H. R. 114

To regulate certain State impositions on interstate commerce.

IN THE HOUSE OF REPRESENTATIVES

Mr. SENSENBERN introduced the following bill; which was referred to the Committee on ________

A BILL

To regulate certain State impositions on interstate commerce.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “No Regulation Without Representation Act of 2016”.

SEC. 2. MINIMUM JURISDICTIONAL STANDARDS FOR STATE AND LOCAL SALES AND USE TAX COLLECTION.

(a) IN GENERAL.—A State may—

(1) impose an obligation on a person for—
(A) the collection of a sales, use, or similar tax, or

(B) the reporting of any information with respect thereto, on a person,

(2) assess a sales, use or similar tax on a person, or

(3) treat a person as doing business in a state for purposes of such a tax,

only if such person had a physical presence in the State during the calendar quarter with respect to which the obligation or assessment is imposed.

(b) REQUIREMENTS FOR PHYSICAL PRESENCE.—

(1) IN GENERAL.—For purposes of subsection (a), a person has a physical presence in a State only if such person’s business activities in the State include any of the following during the calendar year—

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

(B) leases or owns tangible personal property (other than computer software) of more than de minimus value in the State;
(C) has one or more employees, agents or independent contractors present in the State who engage in specific solicitations toward obtaining product or service orders from customers in that State, or prospective customers in that State, on behalf of the person;

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

(E) maintains an office in the State at which it regularly employs three or more employees for any purpose.

(2) DE MINIMIS PHYSICAL PRESENCE.—For purposes of this section, the term “physical presence” shall not include—

(A) entering into an agreement under which a person, for a commission or other consideration, directly or indirectly refers potential purchasers to a person outside the State, whether by an Internet-based link or platform, Internet Web site or otherwise;

(B) any presence in a State, as described in section 2(b)(1), for less than 15 days in a
taxable year (or a greater number of days if provided by State law); (C) delivery and product placement services offered by an interstate or in-State common carrier; and (D) Internet advertising services provided by in-State residents which are not exclusively directed towards, or do not solicit exclusively, in-State customers. (c) PROTECTION OF NON-SELLERS.—A State may not impose a sales or use tax collection obligation, or an obligation to report any information with respect thereto, on a person or assess a sales, use or similar tax on any person other than a purchaser or a seller having a physical presence in the State.

SEC. 3. DISPUTE RESOLUTION. The district courts of the United States shall have original jurisdiction over civil actions to enforce the provisions of this Act, including authority to issue declaratory judgments pursuant to section 2201 of title 28, United States Code, and, notwithstanding the provisions of section 1341 of such title, injunctive relief, as necessary to carry out this Act.

SEC. 4. DEFINITIONS AND EFFECTIVE DATE. (a) DEFINITIONS.—For purposes of this Act:
(1) **Marketplace Provider.**—The term “marketplace provider” includes any person, other than a seller, who facilitates a sale. For purposes of this subsection, a person facilitates a sale when the person both—

(A) lists or advertises tangible personal property and services for sale in any forum, including a catalog or Internet website; and

(B) either directly or indirectly through agreements or arrangements with third parties, collects gross receipts from the customer and transmits those receipts to the marketplace seller, whether or not such person deducts any fees from the transmission of those receipts to the marketplace seller.

(2) **Marketplace Seller.**—The term “marketplace seller” means a person that has any sales facilitated by a marketplace provider.

(3) **Referrer.**—The term “referrer” shall mean every person who—

(A) contracts or otherwise agrees with a seller to list multiple items of tangible personal property and services for sale and the sales prices thereof in any forum, including a catalog or Internet website;
(B) receives a fee, commission, or other consideration from a seller for the listing;

(C) transfers, via telephone, Internet link, or otherwise, a customer to the seller or the seller’s website to complete a purchase; and

(D) does not collect receipts from the customer for the transaction.

(4) Person.—The term “person” has the meaning given such term by section 1 of title 1 of the United States Code. Each corporation that is a member of a group of affiliated corporations, whether unitary or not, is itself a separate “person”.

(5) Seller.—The term “seller” does not include—

(A) any marketplace provider;

(B) any referrer;

(C) any carrier, in which the seller does not have an ownership interest, providing transportation or delivery services with respect to tangible personal property; and

(D) any credit card issuer, transaction or billing processor, or other financial intermediary.

(6) Similar tax.—The term “similar tax” means a tax that is imposed with respect to the sale
or use of a product or service, regardless whether
the tax is imposed on the person making the sale or
the purchaser, with the right or obligation of the
person making the sale to obtain reimbursement for
the amount of the tax from the purchaser at the
time of the transaction.

(7) STATE.—The term “State” means the sev-
eral States, the District of Columbia, the Common-
wealth of Puerto Rico, Guam, American Samoa, the
United States Virgin Islands, the Commonwealth of
the Northern Mariana Islands, and any other terri-
tory or possession of the United States and includes
the State government or political subdivision entity
responsible for tax collection and audits.

(b) EFFECTIVE DATE.—This Act shall apply with re-
spect to calendar quarters beginning on or after January
1, 2017.