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(Original Signature of Member)

114TH CONGRESS
1ST SESSION

H. R. _____

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

Mr. CHAFFETZ (for himself and ____) introduced the following bill; which was referred to the Committee on _____

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 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 “Remote Transactions
5 Parity Act of 2015”.

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 notwithstanding
6 any other provision of law to require all remote sellers not
7 qualifying for the small remote seller exception described
8 in subsection (c) to collect and remit sales and use taxes
9 with respect to remote sales sourced to that Member State
10 pursuant to the provisions of the Streamlined Sales and
11 Use Tax Agreement, but only if any changes to the
12 Streamlined Sales and Use Tax Agreement made after
13 August 31, 2014, are not in conflict with the minimum
14 simplification requirements in subsection (b)(2). A State
15 may exercise authority under this Act on the 1st day of
16 a month beginning 180 days after the State publishes no-
17 tice of the State’s intent to exercise the authority under
18 this Act, but no earlier than the date provided in section
19 3(h).

20 (b) ALTERNATIVE.—A State that is not a Member
21 State under the Streamlined Sales and Use Tax Agree-
22 ment is authorized notwithstanding any other provision of
23 law to require all remote sellers not qualifying for the
24 small remote seller exception described in subsection (c)
25 to collect and remit sales and use taxes with respect to
26 remote sales sourced to that State, but only if the State

1 adopts and implements the minimum simplification re-
2 quirements in paragraph (2). Such authority shall only
3 begin on the 1st day of a month and commence beginning
4 no earlier than the first day of the calendar quarter that
5 is at least 6 months after the date that the State—

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

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

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

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

17 (A) Provide—

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

23 (ii) except as provided in clauses (iii)
24 and section 3(i), a single audit of a remote

1 seller for all State and local taxing juris-
2 dictions within that State;

3 (iii) unless there is reasonable sus-
4 picion that the remote seller has engaged
5 in intentional misrepresentation, if a re-
6 mote seller utilizes a certified software pro-
7 vider as described in section 4(1), the
8 State requesting the audit shall contact the
9 certified software provider who shall have
10 the responsibility to provide the State with
11 complete records of transactions processed
12 for the remote seller at the option and con-
13 sent of the remote seller, represent the re-
14 mote seller during the State's audit and be
15 responsible for the audit findings (Nothing
16 herein shall prevent the remote seller from
17 contesting audit findings, and the remote
18 seller utilizing a certified software provider
19 shall not be contacted by a State request-
20 ing an audit unless the remote seller was
21 reasonably suspected of intentional mis-
22 representation.); and

23 (iv) 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 jurisd-
12 dictions within the State pursuant to paragraph
13 (1).

14 (C) Source all remote sales in compliance
15 with the sourcing definition set forth in section
16 4(8).

17 (D) Provide—

18 (i) a publicly available taxability and
19 exemption table which can be downloaded
20 in an easily usable format and accessed
21 electronically which indicates the taxability
22 of products and services along with any
23 product and service exemptions from sales
24 and use tax in the State, and which is up-
25 dated each calendar quarter for any

1 changes to the products and services speci-
2 fied under paragraph (1)(B);

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

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

13 (I) determine the correct sales
14 and use tax rate based on sourcing
15 rules in section 4(8) and calculate the
16 sales and use tax due at the time of
17 sale;

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

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

22 (IV) report all transactions proc-
23 essed to the remote seller;

1 (V) respond to sales and use tax
2 audit requests by States for remote
3 sellers; and

4 (VI) provide safeguards and pro-
5 tection of consumer privacy in any
6 data stored by the certified software
7 provider; and

8 (iv) certification procedures for per-
9 sons to be approved as certified software
10 providers.

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

18 (E) Relieve remote sellers from liability to
19 the State or locality for the incorrect collection,
20 remittance, or noncollection of sales and use
21 taxes, including any penalties or interest, if the
22 liability is the result of an error or omission
23 made by a certified software provider unless the
24 error or omission is the result of misleading, in-
25 complete, or inaccurate information provided to

1 the certified software provider by the remote
2 seller.

3 (F) Relieve certified software providers
4 from liability to the State or locality for the in-
5 correct collection, remittance, or noncollection
6 of sales and use taxes, including any penalties
7 or interest, if the liability is the result of mis-
8 leading, incomplete, or inaccurate information
9 provided by a remote seller.

10 (G) Relieve remote sellers and certified
11 software providers from liability to the State or
12 locality for incorrect collection, remittance, or
13 noncollection of sales and use taxes, including
14 any penalties or interest, if the liability is the
15 result of incorrect information or software pro-
16 vided or certified by the State.

17 (H) Provide remote sellers and certified
18 software providers with 90 days notice of rate
19 and boundary changes and any changes to the
20 products and services specified under paragraph
21 (1)(B) by the State or any locality in the State
22 and update the information described in clauses
23 (i) and (ii) of subparagraph (D) accordingly
24 and relieve any remote seller or certified soft-
25 ware provider from liability for collecting sales

1 and use taxes at the immediately preceding ef-
2 fective rate during the 90-day notice period if
3 the required notice is not provided.

4 (I) Provide the following:

5 (i) Customers may not pursue any
6 cause of action against the remote seller or
7 certified software provider for under-col-
8 lected or over-collected sales or use tax un-
9 less all of the following have occurred:

10 (I) The State where the customer
11 is located allows a purchaser to seek
12 a return of under-collected or over-col-
13 lected sales or use taxes from the re-
14 mote seller.

15 (II) The customer has provided a
16 written notice to a remote seller of
17 such overcollection.

18 (III) If the remote seller is using
19 a certified software provider, the re-
20 mote seller has provided a copy of
21 such notice to the certified software
22 provider within a reasonable time
23 after the remote seller's receipt of the
24 notice.

1 (IV) The remote seller and the
2 certified software provider have had
3 60 days from the date of the remote
4 seller's receipt of the notice to re-
5 spond.

6 (V) The notice contains informa-
7 tion necessary to determine the valid-
8 ity of the refund request.

9 (VI) The notice was provided by
10 the purchaser within the State's appli-
11 cable statute of limitations for claim-
12 ing a refund of sales and use tax paid.

13 (ii) Remote sellers and certified soft-
14 ware providers will not be liable to cus-
15 tomers seeking refunds for overcollection of
16 sales and use tax if the remote seller and
17 certified software provider have adopted
18 reasonable business practices regarding
19 collection of sales and use tax.

20 (iii) Remote sellers and certified soft-
21 ware providers are presumed to have
22 adopted reasonable business practices re-
23 garding collection of sales and use tax if,
24 in the collection of such sales or use tax,
25 a remote seller uses a certified software

1 provider certified by the State, or a propri-
2 etary system that utilizes information pro-
3 vided by the State pursuant to clauses (i)
4 and (ii) of section 2(b)(2)(D), and the re-
5 mote seller or certified software provider
6 have remitted to the State all sales and use
7 taxes collected less any deductions, credits,
8 or collection allowances.

9 (iv) Nothing in this section shall ei-
10 ther require a State to provide, or prevent
11 a State from providing, a procedure by
12 which a purchaser may seek a refund di-
13 rectly from the State arising out of sales
14 or use taxes collected in error by a remote
15 seller or certified software provider from
16 the purchaser.

17 (J) Accepts registrations at no charge to
18 certified software provider or remote seller from
19 a central online registration system that allows
20 a remote seller to register to collect and remit
21 sales and use taxes in all States that have exer-
22 cised authority under this Act.

23 (K) Relieve remote sellers and certified
24 software providers, except in cases of fraud,
25 from liability for tax, penalty, and interest on

1 transactions if the purchaser provides to the re-
2 mote seller the necessary documentation to
3 claim an exemption within 90 days of the sale.

4 (c) SMALL REMOTE SELLER EXCEPTION.—A State
5 is authorized to require a remote seller to collect sales and
6 use taxes under this Act only if the remote seller has gross
7 annual receipts exceeding \$10,000,000 in the calendar
8 year preceding the first calendar year any State can exer-
9 cise the authority provided under this Act. For the second
10 calendar year any State can exercise the authority pro-
11 vided under this Act, the small remote seller exception
12 threshold will be \$5,000,000 in gross annual receipts in
13 the preceding calendar year. For the third and subsequent
14 calendar years any State can exercise the authority pro-
15 vided under this Act, the small remote seller exception
16 threshold will be \$1,000,000 in gross annual receipts in
17 the preceding calendar year. For purposes of determining
18 whether the threshold in this subsection is met—

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

23 (2) persons with 1 or more ownership relation-
24 ships shall also be aggregated if such relationships

1 were designed with a principal purpose of avoiding
2 the application of these rules.

3 **SEC. 3. LIMITATIONS.**

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

6 (1) subjecting a remote seller or any other per-
7 son to franchise, income, occupation, or any other
8 type of taxes, other than sales and use taxes;

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

10 (3) enlarging or reducing State authority to im-
11 pose such taxes.

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

15 (c) LICENSING AND REGULATORY REQUIREMENTS.—
16 Nothing in this Act shall be construed as permitting or
17 prohibiting a State from—

18 (1) licensing or regulating any person;

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

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

23 (4) exercising authority over matters of inter-
24 state commerce.

1 (d) NO NEW TAXES.—Nothing in this Act shall be
2 construed as encouraging a State to impose sales and use
3 taxes on any goods or services not subject to a sales and
4 use tax prior to the date of the enactment of this Act.

5 (e) NO EFFECT ON INTRASTATE SALES.—The provi-
6 sions of this Act shall apply only to remote sales and shall
7 not apply to intrastate sales or intrastate sourcing rules.
8 States granted authority under section 2(a) shall comply
9 with all intrastate provisions of the Streamlined Sales and
10 Use Tax Agreement.

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

15 (g) CERTIFICATION REQUIREMENTS.—A State may
16 not exercise authority under this Act unless the following
17 requirements are satisfied:

18 (1) The State provides certification procedures
19 for persons to be approved as certified software pro-
20 viders. A State may delegate the certification proce-
21 dures so long as the State retains final approval over
22 any certification decisions.

23 (2) The State (or its delegate) does not deny or
24 revoke certification to a software provider without a
25 reasonable basis, or arbitrarily or capriciously. A

1 State must complete the certification review of the
2 software provider no later than the first day of the
3 calendar quarter that is at least 180 days after the
4 software provider requests certification by that
5 State.

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

12 (4) The State provides compensation for cer-
13 tified software providers. A State may delegate the
14 authority to negotiate the compensation so long as
15 the State retains final approval of the compensation
16 rate(s).

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

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

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

1 (i) LIMITATION ON AUDITS OF REMOTE SELLERS.—

2 A State exercising authority under this Act—

3 (1) may not audit a remote seller that—

4 (A) has registered in the State under sec-
5 tion 2(b)(2)(J);

6 (B) has gross annual receipts of less than
7 \$5,000,000 in the taxable year as aggregated in
8 subsection (c) of this section;

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

12 (2) may not have audits of remote sellers con-
13 ducted by persons whose compensation is contingent
14 upon audit findings.

15 (j) LIMITATION ON TIME PERIOD TO ASSESS RE-

16 MOTE SELLERS AND CERTIFIED SOFTWARE PRO-

17 VIDERS.—A State may not hold a remote seller or certified

18 software provider liable for the incorrect collection, remit-

19 tance, or noncollection of sales and use taxes, including

20 any penalties or interest, if the liability is for a sales or

21 use tax assessed under the authority of this Act more than

22 3 years after the later of the due date or the filing of

23 the sales and use tax return applicable to the sales and

24 use tax assessed.

1 (k) REMOTE SELLER COMPENSATION.—A State
2 must provide remote sellers with compensation equaling
3 no less than the amount, if any, the State provides to non-
4 remote sellers within the State.

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

6 In this Act:

7 (1) CERTIFIED SOFTWARE PROVIDER.—The
8 term “certified software provider” means a person
9 that—

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

13 (B) is certified by a State or on a State’s
14 behalf to so provide such software.

15 (2) LOCALITY; LOCAL.—The terms “locality”
16 and “local” refer to any political subdivision of a
17 State.

18 (3) MEMBER STATE.—The term “Member
19 State”—

20 (A) means a Member State as that term is
21 used under the Streamlined Sales and Use Tax
22 Agreement as in effect on the date of the enact-
23 ment of this Act; and

1 (B) does not include any associate member
2 or a member that is not a full member under
3 the Streamlined Sales and Use Tax Agreement.

4 (4) NATIONAL CERTIFIED SOFTWARE PRO-
5 VIDER.—The term “national certified software pro-
6 vider” means a certified software provider that has
7 been certified by all States that are certifying
8 States. A “certifying State” is a State that has a
9 generally applicable sales and use tax, that has met
10 the requirements set forth under section 3(g)(1),
11 and that has not violated the requirements set forth
12 in section 3(g)(2). Once a certified software provider
13 is a national certified software provider, it shall not
14 lose its status as such when a State becomes a certi-
15 fying State so long as the national certified software
16 provider requested certification from the new certi-
17 fying State at least 30 days from the date that the
18 State became a certifying State and the certifying
19 State has not violated section 3(g)(2).

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

24 (6) REMOTE SALE.—The term “remote sale”
25 means a sale that originates in one State and is

1 sourced to another State as provided in section 4(8)
2 which the seller would not legally be required to pay,
3 collect, or remit State or local sales and use taxes
4 without the authority provided by this Act.

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

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

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

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

22 For purposes of this paragraph, the term “physical
23 presence’ ” shall not include presence in a State for
24 less than 15 days in a taxable year (or a greater
25 number of days if provided by State law), or pres-

1 ence in a State to conduct limited or transient busi-
2 ness activity.

3 (8) SOURCED.—For purposes of a State grant-
4 ed authority under section 2(b), the location to
5 which a remote sale is sourced refers to the location
6 where the product or service sold is received by the
7 purchaser, based on the location indicated by in-
8 structions for delivery that the purchaser furnishes
9 to the seller. When no delivery location is specified,
10 the remote sale is sourced to the customer’s address,
11 including the customer’s place of primary use that
12 is either known to the seller or, if not known, ob-
13 tained by the seller during the consummation of the
14 transaction, including the address of the customer’s
15 payment instrument if no other address is available.
16 If an address or place of primary use is unknown
17 and a billing address cannot be obtained, the remote
18 sale is sourced to the address of the seller from
19 which the remote sale was made. The term “re-
20 ceived” means taking possession of product or mak-
21 ing first use of services. A State granted authority
22 under section 2(a) shall comply with the sourcing
23 provisions of the Streamlined Sales and Use Tax
24 Agreement.

1 (9) STATE.—The term “State” means any of
2 the several States, the District of Columbia, the
3 Commonwealth of Puerto Rico, Guam, American
4 Samoa, the United States Virgin Islands, the Com-
5 monwealth of the Northern Mariana Islands, or any
6 territory or possession of the United States.

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

13 **SEC. 5. SEVERABILITY.**

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

19 **SEC. 6. DISPUTE RESOLUTION.**

20 The district courts of the United States shall have
21 original and exclusive jurisdiction over suits in equity and
22 actions at law to determine compliance with the provisions
23 of this Act.

1 **SEC. 7. PREEMPTION.**

2 Except as otherwise provided in this Act, no State
3 or political subdivision thereof and no interstate agency
4 or political agency of two or more States shall enact or
5 enforce any law, rule, regulation, standard, or other provi-
6 sion that shall have the force or effect of law requiring
7 remote sellers to collect or remit sales tax. Further, this
8 Act shall be construed to preempt and limit any conflicting
9 power exercised or to be exercised by a State or local juris-
10 diction under the law of such State or local jurisdiction.