

114TH CONGRESS
1ST SESSION

H. R. 2775

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

JUNE 15, 2015

Mr. CHAFFETZ (for himself, Mr. WOMACK, Mrs. NOEM, Mr. CONYERS, Ms. SPEIER, Mr. WELCH, Mr. STIVERS, Ms. DELBENE, Mr. DOLD, Mr. RIGELL, Mrs. ELLMERS of North Carolina, Mr. CURBELO of Florida, Mr. BARLETTA, Mr. DEUTCH, Mr. LARSON of Connecticut, Mr. KILMER, and Mr. JOHNSON of Georgia) introduced the following bill; which was referred to the Committee on the Judiciary

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 the
13 date of enactment of this Act, are not in conflict with the
14 minimum simplification requirements in subsection (b)(2).
15 A State may exercise authority under this Act on the 1st
16 day of a month beginning 180 days after the State pub-
17 lishes notice of the State’s intent to exercise the authority
18 under this Act, but no earlier than the date provided in
19 section 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 180 days 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 clause (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, at the op-
9 tion of the remote seller, first contact the
10 certified software provider who shall have
11 the responsibility to provide the State with
12 complete records of transactions processed
13 for the remote seller and who will rep-
14 resent the remote seller during the State's
15 audit and be responsible for the audit find-
16 ings except as provided in subparagraphs
17 (F), (G), and (H) (Nothing herein shall
18 prevent the remote seller from contesting
19 audit findings, and the remote seller uti-
20 lizing a certified software provider shall
21 not be contacted by a State requesting an
22 audit unless the remote seller either was
23 reasonably suspected of intentional mis-
24 representation or has declined to have a

1 certified software provider represent it dur-
2 ing the audit.); and

3 (iv) a single sales and use tax return
4 to be used by remote sellers to be filed
5 with the single entity responsible for tax
6 administration.

7 A State may not require a remote seller to file
8 sales and use tax returns any more frequently
9 than returns are required for nonremote sellers.
10 No local jurisdiction may require a remote sell-
11 er to submit a sales and use tax return or to
12 collect sales and use taxes other than as pro-
13 vided by this paragraph.

14 (B) Provide a uniform sales and use tax
15 base among the State and the local taxing juris-
16 dictions within the State pursuant to paragraph
17 (1).

18 (C) Source all remote sales in compliance
19 with the sourcing definition set forth in section
20 4(10).

21 (D) Provide—

22 (i) a publicly available taxability and
23 exemption table which can be downloaded
24 in an easily usable format and accessed
25 electronically which indicates the taxability

1 of products and services along with any
2 product and service exemptions from sales
3 and use tax in the State, and which is up-
4 dated each calendar quarter for any
5 changes to the products and services speci-
6 fied under paragraph (1)(B);

7 (ii) a rates and boundary database in
8 an easily downloadable format and which is
9 updated each calendar quarter for rate and
10 boundary changes;

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

17 (I) determine the correct sales
18 and use tax rate based on sourcing
19 rules in section 4(10) and calculate
20 the sales and use tax due at the time
21 of sale;

22 (II) generate and file sales and
23 use tax returns electronically;

24 (III) remit the sales and use
25 taxes to States electronically;

1 (IV) report all transactions proc-
2 essed to the remote seller;

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

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

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

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

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

1 error or omission is the result of misleading, in-
2 complete, or inaccurate information provided to
3 the certified software provider by the remote
4 seller.

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

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

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

1 and relieve any remote seller or certified soft-
2 ware provider from liability for collecting sales
3 and use taxes at the immediately preceding ef-
4 fective rate during the 90-day notice period if
5 the required notice is not provided.

6 (I) Provide the following, but only if the
7 law of a State allows a person, other than the
8 State itself, to pursue a cause of action against
9 a seller for under-collected or over-collected
10 sales or use tax:

11 (i) That a person, other than the
12 State itself, may not pursue any cause of
13 action against a remote seller for under-
14 collected or over-collected sales or use tax
15 unless the remote seller has received writ-
16 ten notice from the person that the remote
17 seller has over-collected or under-collected
18 sales and use tax, the notice contains in-
19 formation sufficient to determine the valid-
20 ity of the refund request or asserted
21 under-collection, and the remote seller has
22 not, within 60 days of receipt of the notice,
23 refunded affected customers the amount of
24 the over-collected sales and use tax or paid
25 the under-collected amount of sales and

1 use tax to the State. No penalties may be
2 imposed during the 60-day period in excess
3 of the penalties that would otherwise be
4 imposed by the State had no notice been
5 provided pursuant to this paragraph.

6 (ii) That a notice of over-collection
7 from a person is only valid if received with-
8 in the applicable statute of limitations for
9 filing refunds for sales and use tax, and
10 that a notice of under-collection from a
11 person is only valid if received within the
12 applicable statute of limitations for assess-
13 ing underpayments of sales and use tax.

14 (iii) That a person, other than the
15 State itself, may not pursue any cause of
16 action against a certified software provider
17 for its activities conducted for a remote
18 seller described in clause (i) unless the re-
19 mote seller provides a copy of the written
20 notice to the certified software provider
21 within a reasonable time for the certified
22 software provider to be able to assist the
23 remote seller in making the payments with-
24 in the time frame described in clause (i).

1 (iv) That a person, other than the
2 State itself, may pursue a cause of action
3 against a remote seller for under-collected
4 or over-collected sales or use tax if the re-
5 mote seller knew or should have known
6 that it had under-collected or over-collected
7 and did not, within 60 days of its deter-
8 mination, refund affected customers the
9 amount of the over-collected sales and use
10 tax or pay the amount of under-collected
11 sales and use tax to the State.

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

18 (K) Relieve remote sellers and certified
19 software providers, except in cases of fraud,
20 from liability for tax, penalty, and interest on
21 transactions if the purchaser provides to the re-
22 mote seller the necessary documentation to
23 claim an exemption within 90 days of the sale.

24 (c) **SMALL REMOTE SELLER PHASE-IN.—**

1 (1) COLLECTION AUTHORIZED.—A State is au-
2 thorized to require the collection of sales and use
3 taxes by a remote seller under this Act only as fol-
4 lows:

5 (A) For the 1st calendar year following the
6 effective date, if the remote seller—

7 (i) has gross annual receipts exceed-
8 ing \$10,000,000 in the calendar year pre-
9 ceding the date of enactment; or

10 (ii) utilizes an electronic marketplace
11 for the purpose of making products or
12 services available for sale to the public.

13 (B) For the 2d calendar year following the
14 effective date, if the remote seller—

15 (i) has gross annual receipts exceed-
16 ing \$5,000,000 in the immediately pre-
17 ceding calendar year; or

18 (ii) utilizes an electronic marketplace
19 for the purpose of making products or
20 services available for sale to the public.

21 (c) For the 3d calendar year following the
22 effective date, if the remote seller—

23 (i) has gross annual receipts exceed-
24 ing \$1,000,000 in the immediately pre-
25 ceding calendar year; or

1 (ii) utilizes an electronic marketplace
2 for the purpose of making products or
3 services available for sale to the public.

4 (2) DETERMINATION OF THRESHOLD.—For
5 purposes of determining whether the threshold in
6 this paragraph (1) is met—

7 (A) the sales of all persons related within
8 the meaning of subsections (b) and (c) of sec-
9 tion 267, or section 707(b)(1), of the Internal
10 Revenue Code of 1986 shall be aggregated; or

11 (B) persons with 1 or more ownership rela-
12 tionships shall also be aggregated if such rela-
13 tionships were designed with a principal pur-
14 pose of avoiding the application of these rules.

15 SEC. 3. LIMITATIONS.

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

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

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

22 (3) enlarging or reducing State authority to im-
23 pose such taxes.

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

4 (c) LICENSING AND REGULATORY REQUIREMENTS.—
5 Nothing in this Act shall be construed as permitting or
6 prohibiting a State from—

- 7 (1) licensing or regulating any person;
- 8 (2) requiring any person to qualify to transact
9 intrastate business;
- 10 (3) subjecting any person to State or local taxes
11 not related to the sale of goods or services; or
- 12 (4) exercising authority over matters of inter-
13 state commerce.

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

18 (e) NO EFFECT ON INTRASTATE SALES.—The provi-
19 sions of this Act shall apply only to remote sales and shall
20 not apply to intrastate sales or intrastate sourcing rules.
21 States granted authority under section 2(a) shall comply
22 with all intrastate provisions of the Streamlined Sales and
23 Use Tax Agreement.

24 (f) NO EFFECT ON MOBILE TELECOMMUNICATIONS
25 SOURCING ACT.—Nothing in this Act shall be construed

1 as altering in any manner or preempting the Mobile Tele-
2 communications Sourcing Act (4 U.S.C. 116–126).

3 (g) CERTIFICATION REQUIREMENTS.—A State may
4 not exercise authority under this Act unless the following
5 requirements are satisfied:

6 (1) The State provides certification procedures
7 for persons to be approved as certified software pro-
8 viders. A State may delegate the certification proce-
9 dures so long as the State retains final approval over
10 any certification decisions.

11 (2) The State (or its delegate) does not deny or
12 revoke certification to a software provider without a
13 reasonable basis, or arbitrarily or capriciously. A
14 State must complete the certification review of the
15 software provider no later than the first day of the
16 calendar quarter that is at least 180 days after the
17 software provider requests certification by that
18 State.

19 (3) The State has certified multiple national
20 certified software providers, and the certifications
21 are in effect. Nothing in this Act shall be construed
22 to deny the ability of a remote seller to deploy and
23 utilize a certified software provider of the seller's
24 choice.

1 (4) The State provides compensation for cer-
2 tified software providers. A State may delegate the
3 authority to negotiate the compensation so long as
4 the State retains final approval of the compensation
5 rate(s).

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

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

11 (2) during the period beginning October 1 and
12 ending on December 31 of the first calendar year
13 beginning after the date of the enactment of this
14 Act.

15 (i) LIMITATION ON AUDITS OF REMOTE SELLERS.—
16 A State exercising authority under this Act—

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

18 (A) has registered in the State under sec-
19 tion 2(b)(2)(J); and

20 (B) has gross annual receipts of less than
21 \$5,000,000 in the taxable year as aggregated in
22 subsection (c) of section 2;

23 unless there is reasonable suspicion that such remote
24 seller has engaged in intentional misrepresentation
25 or fraud; and

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

4 (j) LIMITATION ON TIME PERIOD TO ASSESS RE-
5 MOTE SELLERS AND CERTIFIED SOFTWARE PRO-
6 VIDERS.—A State may not hold a remote seller or certified
7 software provider liable for the incorrect collection, remit-
8 tance, or noncollection of sales and use taxes, including
9 any penalties or interest, if the liability is for a sales or
10 use tax assessed under the authority of this Act more than
11 3 years after the later of the due date or the filing of
12 the sales and use tax return applicable to the sales and
13 use tax assessed.

14 (k) REMOTE SELLER COMPENSATION.—A State
15 must provide remote sellers with compensation equaling
16 no less than the amount, if any, the State provides to non-
17 remote sellers within the State.

18 SEC. 4. DEFINITIONS AND SPECIAL RULES.

19 In this Act:

20 (1) CERTIFIED SOFTWARE PROVIDER.—The
21 term “certified software provider” means a person
22 that—

23 (A) provides software or access to software
24 to remote sellers to facilitate State and local
25 sales and use tax compliance; and

1 (B) is certified by a State or on a State's
2 behalf to so provide such software.

3 (2) EFFECTIVE DATE.—The term “effective
4 date” means the date that is 1 year after the date
5 of the enactment of this Act. However, if the date
6 that is 1 year after the date of the enactment of this
7 Act falls during the period beginning October 1 and
8 ending on December 31, the effective date shall be
9 January 1 of the immediately following year.

10 (3) ELECTRONIC MARKETPLACE.—The term
11 “electronic marketplace” means a digital marketing
12 platform where—

13 (A) products or services are offered for
14 sale by more than 1 remote seller; and

15 (B) buyers may purchase such products or
16 services through a common system of financial
17 transaction processing.

18 (4) LOCALITY; LOCAL.—The terms “locality”
19 and “local” refer to any political subdivision of a
20 State.

21 (5) MEMBER STATE.—The term “Member
22 State”—

23 (A) means a Member State as that term is
24 used under the Streamlined Sales and Use Tax

1 Agreement as in effect on the date of the enact-
2 ment of this Act; and

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

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

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

1 (8) REMOTE SALE.—The term “remote sale”
2 means a sale that originates in one State and is
3 sourced to another State as provided in section
4 4(10) which the seller would not legally be required
5 to pay, collect, or remit State or local sales and use
6 taxes without the authority provided by this Act.

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

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

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

22 (c) The leasing or owning of tangible per-
23 sonal property or of real property in the State.

24 For purposes of this paragraph, the term “physical
25 presence’” shall not include presence in a State for

1 less than 15 days in a taxable year (or a greater
2 number of days if provided by State law), or pres-
3 ence in a State to conduct limited or transient busi-
4 ness activity.

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

1 provisions of the Streamlined Sales and Use Tax
2 Agreement.

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

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

15 SEC. 5. SEVERABILITY.

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

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