty on
8 any person other than the purchaser if the sale is made
9 on or after June 21, 2018, and before the date that is
10 30 days after the date on which the States develop and
11 Congress approves an interstate compact, applicable to the
12 State and sale, governing the imposition of tax collection
13 duties on remote sellers.

14 **SEC. 5. SENSE OF CONGRESS.**

15 It is the sense of Congress that the States should de-
16 velop an interstate compact for the collection of sales tax
17 by remote sellers that identifies a clearly defined minimum
18 substantial nexus between the remote seller and the taxing
19 State, that simplifies registration, collection, remittance,
20 auditing, and other compliance processes to the greatest
21 extent possible in order to avoid undue burdens on inter-
22 state commerce, and that, due to such simplification,
23 eliminates the need for the continuation of the small busi-
24 ness remote seller exemption under section 4.

25 **SEC. 6. DEFINITIONS.**

26 In this Act:

1 (1) REMOTE SELLER.—The term “remote seller” means a person without a physical presence in the State who makes a sale in the State.

2 (2) PHYSICAL PRESENCE.—

3 (A) IN GENERAL.—Except as provided in subparagraph (B), the term “physical presence” means, with respect to a person, that a person’s business activities in the State include any of the following during such person’s taxable year:

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

5 (ii) Using the services of an agent (excluding an employee) to establish or maintain a market in the State, if such agent does not perform business services in the State for any other person during such taxable year.

6 (iii) The leasing or owning of tangible personal property (other than digital or alphanumeric data) or of real property in the State.

7 (B) EXCEPTION.—A person does not have physical presence in a State if the person’s physical presence in the State under subpara-

graph (A) was for less than 15 days in a taxable year (or a greater number of days if provided by State law), or if the person's physical presence in the State was solely for the purpose of conducting limited or transient business activity.

(3) SALES TAX COLLECTION DUTY.—The term “sales tax collection duty” means—

(A) an obligation imposed on a person, including a person other than the actual seller, to—

(i) pay or collect a sales, use, or similar tax upon the sale of a good or service; or

(ii) report any information with respect to such sale of a good or service; or

(B) the assessment of a sales, use, or similar tax on a person.

(4) SMALL BUSINESS REMOTE SELLER.—The term “small business remote seller” means a remote seller with gross annual receipts in the United States during the preceding calendar year in an amount that is not more than \$10,000,000.