

[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

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 “Online Sales Sim-
5 plification Act of 2015”.

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

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

7 (1) the State is the origin State for the remote
8 sale; and

9 (2) the State is a party to the distribution
10 agreement.

11 (b) AMOUNT OF TAX.—The tax imposed by a State
12 pursuant to subsection (a) on a remote sale shall be ap-
13 plied at the origin rate.

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

24 (d) PRESERVATION OF STATE SOVEREIGNTY IN EN-
25 FORCEMENT.—A State taxing authority may conduct an
26 audit of a seller with respect to sales, use or similar tax

1 on remote sales only if the State is the origin State with
2 regard to that remote sale.

3 (e) PREVENTION OF DOUBLE TAXATION.—

4 (1) With the exception of vehicles, vessels, air-
5 craft and business purchases by taxpayers who are
6 required to file sales or use tax returns with the des-
7 tination State, a destination State may not impose
8 any additional tax on a purchaser of property or
9 services from a remote seller if the purchaser paid
10 a tax that was collected by the remote seller.

11 (2) No State may impose any sales, use, or
12 similar tax on a purchaser from a remote seller of
13 vehicles, vessels or aircraft, or with respect to busi-
14 ness purchases described in paragraph (1) from a
15 remote seller, unless that State allows such pur-
16 chasers a credit for any sales, use, or similar tax
17 that was collected by the remote seller with respect
18 to the purchase.

19 **SEC. 3. DISTRIBUTION OF TAX REVENUE AMONG THE**
20 **STATES.**

21 (a) IN GENERAL.—Not later than 30 days after the
22 date of enactment of this Act, a commission shall be ap-
23 pointed, composed of four representatives from each par-
24 ticipating State. At least one shall be a remote seller
25 whose origin State is the appointing State. The remaining

1 three shall represent the interests of government, con-
2 sumers and non-remote sellers resident in that State. The
3 representatives of each State shall be appointed by the
4 governor of that State. Not later than 90 days after the
5 appointment of all members of the commission, the com-
6 mission shall produce a distribution agreement, the terms
7 of which shall conform to the following:

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

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

18 (3) The State taxing authority of each State
19 that is party to the distribution agreement shall dis-
20 tribute the tax collected on remote sales for which
21 that State was the origin State to each State that
22 was a destination State for such sales, in proportion
23 to that State's share of the collected tax on remote
24 sales, using a single entity (including with respect to
25 funding and staffing) similar to the clearinghouse

1 operated pursuant to the Intermodal Surface Trans-
2 portation Efficiency Act of 1991 (relating to Fuel
3 Tax) (P.L. 102-240).

4 (4) Each State that is not a party to the dis-
5 tribution agreement may not levy any tax on a re-
6 mote sale, and may not receive any distribution
7 under the terms of the distribution agreement.

8 (5) A method shall be established for

9 (A) reporting to the entity described in
10 paragraph (3) sales information reported by re-
11 mote sellers in States that do not impose a
12 sales, use or similar tax;

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

16 (C) providing, whenever a purchaser re-
17 quests, access within a reasonable period of
18 time to sales information pertaining to such
19 purchaser's transactions.

20 (6) A method shall be established for deter-
21 mining and publishing, on an annual basis, the low-
22 est combined rate within any of the contiguous 48
23 States that do impose a sales or use tax of the—

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

1 (B) the average rate of sales or use tax im-
2 posed by counties or other units of local govern-
3 ment in that State,
4 to be known as the “collection rate”.

5 (7) A method shall be established for deter-
6 mining and publishing, every 5 years, a list of com-
7 mon tax exemptions, to be known as “common ex-
8 emptions”.

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

11 (A) The distribution agreement shall in-
12 clude provisions for a uniform compliant pur-
13 chaser certificate that allows for—

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

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

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

21 (B) Each destination State may establish
22 its own rules governing purchaser qualification
23 criteria, application process, and reporting and
24 tax remittance requirements for the grant and

1 use of uniform compliant purchaser certificates
2 by purchasers in such State.

3 (C) Receipt by a remote seller of such a
4 certificate with respect to a remote sale shall be
5 prima facie evidence that the seller had no obli-
6 gation to collect tax with respect to that sale.

7 (D) Delivery of a compliant taxpayer cer-
8 tificate to a remote seller requires that the pur-
9 chaser remit any sales, use or similar tax that
10 may be due directly to the destination State
11 taxing authority based on that destination
12 State's tax rate and tax base and subject to the
13 conditions and exceptions of that destination
14 State.

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

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

23 (B) is not party to the distribution agree-
24 ment; and

1 (C) formally declines a reasonable request
2 for audit by a State that is party to the dis-
3 tribution agreement, provided that the request
4 included an offer to compensate the origin
5 State for reasonable administrative costs.

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

11 (11) A State that is a party to the distribution
12 agreement shall conform its laws to be consistent
13 with this Act and applicable Constitutional stand-
14 ards.

15 (12) The single entity shall:

16 (A) implement reasonable security safe-
17 guards and internal access controls to protect
18 the integrity of the personal information that it
19 collects and maintains;

20 (B) implement a data privacy and security
21 program designed to ensure the privacy, secu-
22 rity, and confidentiality of personal information;

23 (C) protect against vulnerability to the pri-
24 vacy, security, or integrity of personal informa-
25 tion;

1 (D) protect against unauthorized, illegit-
2 imate, or unnecessary access to or use of per-
3 sonal information;

4 (E) designate a specific employee or em-
5 ployees to coordinate the implementation of
6 these safeguards;

7 (F) maintain a written security plan and
8 process for the implementation of these safe-
9 guards; and

10 (G) not disclose personal information ex-
11 cept—

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

14 (ii) as required pursuant to the meth-
15 od described in section (3)(a)(5)(B);

16 (iii) as required by law; or

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

20 (13) Except as provided in paragraphs (5)
21 through (12), the distribution agreement may not in-
22 clude any provision that does not pertain to the dis-
23 tribution of taxes on remote sales among the States
24 that are party to the agreement.

1 (b) DEADLINE.—If, not later than 90 days after the
2 appointment of all members of the commission, the com-
3 mission has not produced a distribution agreement in ac-
4 cordance with subsection (a), no State may impose or col-
5 lect any sales, use or similar tax on a remote sale until
6 the distribution agreement becomes effective.

7 (c) APPROVAL & EFFECTIVE DATE.—The distribu-
8 tion agreement may not take effect until—

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

11 (2) the [Comptroller General of the United
12 States/Assistant Attorney General for the Tax Divi-
13 sion of the Department of Justice]—

14 (A) approves the distribution agreement;

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

18 (C) not later than 60 days after such no-
19 tice, the Congress does not enact a joint resolu-
20 tion disapproving of the distribution agreement.

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

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

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

6 (2) collect a flat tax on each remote sale that
7 shall be equal to the collection rate under section
8 3(a)(6) (unless that sale falls within the common ex-
9 emptions under section 3(a)(7)) and remit such tax
10 collected to the single entity established under sec-
11 tion 3(a).

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

16 (c) EQUITABLE TREATMENT FOR FOREIGN COUN-
17 TRIES.—For purposes of subsection (a) and section
18 3(a)(5), a remote seller in a foreign country that enforces
19 the collection and remittance obligation of a domestic con-
20 sumption tax on US-based sellers for remote sales to con-
21 sumers in that foreign country shall be subject to the re-
22 quirements of subsection (a) as though that foreign re-
23 mote seller were located in a State that does not impose
24 a sales, use or similar tax, and the foreign country shall
25 be treated as the origin State.

1 (d) EFFECTIVE DATE.—This section shall take effect
2 90 days after the distribution agreement becomes effec-
3 tive.

4 **SEC. 5. DEFINITIONS.**

5 In this Act:

6 (1) The term “contiguous 48 States” means the
7 several States, excluding Hawaii and Alaska.

8 (2) The term “destination State” means, with
9 regard to a remote sale—

10 (A) the State in which the product or serv-
11 ice sold is received by the buyer, based on the
12 location indicated by instructions for delivery
13 that the buyer furnishes to the seller;

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

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

19 (3) The term “flat tax” means, in regard to a
20 tax imposed under section 4, a uniform rate of tax-
21 ation on sales of all products or services.

22 (4) The term “origin State” means, with regard
23 to a remote sale during any calendar year, the State
24 in which the remote seller has employed the greatest
25 average number of employees on business days dur-

1 ing the preceding calendar year. For purposes of
2 this paragraph and paragraph (5), in the case of a
3 remote seller which was not in existence throughout
4 such preceding calendar year, the determination
5 under the preceding sentence (and under paragraph
6 (5)) shall be based on the average number of em-
7 ployees that it is reasonably expected such remote
8 seller will employ on business days in the current
9 calendar year. For purposes of this paragraph and
10 paragraph (5), all persons treated as a single em-
11 ployer under subsection (b), (c), (m), or (o) of sec-
12 tion 414 of the Internal Revenue Code of 1986 shall
13 be treated as a single person. Any reference in this
14 paragraph or paragraph (5) to any person shall in-
15 clude a reference to any predecessor of such person.

16 (5) The term “origin locality” means, with re-
17 gard to a remote sale during any calendar year, the
18 location in the origin State in which the remote sell-
19 er has employed the greatest average number of em-
20 ployees on business days during the preceding cal-
21 endar year.

22 (6) The term “origin rate” means the tax rate
23 (including any tax imposed by the tax jurisdiction
24 for the origin locality), subject to the same condi-
25 tions and exceptions, that would apply were the pur-

1 chase made in person in the remote seller's origin
2 State and origin locality.

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

5 (i) owns, holds a leasehold interest in
6 or maintains real property such as a retail
7 store, kiosk, warehouse, distribution cen-
8 ter, manufacturing operation, or assembly
9 facility in the State;

10 (ii) leases or owns tangible personal
11 property (other than computer software),
12 excluding inventory (other than inventory
13 with a cost value more than \$100,000 held
14 for more than 30 consecutive days in a cal-
15 endar year), in the state;

16 (iii) has one or more employees,
17 agents or independent contractors present
18 in the State who engage in specific solici-
19 tations toward obtaining product or service
20 orders from customers in that State, or
21 prospective customers in that State, on be-
22 half of the seller, excluding general solici-
23 tation campaigns or participation at na-
24 tional or regional trade shows and conven-
25 tions conducted in the State; or

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

5 (B) Physical presence does not include en-
6 tering into an agreement under which a person,
7 for a commission or other consideration, di-
8 rectly or indirectly refers potential purchasers
9 to a seller outside the state, whether by an
10 Internet-based link or platform, Internet Web
11 site or otherwise.

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

17 (D) For purposes of this Act, the term
18 “physical presence” does not include delivery
19 and product placement services offered by an
20 in-State common carrier and Internet adver-
21 tising services provided by in-State residents
22 which are not exclusively directed towards, or
23 do not solicit exclusively, in-State customers.

1 (8) The term “personal information” means in-
2 formation provided by a remote seller or State to the
3 single entity described in Section (3)(a)(5).

4 (9) The term “remote sale” means a sale made
5 to a purchaser in a State in which the seller has no
6 physical presence.

7 (10) The term “remote seller” means a person
8 that makes a remote sale.

9 (11) The term “Similar tax” means a tax that
10 is imposed with respect to the sale or use of a prod-
11 uct or service, regardless whether the tax is imposed
12 on the seller or the purchaser, with the right or obli-
13 gation of the seller to obtain reimbursement for the
14 amount of the tax from the purchaser at the time
15 of the transaction.

16 (12) The term “State” means the several
17 States, the District of Columbia, the Commonwealth
18 of Puerto Rico, Guam, American Samoa, the United
19 States Virgin Islands, the Commonwealth of the
20 Northern Mariana Islands, and any other territory
21 or possession of the United States.

22 (13) The term “State taxing authority” means
23 the State entity responsible for tax collection and
24 audits.

1 **SEC. 6. DISPUTE RESOLUTION.**

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

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