

country's urgent fiscal challenges, I am confident that she will commit to finding bipartisan solutions to these real problems. Solutions that will provide greater program efficiency and transparency and will put our country back on a path of fiscal stability so that future generations will not be forced to pay for the irresponsible spending decisions we continue to make here in Congress. Again, I am pleased that the President put forth such a qualified nominee, and I look forward to working with her.

The PRESIDING OFFICER. All time has expired.

The question is, Will the Senate advise and consent to the nomination of Jane Kelly, of Iowa, to be United States Circuit Judge for the Eighth Circuit?

Mr. SESSIONS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. COWAN), the Senator from New Jersey (Mr. LAUTENBERG), and the Senator from Massachusetts (Ms. WARREN) are necessarily absent.

Mr. CORNYN. The following Senator is necessarily absent: the Senator from North Dakota (Mr. HOEVEN).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 108 Ex.] YEAS—96

Table listing Senators and their votes for the nomination of Jane Kelly. Includes names like Alexander, Ayotte, Baldwin, Barrasso, etc.

NOT VOTING—4

Table listing Senators who did not vote: Cowan, Lautenberg, Hoeven, Warren.

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, there is now 2 minutes, equally divided, prior to a vote on the Burwell nomination.

Who yields time?

Mr. REID. I yield back all time.

The PRESIDING OFFICER. All time is yielded back.

The question is, Will the Senate advise and consent to the nomination of Sylvia Matthews Burwell, of West Virginia, to be Director of the Office of Management and Budget?

Mr. REID. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. COWAN), the Senator from New Jersey (Mr. LAUTENBERG), and the Senator from Massachusetts (Ms. WARREN) are necessarily absent.

Mr. CORNYN. The following Senator is necessarily absent: the Senator from Idaho (Mr. CRAPO).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 109 Ex.] YEAS—96

Table listing Senators and their votes for the nomination of Sylvia Matthews Burwell. Includes names like Alexander, Franken, Moran, etc.

NOT VOTING—4

Table listing Senators who did not vote: Cowan, Lautenberg, Crapo, Warren.

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motions to reconsider are considered made and laid upon the table, and the President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

The majority leader is recognized.

Mr. REID. Madam President, I ask unanimous consent that the next vote be 10 minutes in duration.

The PRESIDING OFFICER. Without objection, it is so ordered.

MARKETPLACE FAIRNESS ACT OF 2013—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 743, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 743) to restore States' sovereign rights to enforce State and local sales and use tax laws, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the question is on the adoption of the motion to proceed to S. 743.

Mrs. SHAHEEN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. COWAN), the Senator from New Jersey (Mr. LAUTENBERG), and the Senator from Massachusetts (Ms. WARREN) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 74, nays 23, as follows:

[Rollcall Vote No. 110 Leg.] YEAS—74

Table listing Senators and their votes for the Marketplace Fairness Act. Includes names like Alexander, Feinstein, Menendez, etc.

NAYS—23

Table listing Senators who voted nay: Ayotte, Baucus, Coburn, etc.

NOT VOTING—3

Table listing Senators who did not vote: Cowan, Lautenberg, Warren.

The motion was agreed to.

CHANGE OF VOTE

Mr. PAUL. On rollcall vote No. 110, I voted "aye." It was my intention to vote "nay." Therefore, I ask unanimous consent that I be permitted to change my vote since it will not affect the outcome.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

(The foregoing tally has been changed to reflect the above order.)

VOTE EXPLANATION

• Mr. COWAN. Madam President, I was necessarily absent from votes during today's session. Had I been present for the votes, I would have supported the nominations of Jane Kelly, of Iowa, to be United States Circuit Judge for the Eighth Circuit and Sylvia Mathews Burwell, of West Virginia, to be Director of the Office of Management and Budget. I would have also supported the motion to proceed to S. 743, the Marketplace Fairness Act. •

MARKETPLACE FAIRNESS ACT OF 2013

The PRESIDING OFFICER. The clerk will report the bill.

The legislative clerk read as follows:

A bill (S. 743) to restore States' sovereign rights to enforce State and local sales and use tax laws, and for other purposes.

The PRESIDING OFFICER. The majority leader.

AMENDMENT NO. 741

Mr. REID. Madam President, on behalf of Senators Enzi, Durbin, and others, I have an amendment at the desk and I ask the clerk to report.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. ENZI, Mr. DURBIN, Mr. ALEXANDER, and Ms. HEITKAMP, proposes an amendment numbered 741.

The amendment is as follows:

Beginning on page 2, line 10, strike "if the Streamlined" and all that follows through page 11, line 5, and insert the following:

if any changes to the Streamlined Sales and Use Tax Agreement made after the date of the 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 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 first day of the calendar quarter that is at least 180 days after the date of the enactment of this Act.

(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 sellers not qualifying for the small 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 commence beginning no earlier than the first day of the calendar quarter that is at least 6 months 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 identi-

fied 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 responsible for all State and local sales and use tax administration, return processing, and audits for remote sales sourced to the State;

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

(iii) 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 non-remote sellers or impose requirements on remote sellers that the State does not impose on nonremote sellers with respect to the collection of sales and use taxes under this Act. No local jurisdiction may require a remote seller to submit a sales and use tax return or to collect sales and use taxes other than as provided by this paragraph.

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

(C) Source all remote sales in compliance with the sourcing definition set forth in section 4(7).

(D) Provide—

(i) information indicating the taxability of products and services along with any product and service exemptions from sales and use tax in the State and a rates and boundary database;

(ii) software free of charge for remote sellers that calculates sales and use taxes due on each transaction at the time the transaction is completed, that files sales and use tax returns, and that is updated to reflect rate changes as described in subparagraph (H); and

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

For purposes of clause (iii), the software provided by 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.

(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 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 by the State.

(H) Provide remote sellers and certified software providers with 90 days notice of a rate change by the State or any locality in the State and update the information described in subparagraph (D)(i) accordingly and relieve any remote seller or certified software provider from liability for collecting sales and use taxes at the immediately preceding effective rate during the 90-day notice period if the required notice is not provided.

(c) SMALL SELLER EXCEPTION.—A State is authorized to require a remote seller to collect sales and use taxes under this Act only if the remote seller has gross annual receipts in total remote sales in the United States in the preceding calendar year exceeding \$1,000,000. For purposes of determining whether the threshold in this section is met, the gross annual receipts from remote sales of 2 or more persons shall be aggregated if—

(1) such persons are related to the remote seller within the meaning of subsections (b) and (c) of section 267 or section 707(b)(1) of the Internal Revenue Code of 1986; or

(2) such persons have 1 or more ownership relationships and 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 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 or alter the standards for determining nexus between a person and a State or locality.

(c) NO EFFECT ON SELLER CHOICE.—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.

(d) 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 products or services; or

(4) exercising authority over matters of interstate commerce.

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

(f) 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.

(g) 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).

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 to remote sellers to facilitate State and local sales and use tax compliance pursuant to section 2(b)(2)(D)(ii); and

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

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

(3) 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