

[DISCUSSION DRAFT]

114TH CONGRESS
1ST SESSION

H.R. _____

To

IN THE HOUSE OF REPRESENTATIVES

M_____. _____ introduced the following bill; which was referred to
the Committee on _____

A BILL

To

*Be it enacted by the Senate and House of Representatives of the United States of America
in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Online Sales Simplification Act of 2015".

**SEC. 2. LIMIT ON STATES' AUTHORITY TO IMPOSE SALES OR USE TAX
COLLECTION AND REMITTANCE OBLIGATIONS ON REMOTE SALES.**

(a) IN GENERAL. -- A State may impose or require the collection of a sales, use or similar tax by a seller on a remote sale of a product or service only if --

- (1) the State is the origin State for the remote sale; and
- (2) the State is a party to the distribution agreement.

(b) AMOUNT OF TAX. -- The tax imposed by a State pursuant to subsection (a) on a remote sale shall be applied at the origin rate.

(c) PRIVACY PROTECTION. -- Except as provided in section 4, a seller who makes a remote sale shall not be required to report information pertaining to that sale to a State taxing authority other than the origin State, and the information reported by the origin State to any other entity, except to a destination State and relating to a compliance certificate in the course of an audit of a remote seller, shall be limited to the amount of the sales, use or similar tax collected and the destination State [and zip code].

(d) PRESERVATION OF STATE SOVEREIGNTY IN ENFORCEMENT. -- A State taxing authority may conduct an audit of a seller with respect to sales, use or similar tax on remote sales only if the State is the origin State with regard to that remote sale.

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(e) PREVENTION OF DOUBLE TAXATION. --

(1) With the exception of vehicles, vessels, aircraft and business purchases by taxpayers who are required to file sales or use tax returns with the destination State, a destination State may not impose any additional tax on a purchaser of property or services from a remote seller if the purchaser paid a tax that was collected by the remote seller.

(2) No State may impose any sales, use, or similar tax on a purchaser from a remote seller of vehicles, vessels or aircraft, or with respect to business purchases described in paragraph (1) from a remote seller, unless that State allows such purchasers a credit for any sales, use, or similar tax that was collected by the remote seller with respect to the purchase.

SEC. 3. DISTRIBUTION OF TAX REVENUE AMONG THE STATES.

(a) IN GENERAL. -- Not later than 30 days after the date of enactment of this Act, a commission shall be appointed, composed of four representatives from each participating State. At least one shall be a remote seller whose origin State is the appointing State. The remaining three shall represent the interests of government, consumers and non-remote sellers resident in that State. The representatives of each State shall be appointed by the governor of that State. Not later than 90 days after the appointment of all members of the commission, the commission shall produce a distribution agreement, the terms of which shall conform to the following:

(1) Each month, each State that is party to the distribution agreement shall determine the total tax imposed on remote sales for which that State was the origin State.

(2) Each State that is party to the distribution agreement shall use information on remote sales which shall be required to be provided by sellers in the origin State to determine the proportion of tax collected on sales to States other than the origin State.

(3) The State taxing authority of each State that is party to the distribution agreement shall distribute the tax collected on remote sales for which that State was the origin State to each State that was a destination State for such sales, in proportion to that State's share of the collected tax on remote sales, using a single entity (including with respect to funding and staffing) similar to the clearinghouse operated pursuant to the Intermodal Surface Transportation Efficiency Act of 1991 (relating to Fuel Tax) (P.L. 102-240).

(4) Each State that is not a party to the distribution agreement may not levy any tax on a remote sale, and may not receive any distribution under the terms of the distribution agreement.

(5) A method shall be established for

(A) reporting to the entity described in paragraph (3) sales information reported by remote sellers in States that do not impose a sales, use or similar tax;

(B) for that entity to make the reported sales information available to the destination State of each sale; and

(C) providing, whenever a purchaser requests, access within a reasonable period of time to sales information pertaining to such purchaser's transactions.

(6) A method shall be established for determining and publishing, on an annual basis, the lowest combined rate within any of the contiguous 48 States that do impose a sales or use tax of the --

(A) generally applicable sales or use tax rate; and

(B) the average rate of sales or use tax imposed by counties or other units of local government in that State, to be known as the "collection rate".

(7) A method shall be established for determining and publishing, every 5 years, a list of common tax exemptions, to be known as "common exemptions".

(8) Adoption of a uniform compliant purchaser certificate, in accordance with the following:

(A) The distribution agreement shall include provisions for a uniform compliant purchaser certificate that allows for --

(i) recognition by remote sellers of sales for resale;

(ii) permits a business purchaser to directly pay applicable tax, if any, to the destination State; and

(iii) entity- and use-based exemptions of the destination State, where applicable.

(B) Each destination State may establish its own rules governing purchaser qualification criteria, application process, and reporting and tax remittance requirements for the grant and use of uniform compliant purchaser certificates by purchasers in such State.

(C) Receipt by a remote seller of such a certificate with respect to a remote sale shall be prima facie evidence that the seller had no obligation to collect tax with respect to that sale.

(D) Delivery of a compliant taxpayer certificate to a remote seller requires that the purchaser remit any sales, use or similar tax that may be due directly to the destination State taxing authority based on that destination State's tax rate and tax base and subject to the conditions and exceptions of that destination State.

(9) A method shall be established for a single audit of remote sellers whose origin State does not impose any sales, use or similar tax, for compliance with the requirements of section 4. This authority shall extend only to remote sellers whose origin State --

(A) does not impose a sales, use or similar tax;

(B) is not party to the distribution agreement; and

(C) formally declines a reasonable request for audit by a State that is party to the distribution agreement, provided that the request included an offer to compensate the origin State for reasonable administrative costs.

(10) Taxes collected with respect to remote sales to purchasers in destination States that are not parties to the distribution agreement shall be treated as if they were made to purchasers in the origin State.

(11) A State that is a party to the distribution agreement shall conform its laws to be consistent with this Act and applicable Constitutional standards.

(12) The single entity shall:

(A) implement reasonable security safeguards and internal access controls to protect the integrity of the personal information that it collects and maintains;

(B) implement a data privacy and security program designed to ensure the privacy, security, and confidentiality of personal information;

(C) protect against vulnerability to the privacy, security, or integrity of personal information;

(D) protect against unauthorized, illegitimate, or unnecessary access to or use of personal information;

(E) designate a specific employee or employees to coordinate the implementation of these safeguards;

(F) maintain a written security plan and process for the implementation of these safeguards; and

(G) not disclose personal information except --

(i) upon a request by the purchaser regarding the purchaser's transactions;

(ii) as required pursuant to the method described in section (3)(a)(5)(B);

(iii) as required by law; or

(iv) as necessary for a service provider operating at the direction and on behalf of the single entity.

(13) Except as provided in paragraphs (5) through (12), the distribution agreement may not include any provision that does not pertain to the distribution of taxes on remote sales among the States that are party to the agreement.

(b) DEADLINE. -- If, not later than 90 days after the appointment of all members of the commission, the commission has not produced a distribution agreement in accordance with subsection (a), no State may impose or collect any sales, use or similar tax on a remote sale until the distribution agreement becomes effective.

(c) APPROVAL & EFFECTIVE DATE. -- The distribution agreement may not take effect until --

(1) the agreement is approved by a [majority] of States; and

(2) the [Comptroller General of the United States/Assistant Attorney General for the Tax Division of the Department of Justice] --

(A) approves the distribution agreement;

(B) the House Judiciary Committee and Senate Finance Committee are notified of the approval; and

(C) not later than 60 days after such notice, the Congress does not enact a joint resolution disapproving of the distribution agreement.

SEC. 4. TREATMENT OF SELLERS IN STATES THAT DO NOT IMPOSE A SALES, USE OR SIMILAR TAX.

(a) IN GENERAL. -- In the case of a State that does not impose a sales, use or similar tax, remote sellers in that State shall --

(1) report the buyer's name, address and the amount of the sale for each such remote sale, to the single entity established under section 3(a) not later than 90 days after a remote sale for which that State was the origin State; or

(2) collect a flat tax on each remote sale that shall be equal to the collection rate under section 3(a)(6) (unless that sale falls within the common exemptions under section 3(a)(7)) and remit such tax collected to the single entity established under section 3(a).

(b) STATES THAT ARE PARTY TO THE DISTRIBUTION AGREEMENT. -- A State that does not impose a sales, use or similar tax on the date of enactment of this Act may participate in the distribution agreement.

(c) EQUITABLE TREATMENT FOR FOREIGN COUNTRIES. -- For purposes of subsection (a) and section 3(a)(5), a remote seller in a foreign country that enforces the collection and remittance obligation of a domestic consumption tax on US-based sellers for remote sales to consumers in that foreign country shall be subject to the requirements of subsection (a) as though that foreign remote seller were located in a State that does not impose a sales, use or similar tax, and the foreign country shall be treated as the origin State.

(d) EFFECTIVE DATE. -- This section shall take effect 90 days after the distribution agreement becomes effective.

SEC. 5. DEFINITIONS.

In this Act:

(1) The term "contiguous 48 States" means the several States, excluding Hawaii and Alaska.

(2) The term "destination State" means, with regard to a remote sale --

(A) the State in which the product or service sold is received by the buyer, based on the location indicated by instructions for delivery that the buyer furnishes to the seller;

(B) if no delivery location is specified, the State of any address the seller obtains from the buyer during the sale; or

(C) if the seller has no address for the buyer, the origin State for the remote sale.

(3) The term "flat tax" means, in regard to a tax imposed under section 4, a uniform rate of taxation on sales of all products or services.

(4) The term "origin State" means, with regard to a remote sale during any calendar year, the State in which the remote seller has employed the greatest average number of employees on business days during the preceding calendar year. For purposes of this paragraph and paragraph (5), in the case of a remote seller which was not in existence throughout such preceding calendar year, the determination under the preceding sentence (and under paragraph (5)) shall be based on the average number of employees that it is reasonably expected such remote seller will employ on business days in the current calendar year. For purposes of this paragraph and paragraph (5), all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as a single person. Any reference in this paragraph or paragraph (5) to any person shall include a reference to any predecessor of such person.

(5) The term "origin locality" means, with regard to a remote sale during any calendar year, the location in the origin State in which the remote seller has employed the greatest average number of employees on business days during the preceding calendar year.

(6) The term "origin rate" means the tax rate (including any tax imposed by the tax jurisdiction for the origin locality), subject to the same conditions and exceptions, that would apply were the purchase made in person in the remote seller's origin State and origin locality.

(7)(A) The term "physical presence" means that a seller, in a State --

(i) owns, holds a leasehold interest in or maintains real property such as a retail store, kiosk, warehouse, distribution center, manufacturing operation, or assembly facility in the State;

(ii) leases or owns tangible personal property (other than computer software), excluding inventory (other than inventory with a cost value more than \$100,000 held for more than 30 consecutive days in a calendar year), in the state;

(iii) has one or more employees, agents or independent contractors present in the State who engage in specific solicitations toward obtaining product or service orders from customers in that State, or prospective customers in that State, on behalf of the seller, excluding general solicitation campaigns or participation at national or regional trade shows and conventions conducted in the State; or

(iv) has one or more employees present in the State who provide on-site design, installation, or repair services on behalf of the remote seller.

(B) Physical presence does not include entering into an agreement under which a person, for a commission or other consideration, directly or indirectly refers potential purchasers to a seller outside the state, whether by an Internet-based link or platform, Internet Web site or otherwise.

(C) For purposes of this Act, the term "physical presence" shall not include a presence in a State for less than 15 days in a taxable year (or a greater number of days if provided by State law).

(D) For purposes of this Act, the term "physical presence" does not include delivery and product placement services offered by an in-State common carrier and Internet advertising services provided by in-State residents which are not exclusively directed towards, or do not solicit exclusively, in-State customers.

(8) The term "personal information" means information provided by a remote seller or State to the single entity described in Section (3)(a)(5).

(9) The term "remote sale" means a sale made to a purchaser in a State in which the seller has no physical presence.

(10) The term "remote seller" means a person that makes a remote sale.

(11) The term "Similar tax" means a tax that is imposed with respect to the sale or use of a product or service, regardless whether the tax is imposed on the seller or the purchaser, with the right or obligation of the seller to obtain reimbursement for the amount of the tax from the purchaser at the time of the transaction.

(12) The term "State" means 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, and any other territory or possession of the United States.

(13) The term "State taxing authority" means the State entity responsible for tax collection and audits.

SEC. 6. DISPUTE RESOLUTION.

(a) A judicial proceeding commenced in the court of a State raising the question whether such State is a seller's origin State or whether the seller is a remote seller may be removed by the seller to the United States District Court for a district in either such State or a district in another State the seller claims is its origin State.

(b) The District Courts of the United States shall have exclusive and original jurisdiction over civil actions to enforce the provisions of this Act pertaining to remote sellers in States that do not impose a sales, use, or similar tax.