

112TH CONGRESS  
1ST SESSION

S. \_\_\_\_\_

To authorize States to require remote sellers to collect sales and use taxes, under a simplified sales and use tax collection system.

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IN THE SENATE OF THE UNITED STATES

January \_\_\_\_\_, 2011

Mr. \_\_\_\_\_ (for himself and \_\_\_\_\_) introduced the following bill; which was read twice and referred to the Committee on Finance

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**A BILL**

To authorize States to require remote sellers to collect sales and use taxes, under a simplified sales and use tax collection system

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

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Sales and Use Tax Collection and  
5 Simplification Act of 2011.”

6 SEC. 2. FINDINGS.

7 Congress makes the following findings:

8 (1) The States should be authorized to require remote sellers that  
9 make substantial amounts of remote sales in the United States and  
10 substantial amounts of remote sales to a particular State to collect that  
11 State’s sales and use tax. This Act would authorize the States to require

1 only those remote sellers that exceed substantial thresholds to collect  
2 sales and use tax. Accordingly, small sellers would not be affected by this  
3 Act. This Act does not authorize the imposition of any new tax and would relieve  
4 citizens from having to maintain records of their purchases and file use tax returns  
5 with various state and local tax authorities.

6 (2) The nationwide standard for imposing State sales and use tax  
7 collection obligations is most appropriately addressed by Congress. This  
8 was noted by the United States Supreme Court in Quill Corp. v. North  
9 Dakota, 504 U.S. 298 (1992).

10 (3) Many remote sellers, including large and sophisticated remote  
11 sellers, are not currently collecting sales and use taxes in States in which  
12 they have no physical presence, due to the Quill decision.

13 (4) It is unfair and wrong for the States to lack authority to require  
14 remote sellers to collect sales and use taxes if the collection burden is not  
15 substantially different than that imposed on in-state businesses, which  
16 are required to collect such taxes.

17 (5) Requiring remote sellers to comply with the sales and use tax laws  
18 of all the local jurisdictions in a State would create an unreasonable  
19 administrative burden, because local jurisdictions may have their own  
20 unique sales and use tax forms, rules, rates, and filing procedures.

21 (6) To eliminate the administrative burden generated by local taxes,  
22 any State that imposes sales and use tax collection responsibilities on a  
23 remote seller under this Act must design a single sales and use tax return  
24 form for remote sellers that covers State sales and use taxes as well as  
25 local sales and use taxes imposed within that state.

26 (7) To ensure that remote sellers have adequate time to make  
27 necessary administrative arrangements to begin collecting sales and use  
28 tax, the Act provides that any State that imposes sales and use tax  
29 collection responsibilities on a remote seller under this Act provide  
30 notification that the legislation has been enacted and allow remote sellers

1 a three-month period after the date of the enactment of the legislation  
2 before they must begin collecting sales and use tax.

3 (8) Granting jurisdiction to a federal court to enforce this Act ensures  
4 meaningful recourse for those affected by this Act, and is consistent with  
5 the principles of uniformity and simplification underlying this Act.  
6 Notwithstanding any common law or statutory provision, including 28  
7 U.S.C. § 1341, the Court of Federal Claims should have concurrent  
8 jurisdiction with state administrative bodies and state courts over any  
9 case or controversy arising directly under this Act. Consequently, remote  
10 sellers affected by this Act would have the choice of pursuing litigation  
11 involving this Act either in federal court or in state administrative bodies  
12 and state courts.

13 (9) To prevent harmful, costly, time-consuming, and wasteful litigation  
14 of issues arising under this Act, the losing party in litigation should be  
15 required to reimburse the prevailing party's litigation costs.

16 **Sec. 3. DEFINITIONS.**

17 (a) **FACILITATOR OF REMOTE SALES.** – The term “facilitator of remote  
18 sales” means any person that directly aids or assists sellers in the making  
19 of remote sales, including, but not limited to, a person that operates a  
20 website marketplace through which the remote seller makes sales.

21 (b) **LOCAL JURISDICTION.**– The term “local jurisdiction” means any  
22 political subdivision of a State.

23 (c) **PERSON.**– The term “person” means an individual, estate, trust,  
24 corporation, partnership, limited liability company, or government entity.

25 (d) **RELATED ENTITY.**– The term “related entity” means a person that,  
26 with respect to the seller during all or any portion of the taxable year, is:

27 (1) connected through stock or other ownership interest with a common  
28 parent corporation if (A) stock possessing at least 50 percent of the total  
29 combined voting power of all classes of stock entitled to vote or at least 50  
30 percent of the total value of shares of all classes of stock of each of the

1 corporations, except the common parent corporation, is owned by one or  
2 more of the other corporations; and (B) the common parent corporation  
3 owns stock possessing at least 50 percent of the total combined voting  
4 power of all classes of stock entitled to vote or at least 50 percent of the  
5 total value of shares of all classes of stock of at least one of the other  
6 corporations; or (2) a person that, notwithstanding its form of  
7 organization, bears the same ownership relationship to the seller as a  
8 person described in (1).

9 (e) REMOTE SALES.- The term “remote sales” means sales made into a  
10 State with which the seller lacks substantial nexus.

11 (f) REMOTE SELLER.- The term “remote seller” means a person that  
12 makes remote sales.

13 (g) SALES IN THE STATE.- The term “sales in the State” means a sale  
14 where the item sold is received by the purchaser in the State, based on the  
15 location indicated by instructions for delivery that the purchaser furnishes  
16 to the seller. When no delivery location is specified, the sale occurs in the  
17 State if the customer’s billing address is in the State.

18 (h) SALES IN THE UNITED STATES.- The term “sales in the United  
19 States” means a sale where the item sold is received by the purchaser in  
20 the United States, based on the location indicated by instructions for  
21 delivery that the purchaser furnishes to the seller. When no delivery  
22 location is specified, the sale occurs in the United States if the customer’s  
23 billing address is in the United States.

24 (i) SALES TAX.- The term “sales tax” means a tax that is:

25 (1) imposed on or incident to the sale of tangible or intangible personal  
26 property or services as may be defined or specified under the laws  
27 imposing such tax; and

28 (2) measured by the amount of the sales price, cost, charge, or other  
29 value of or for such property or services.

1 (j) STATE.- The term “State” means: (1) a State, the District of Columbia,  
2 the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and  
3 American Samoa and includes the Commonwealth of the Northern  
4 Mariana Islands; and (2) an Indian country as defined in 18 U.S. 1151.

5 (k) USE TAX.- The term “use tax” means a tax that is:

6 (1) imposed on the purchase, storage, consumption, distribution, or  
7 other use of tangible or intangible personal property or services as may be  
8 defined or specified under the laws imposing such tax; and

9 (2) measured by the purchase price of such property or services.

10 SEC. 4. AUTHORITY TO REQUIRE REMOTE SELLERS TO COLLECT  
11 SALES AND USE TAXES.

12 (a) IN GENERAL. – A State is authorized to require a remote seller to  
13 collect sales and use tax only if the remote seller has gross annual receipts  
14 in the preceding calendar year from remote sales of items, services, and  
15 other products –

16 (1) in the United States exceeding \$5,000,000 and in the State  
17 exceeding \$500,000; and

18 (2) the State collects and administers all sales and use taxes under this  
19 Act in accordance with section 5.

20 (b) AGGREGATION RULE. – For purposes of determining whether the  
21 \$5,000,000 and \$500,000 thresholds described in subsection (a) of this  
22 section are met, the sales of all related entities are aggregated.

23 SEC. 5. ADMINISTRATION.

24 (a) IN GENERAL. – No State is authorized to require remote sellers to  
25 collect sales and use tax under this Act unless the State complies with the  
26 following requirements:

27 (1) the State must provide a sales and use tax return for use by remote  
28 sellers and must not require that remote sellers submit any other sales  
29 and use tax return other than the sales and use tax return developed  
30 specifically for remote sellers;

1 (2) except as provided in paragraph (3) of this subsection, remote  
2 sellers that are required to collect sales and use tax must collect sales and  
3 use tax at a single rate that includes both the State rate and the locality  
4 rate, if any, with respect to all sales made in the State;

5 (3) any State that generally imposes a lower sales and use tax rate for  
6 sales of food or drugs and medicine or both may require remote sellers to  
7 collect sales and use tax at two rates, a lower rate for sales of food or  
8 drugs and medicine or both, and a general rate for all other items;

9 (4) the rates described in (2) and (3) must not exceed the respective  
10 average State and locality rates for sellers other than remote sellers; and

11 (5) the State's legislation requiring remote sellers to collect sales and  
12 use tax may not apply to sales occurring less than three months after the  
13 date of the enactment of the legislation.

14 (b) NOTICE. – Any State that enacts legislation requiring remote sellers  
15 to collect sales and use tax under this Act must publish a notice within  
16 seven (7) days following enactment of the State legislation that states:

17 (1) that the State has enacted legislation requiring remote sellers to  
18 collect sales and use tax;

19 (2) the criteria under which remote sellers are required to collect sales  
20 and use tax under the State legislation;

21 (3) the date upon which affected remote sellers will be required to  
22 begin collecting sales and use tax;

23 (4) the rate or rates at which affected remote sellers will be required to  
24 collect sales and use tax; and

25 (5) where remote sellers can obtain the special sales and use tax return  
26 for use by remote sellers.

27 (c) FREQUENCY. – No State is authorized under this Act to require a  
28 remote seller to file sales and use tax returns under this Act any more  
29 frequently than returns are required for other sellers.

1 (d) LOCAL JURISDICTIONS. – No local jurisdiction may require a  
2 remote seller to submit a sales and use tax return or to collect sales and  
3 use tax other than as provided by this section.

4 Sec. 6. APPEALS.

5 (a) FEDERAL CONCURRENT JURISDICTION.- The Court of Federal  
6 Claims shall have concurrent jurisdiction with state administrative bodies  
7 and state courts to render judgment in any case or controversy examining  
8 whether a State is in compliance with the provisions of this Act or  
9 whether a remote seller meets the criteria set forth in this Act or both.

10 (b) REIMBURSEMENT OF LITIGATION COSTS.- If any litigation  
11 brought under this section is contested at the Court of Federal Claims, the  
12 losing party in litigation shall reimburse the prevailing party's litigation  
13 costs, including any appeals, including but not limited to, attorney fees.

14 (c) ELEVENTH AMENDMENT APPLICABILITY.- Any State that  
15 requires a remote seller to collect sales or use tax under the authority of  
16 this Act hereby waives whatever immunity it might otherwise have under  
17 the Eleventh Amendment of the United States Constitution to being sued  
18 without its consent in federal court as provided in this section.

19 Sec. 7. APPLICATION OF STATE LAW.

20 (a) PERSONS REQUIRED TO COLLECT STATE OR LOCAL SALES  
21 TAX.- Any person required by State legislation authorized by section 4 of  
22 this Act to collect a State sales and use tax shall be subject to the laws of  
23 such State relating to such tax to the extent that such laws are consistent  
24 with this Act.

25 (b) NO NEW TAXES.- Except as provided in this Act, nothing in this Act  
26 shall be construed to authorize a State to license or regulate any person.  
27 Additionally, this Act shall not be construed to authorize or impose any  
28 new tax on any person.

29 Sec. 8. DISCLOSURE REQUIREMENT.

1 A State that meets the requirements under Section 5 of this Act may  
2 require facilitators of remote sales to disclose the names of all sellers that  
3 make over \$5,000,000 in annual sales in the United States through the  
4 services of the facilitator.

5 Sec. 9. PREEMPTION.

6 (a) QUILL.- This Act overrides the application of the United States  
7 Supreme Court's decision in Quill Corp. v. North Dakota, 504 U.S. 298  
8 (1992), to the extent that its physical presence requirement is inconsistent  
9 with this Act.

10 (b) OTHER.- Except at otherwise provided in this Act, this Act shall not be  
11 construed to preempt or limit any power exercised or to be exercised by a  
12 State or local jurisdiction under the law of such State or local jurisdiction  
13 or under any other Federal law.