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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 juris-
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 PHASE-IN.—

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

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

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

14 (ii) utilizes an electronic marketplace
15 for the purpose of making products or
16 services available for sale to the public.

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

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

22 (ii) utilizes an electronic marketplace
23 for the purpose of making products or
24 services available for sale to the public.

1 (C) For the 3d calendar year following the
2 effective date, if the remote seller—

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

6 (ii) utilizes an electronic marketplace
7 for the purpose of making products or
8 services available for sale to the public.

9 (2) DETERMINATION OF THRESHOLD.—For
10 purposes of determining whether the threshold in
11 this paragraph (1) is met—

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

16 (B) persons with 1 or more ownership rela-
17 tionships shall also be aggregated if such rela-
18 tionships were designed with a principal pur-
19 pose of avoiding the application of these rules.

20 **SEC. 3. LIMITATIONS.**

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

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

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

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

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

7 (c) LICENSING AND REGULATORY REQUIREMENTS.—
8 Nothing in this Act shall be construed as permitting or
9 prohibiting a State from—

10 (1) licensing or regulating any person;

11 (2) requiring any person to qualify to transact
12 intrastate business;

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

15 (4) exercising authority over matters of inter-
16 state commerce.

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

21 (e) NO EFFECT ON INTRASTATE SALES.—The provi-
22 sions of this Act shall apply only to remote sales and shall
23 not apply to intrastate sales or intrastate sourcing rules.
24 States granted authority under section 2(a) shall comply

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

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

7 (g) CERTIFICATION REQUIREMENTS.—A State may
8 not exercise authority under this Act unless the following
9 requirements are satisfied:

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

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

23 (3) The State has certified multiple national
24 certified software providers, and the certifications
25 are in effect. Nothing in this Act shall be construed

1 to deny the ability of a remote seller to deploy and
2 utilize a certified software provider of the seller's
3 choice.

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

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

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

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

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

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

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

23 (B) has gross annual receipts of less than
24 \$5,000,000 in the taxable year as aggregated in
25 subsection (c) of this section;

1 unless there is reasonable suspicion that such remote
2 seller has engaged in intentional misrepresentation
3 or fraud; and

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

7 (j) **LIMITATION ON TIME PERIOD TO ASSESS RE-**
8 **MOTE SELLERS AND CERTIFIED SOFTWARE PRO-**
9 **VIDERS.**—A State may not hold a remote seller or certified
10 software provider liable for the incorrect collection, remit-
11 tance, or noncollection of sales and use taxes, including
12 any penalties or interest, if the liability is for a sales or
13 use tax assessed under the authority of this Act more than
14 3 years after the later of the due date or the filing of
15 the sales and use tax return applicable to the sales and
16 use tax assessed.

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

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

22 In this Act:

23 (1) **CERTIFIED SOFTWARE PROVIDER.**—The
24 term “certified software provider” means a person
25 that—

1 (A) provides software or access to software
2 to remote sellers to facilitate State and local
3 sales and use tax compliance; and

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

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

13 (3) ELECTRONIC MARKETPLACE.—The term
14 “electronic marketplace” means a digital marketing
15 platform where—

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

18 (B) buyers may purchase such products or
19 services through a common system of financial
20 transaction processing.

21 (4) LOCALITY; LOCAL.—The terms “locality”
22 and “local” refer to any political subdivision of a
23 State.

24 (5) MEMBER STATE.—The term “Member
25 State”—

1 (A) means a Member State as that term is
2 used under the Streamlined Sales and Use Tax
3 Agreement as in effect on the date of the enact-
4 ment of this Act; and

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

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

24 (7) PERSON.—The term “person” means an in-
25 dividual, trust, estate, fiduciary, partnership, cor-

1 poration, limited liability company, or other legal en-
2 tity, and a State or local government.

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

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

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

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

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

1 For purposes of this paragraph, the term “physical
2 presence’” shall not include presence in a State for
3 less than 15 days in a taxable year (or a greater
4 number of days if provided by State law), or pres-
5 ence in a State to conduct limited or transient busi-
6 ness activity.

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

1 under section 2(a) shall comply with the sourcing
2 provisions of the Streamlined Sales and Use Tax
3 Agreement.

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

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

16 **SEC. 5. SEVERABILITY.**

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