

Calendar No. 41

113TH CONGRESS
1ST SESSION**S. 743**

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

IN THE SENATE OF THE UNITED STATES

APRIL 16, 2013

Mr. ENZI (for himself, Mr. DURBIN, Mr. ALEXANDER, and Ms. HEITKAMP)
introduced the following bill; which was read the first time

APRIL 17, 2013

Read the second time and placed on the calendar

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 Fairness
5 Act of 2013”.

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

3 (a) STREAMLINED SALES AND USE TAX AGREE-
4 MENT.—Each Member State under the Streamlined Sales
5 and Use Tax Agreement is authorized to require all sellers
6 not qualifying for the small seller exception described in
7 subsection (c) to collect and remit sales and use taxes with
8 respect to remote sales sourced to that Member State pur-
9 suant to the provisions of the Streamlined Sales and Use
10 Tax Agreement, but only if the Streamlined Sales and Use
11 Tax Agreement includes the minimum simplification re-
12 quirements in subsection (b)(2). A State may exercise au-
13 thority under this Act beginning 90 days after the State
14 publishes notice of the State’s intent to exercise the au-
15 thority under this Act, but no earlier than the first day
16 of the calendar quarter that is at least 90 days after the
17 date of the enactment of this Act.

18 (b) ALTERNATIVE.—A State that is not a Member
19 State under the Streamlined Sales and Use Tax Agree-
20 ment is authorized notwithstanding any other provision of
21 law to require all sellers not qualifying for the small seller
22 exception described in subsection (c) to collect and remit
23 sales and use taxes with respect to remote sales sourced
24 to that State, but only if the State adopts and implements
25 the minimum simplification requirements in paragraph
26 (2). Such authority shall commence beginning no earlier

1 than the first day of the calendar quarter that is at least
2 6 months 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) a single audit of a remote seller
21 for all State and local taxing jurisdictions
22 within that State; and

23 (iii) 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 interstate sales in compli-
15 ance with the sourcing definition set forth in
16 section 4(7).

17 (D) Provide—

18 (i) information indicating the tax-
19 ability of products and services along with
20 any product and service exemptions from
21 sales and use tax in the State and a rates
22 and boundary database;

23 (ii) software free of charge for remote
24 sellers that calculates sales and use taxes
25 due on each transaction at the time the

1 transaction is completed, that files sales
2 and use tax returns, and that is updated to
3 reflect rate changes as described in sub-
4 paragraph (H); and

5 (iii) certification procedures for per-
6 sons to be approved as certified software
7 providers.

8 For purposes of clause (iii), the software pro-
9 vided by certified software providers shall be ca-
10 pable of calculating and filing sales and use
11 taxes in all States qualified under this Act.

12 (E) Relieve remote sellers from liability to
13 the State or locality for the incorrect collection,
14 remittance, or noncollection of sales and use
15 taxes, including any penalties or interest, if the
16 liability is the result of an error or omission
17 made by a certified software provider.

18 (F) Relieve certified software providers
19 from liability to the State or locality for the in-
20 correct collection, remittance, or noncollection
21 of sales and use taxes, including any penalties
22 or interest, if the liability is the result of mis-
23 leading or inaccurate information provided by a
24 remote seller.

1 (G) Relieve remote sellers and certified
2 software providers from liability to the State or
3 locality for incorrect collection, remittance, or
4 noncollection of sales and use taxes, including
5 any penalties or interest, if the liability is the
6 result of incorrect information or software pro-
7 vided by the State.

8 (H) Provide remote sellers and certified
9 software providers with 90 days notice of a rate
10 change by the State or any locality in the State
11 and update the information described in sub-
12 paragraph (D)(i) accordingly and relieve any re-
13 mote seller or certified software provider from
14 liability for collecting sales and use taxes at the
15 immediately preceding effective rate during the
16 90-day notice period if the required notice is
17 not provided.

18 (c) SMALL SELLER EXCEPTION.—A State is author-
19 ized to require a remote seller to collect sales and use taxes
20 under this Act only if the remote seller has gross annual
21 receipts in total remote sales in the United States in the
22 preceding calendar year exceeding \$1,000,000. For pur-
23 poses of determining whether the threshold in this sub-
24 section is met—

1 (1) the sales of all persons related within the
 2 meaning of subsections (b) and (c) of section 267 or
 3 section 707(b)(1) of the Internal Revenue Code of
 4 1986 shall be aggregated; or

5 (2) persons with 1 or more ownership relation-
 6 ships shall also be aggregated if such relationships
 7 were designed with a principal purpose of avoiding
 8 the application of these rules.

9 **SEC. 3. LIMITATIONS.**

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

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

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

16 (3) enlarging or reducing State authority to im-
 17 pose such taxes.

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

21 (c) LICENSING AND REGULATORY REQUIREMENTS.—
 22 Nothing in this Act shall be construed as permitting or
 23 prohibiting a State from—

24 (1) licensing or regulating any person;

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

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

5 (4) exercising authority over matters of inter-
6 state commerce.

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

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

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

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

22 In this Act:

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

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

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

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

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

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

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

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

22 (5) REMOTE SALE.—The term “remote sale”
 23 means a sale into a State in which the seller would
 24 not legally be required to pay, collect, or remit State

1 or local sales and use taxes unless provided by this
2 Act.

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

6 (7) SOURCED.—For purposes of a State grant-
7 ed authority under section 2(b), the location to
8 which a remote sale is sourced refers to the location
9 where the item sold is received by the purchaser,
10 based on the location indicated by instructions for
11 delivery that the purchaser furnishes to the seller.
12 When no delivery location is specified, the remote
13 sale is sourced to the customer’s address that is ei-
14 ther known to the seller or, if not known, obtained
15 by the seller during the consummation of the trans-
16 action, including the address of the customer’s pay-
17 ment instrument if no other address is available. If
18 an address is unknown and a billing address cannot
19 be obtained, the remote sale is sourced to the ad-
20 dress of the seller from which the remote sale was
21 made. A State granted authority under section 2(a)
22 shall comply with the sourcing provisions of the
23 Streamlined Sales and Use Tax Agreement.

24 (8) STATE.—The term “State” means each of
25 the several States, the District of Columbia, the

1 Commonwealth of Puerto Rico, Guam, American
2 Samoa, the United States Virgin Islands, the Com-
3 monwealth of the Northern Mariana Islands, and
4 any other territory or possession of the United
5 States.

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

12 **SEC. 5. SEVERABILITY.**

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

18 **SEC. 6. PREEMPTION.**

19 Except as otherwise provided in this Act, this Act
20 shall not be construed to preempt or limit any power exer-
21 cised or to be exercised by a State or local jurisdiction
22 under the law of such State or local jurisdiction or under
23 any other Federal law.

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