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(Original Signature of Member)

115TH 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.

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IN THE HOUSE OF REPRESENTATIVES

Mrs. NOEM (for herself 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 2017”.

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  
24 software to remote sellers to facilitate State  
25 and local 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.