112TH CONGRESS
1ST SESSION

H. R. ________

To improve the States' rights to enforce the collection of State sales and use tax laws, and for other purposes.

___________

IN THE HOUSE OF REPRESENTATIVES

Mr. Womack (for himself and _____) introduced the following bill, which was referred to the Committee on _____________

___________

A BILL

To improve the States' rights to enforce the collection of State sales and use tax laws, 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 “___________ Act
5  of 2011”.
6  SEC. 2. AUTHORIZATION FOR STATES TO REQUIRE COLLEC-
7  TION OF SALES AND USE TAXES.
8  (a) GRANT OF AUTHORITY.—Notwithstanding any
9  other provision of law, a State electing, individually or
through an agreement with one or more of the several States, to satisfy the requirements of subsection (b) is authorized to require all sellers not qualifying for the small seller exception to collect and remit sales and use taxes with respect to remote sales into the State without regard to the location of the seller.

(b) REQUIREMENTS FOR AUTHORITY.—The authorization provided under paragraph (1) shall be granted once the State implements a simplified system for administration of sales and use tax collection with respect to remote sellers, which includes the following minimum requirements:

(1) SMALL SELLER EXCEPTION.—An exception for remote sellers with gross annual receipts in the preceding calendar year from remote sales of items, services, and other products in the United States not exceeding $1,000,000 (or such greater amount as determined by the State involved) or in the State not exceeding $100,000 (or such greater amount as determined by the State).

(2) FORM AND FILING.—A sales and use tax return for use by remote sellers and a single revenue authority within the State with which remote sellers are required to file the return. A State may not require that remote sellers submit any other sales and
use tax return other than the sales and use tax return applicable to remote sellers. A remote seller may not be required to file sales and use tax returns any more frequently than returns are required for other sellers. No local jurisdiction may require a remote seller to submit a sales and use tax return or to collect sales and use tax other than as provided by this paragraph.

(3) Definition of Tax Base.—With respect to remote sellers—

(A) products and services subject to tax must be identical throughout the State, and

(B) any exemptions must be identical throughout the State and may not include exemptions for products and services that are not exempt when sold by other than remote sellers.

(4) Sales and Use Tax Rate Structure.—

(A) Except as provided in subparagraph (B) of this paragraph, remote sellers must collect sales and use tax under one of three rate structures—

(i) a single State-wide blended rate that includes both the State rate and applicable rates of local jurisdictions, as determined by the State;
(ii) the maximum State rate, which is the highest rate at which sellers are required by the State to collect tax, exclusive of tax imposed by or for the specific benefit of local jurisdictions; or

(iii) the applicable destination rate, which is the sum of the State rate and any applicable rate for the local jurisdiction into which the sale was made. If a State requires that remote sellers collect at the applicable destination rate, the State must make available adequate software to remote sellers that substantially eases the burden of collecting at multiple rates within the State, and any State providing such software must relieve remote sellers from liability to that State for collection of the incorrect amount of sales or use tax, including any penalties or interest, provided that collection of the improper amount is the result of relying on information provided by that State.

(B) A State that generally imposes a lower sales and use tax rate for sales of food or drugs
and medicine, or both, may require remote sellers to collect sales and use tax at such rates.

(C) The rates described in clause (i) and (ii) must not exceed the respective average State and locality rates applicable to sellers other than remote sellers.

(c) COMENCEMENT OF AUTHORITY.—

(1) IN GENERAL.—A State satisfying the requirements of subsection (b) may exercise the authority granted in subsection (a) beginning on the first day of the calendar quarter at least six months after the date that the State publishes the public notice described in paragraph (2).

(2) NOTICE REQUIREMENTS.—The public notice required in paragraph (1) must include the following information for remote sellers:

(A) The title and reference to the legislation that the State has enacted requiring remote sellers to collect sales and use tax.

(B) The criteria under which remote sellers are required to collect sales and use tax under the State legislation.

(C) The rate or rates at which affected remote sellers will be required to collect sales and use tax.
(D) The date upon which affected remote sellers will be required to begin collecting sales and use tax.

(E) References to compliance information and the form to be filed by remote sellers.

(d) **Termination of Authority.**—The authorization provided under subsection (a) shall terminate for a State that no longer satisfies the requirements of subsection (b) on the date that—

(1) a court of competent jurisdiction determines that the State's simplified system of administration no longer meets the minimum requirements set forth in subsection (b); and

(2) the determination of such court is no longer subject to appeal.

**SEC. 3. PREEMPTION.**

Except at otherwise provided in this Act, this Act shall not be construed to preempt or limit any power exercised or to be exercised by a State or local jurisdiction under the law of such State or local jurisdiction or under any other Federal law.

**SEC. 4. LIMITATIONS.**

(a) **In General.**—Nothing in this Act shall be construed as—
(1) subjecting a seller to franchise taxes, income taxes, or licensing requirements of a State or political subdivision thereof;

(2) affecting the application of such taxes or requirements or enlarging or reducing the authority of any State to impose such taxes or requirements;

(3) requiring any State or any local taxing jurisdiction to exempt, or to impose a tax on any product, or to adopt any particular type of tax, or to impose the same rate of tax as any other taxing jurisdiction; or

(4) permitting or prohibiting a State from—

(A) licensing or regulating any person;

(B) requiring any person to qualify to transact intrastate business;

(C) subjecting any person to State taxes not related to the sale of goods or services; or

(D) exercising authority over matters of interstate commerce.

(b) NO EFFECT ON NEXUS.—No obligation imposed by virtue of the authority granted by section 2 shall be considered in determining whether a seller has a nexus with any State for any other tax purpose.
SEC. 5. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

1. **STATE.**—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, any other territory or possession of the United States, and any Indian country as defined in section 1151 of title 18 of the United States Code.

2. **LOCAL JURISDICTION.**—The term "local jurisdiction" means any political subdivision of a State.

3. **PERSON.**—The term "person" means an individual, trust, estate, fiduciary, partnership, corporation, limited liability company, or any other legal entity, and includes a State or local government.

4. **SALE INTO THE STATE.**—The term "sale into the State" means a sale where the item sold is received by the purchaser in the State, based on the location indicated by instructions for delivery that the purchaser furnishes to the seller. When no delivery location is specified, the sale occurs in the State if the customer’s billing address is in the State.
(5) **REMOTE SALE.**—The term "remote sale" means a sale of goods or services attributed to a State with respect to which a seller does not have adequate physical presence to establish nexus under the law existing on the day before the date of the enactment of this Act so as to allow such State to require, without regard to the authority granted by this Act, the seller to collect and remit taxes covered by this Act with respect to such sale.

(6) **REMOTE SELLER.**—The term "remote seller" means a person that makes remote sales.

(7) **SALES TAX.**—The term "sales tax" means a tax that is—

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

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

(8) **USE TAX.**—The term "use tax" means a tax that is—

(1) imposed on the purchase, storage, consumption, distribution, or other use of tangible or intan-
gible personal property or services as may be defined
or specified under the laws imposing such tax; and
(2) measured by the purchase price of such
property or services.

SEC. 6. SEVERABILITY.
If any provision of this Act or the application of such
provision to any person or circumstance is held to be un-
constitutional, the remainder of this Act and the applica-
tion of the provisions of such to any person or cir-
cumstance shall not be affected thereby.