

S 1736 IS

108th CONGRESS  
1st Session  
**S. 1736**

To promote simplification and fairness in the administration and collection of sales and use taxes.

**IN THE SENATE OF THE UNITED STATES**

**October 15, 2003**

Mr. ENZI (for himself, Mr. DORGAN, Mr. CHAFEE, Mr. HAGEL, Mrs. HUTCHISON, Mr. VOINOVICH, Mr. THOMAS, Mr. BREAU, Mr. BINGAMAN, Mr. GRAHAM of Florida, Mr. JOHNSON, Mr. NELSON of Nebraska, and Mr. ROCKEFELLER) introduced the following bill; which was read twice and referred to the Committee on Finance

**A BILL**

To promote simplification and fairness in the administration and collection of sales and use taxes.

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 'Streamlined Sales and Use Tax Act'.

**SEC. 2. CONSENT OF CONGRESS.**

The Congress consents to the November 12, 2002, Streamlined Sales and Use Tax Agreement.

**SEC. 3. SENSE OF THE CONGRESS.**

It is the sense of the Congress that the sales and use tax system established by the Streamlined Sales and Use Tax Agreement, to the extent that it meets the minimum simplification requirements of section 6, provides sufficient simplification and uniformity to warrant Federal authorization to States that are parties to the Agreement to require remote sellers, subject to the conditions provided in this Act, to collect and remit the sales and use taxes of such States and of local taxing jurisdictions of such States. The purpose of this Act is to effectuate that limited authority, and not to grant additional authority unrelated to the accomplishment of that purpose.

**SEC. 4. AUTHORIZATION TO REQUIRE COLLECTION OF SALES AND USE TAXES.**

(a) GRANT OF AUTHORITY- Once 10 States comprising at least 20 percent of the total population of all States imposing a sales tax, as determined by the 2000 Federal census, have petitioned for membership under the Streamlined Sales and Use Tax Agreement in the manner required by the Agreement, have been found to be in compliance with the Agreement pursuant to the terms of the Agreement, have become Member States under the Agreement, and the necessary operational aspects of the Agreement have been implemented, any Member State under the Agreement is authorized, notwithstanding any other provision of law, to require all sellers not qualifying for the small business exception provided under subsection (b) to collect and remit sales and use taxes with respect to remote sales to purchasers located in such State. Such authorization shall terminate for all States if the requirements of the preceding sentence cease to be met or if the Agreement, as amended, no longer meets the minimum simplification requirements of section 6. Such authorization shall also terminate for any Member State if such Member State no longer complies with the requirements for Member State status under the terms of the Agreement. Determinations regarding compliance with the requirements of this subsection shall be made by the Governing Board (or, prior to the establishment of the Governing Board, by the States petitioning for membership under the Agreement) subject to section 5.

(b) SMALL BUSINESS EXCEPTION- No seller shall be subject to a requirement of any State to collect and remit sales and use taxes with respect to a remote sale where the seller and its affiliates collectively had gross remote taxable sales nationwide of less than \$5,000,000 in the calendar year preceding the date of such sale. No seller shall be subject to a requirement of any State to collect and remit sales and use taxes with respect to a remote sale where the seller and its affiliates collectively meet the \$5,000,000 threshold of this subsection but the seller has less than \$100,000 in gross remote taxable sales nationwide.

(c) REASONABLE SELLER COMPENSATION- The authority provided in subsection (a) is conditioned on acceptance and implementation by each Member State of a requirement that the State provide reasonable compensation for expenses incurred by sellers related to the administration, collection and remittance of sales and use taxes. Furthermore, the State shall provide compensation that covers all tax processing costs of remote sellers. The additional compensation provided to remote sellers shall remain in effect for a period of 4 years from the date that a State is granted the authority under this Act to

require remote sellers to collect and remit sales taxes with respect to remote purchasers located in such State.

## **SEC. 5. DETERMINATION BY GOVERNING BOARD AND JUDICIAL REVIEW OF THAT DETERMINATION.**

(a) PETITION- Any person who may be affected by the Agreement may petition the Governing Board for a determination on any issue relating to the implementation of the Agreement.

(b) REVIEW IN COURT OF FEDERAL CLAIMS- Any person who submits a petition under subsection (a) may bring an action against the Governing Board in the United

States Court of Federal Claims for judicial review of the action of the Governing Board on that petition if--

(1) the petition relates to an issue of whether--

(A) a State has met or continues to meet the requirements for Member State status under the Agreement;

(B) the Governing Board has performed a nondiscretionary duty of the Governing Board under the Agreement;

(C) the Agreement continues to meet the minimum simplification requirements set forth in section 6; or

(D) any other requirement of section 4 has been met; and

(2) the petition is denied by the Governing Board in whole or in part with respect to that issue, or the Governing Board fails to act on the petition with respect to that issue not later than six months after the date on which the petition is submitted.

(c) TIMING OF ACTION FOR REVIEW- An action for review under this section shall be initiated not later than 60 days after the Governing Board's denial of the petition, or, if the Governing Board failed to act on the petition, within 60 days after the end of the six-month period beginning on the day after the date on which the petition was submitted.

(d) STANDARD OF REVIEW- In any action for review under this section, the court shall set aside the actions, findings, and conclusions of the Governing Board found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(e) JURISDICTION-

(1) GENERALLY- Chapter 91 of title 28 of the United States Code is amended by adding at the end thereof:

**`Sec. 1510. Jurisdiction regarding the streamlined sales and use tax agreement**

`The United States Court of Federal Claims shall have exclusive jurisdiction over actions for judicial review of determinations of the Governing Board of the Streamlined Sales and Use Tax Agreement under the terms and conditions provided in section 5 of the Simplified Sales and Use Tax Act.'

(2) CONFORMING AMENDMENT TO TABLE OF SECTIONS- The table of sections at the beginning of chapter 91 of title 28, United States Code, is amended by adding at the end the following new item:

`1510. Jurisdiction regarding the streamlined sales and use tax agreement.'

**SEC. 6. MINIMUM SIMPLIFICATION REQUIREMENTS.**

The following criteria are the minimum simplification requirements for the Agreement:

(1) A centralized, one-stop, multistate registration system that sellers may elect to use to register with the Member States; provided the seller may also elect to register directly with a Member State; and further provided that privacy and confidentiality controls shall be placed on the multistate registration system so that it may not be used for any purpose other than the administration of sales and use taxes.

(2) Uniform definitions of products and product-based exemptions from which the Member States may choose their individual tax bases; Member States may enact other product-based exemptions without restriction if the Agreement does not have a definition for the product or for a term that includes the product.

(3) Uniform rules for sourcing and attributing transactions to particular taxing jurisdictions.

(4) Uniform procedures for the certification of service providers and software on which a seller may elect to rely in order to determine State sales and use tax rates and taxability.

(5) Uniform rules for bad debts.

(6) Uniform requirements for tax returns and remittances.

(7) Consistent electronic filing and remittance methods.

(8) Single, State-level administration of all State and local sales and use taxes, and a single filing for each State.

(9) A single sales and use tax rate per taxing jurisdiction for items other than those listed in section 308 C of the Agreement as adopted on November 12, 2002, except that a State may impose a second sales and use tax rate for

items satisfying the Agreement's definition for food, food ingredients, or drugs.

(10) A provision that relieves a seller or service provider from liability for collection of the incorrect amount of sales or use tax, provided such seller has relied on information provided by the Member States regarding tax rates, boundaries, or taxing jurisdiction assignments.

(11) Uniform audit procedures for sellers, including an option under which a seller may elect, by notifying the Governing Board, to be subject to a single audit on behalf of all the Member States or a single audit on behalf of each Member State.

(12) Reasonable compensation for all sellers that administer, collect and remit sales and use tax, with requirements for remote seller compensation as provided in section 4(d) of this Act.

(13) Appropriate protections for consumer privacy.

(14) Governance procedures and mechanisms to ensure timely, consistent, and uniform implementation and adherence to the principles of the streamlined system and the terms of the Agreement.

(15) The Member States apply the minimum simplification requirements under this subsection to transaction taxes on communications by January 1, 2006, except that the requirement for one uniform return shall not apply and the requirements for rate simplification are modified to require one rate for each type of transaction tax per jurisdiction. `Transaction tax' as used in this provision shall have the same meaning as in section 116 of title 4, United States Code, except that `communications services' shall replace `mobile telecommunications services' whenever such term appears.

(16) Uniform rules for `sales tax holidays' that provide alternative mechanisms for remote sellers to participate.

(17) Uniform rules and procedures to address refunds and credits for sales taxes relating to customer returns, restocking fees, discounts and coupons, and rules to address allocations of shipping and handling and discounts applied to multiple item and multiple seller orders and sourcing rules that contain provisions to prevent double taxation in situations where a foreign country has imposed a transaction tax on a digital good or service.

(18) Each amendment hereafter adopted to the Agreement is within the scope of the subject matter currently covered by the agreement.

## **SEC. 7. LIMITATION.**

(a) IN GENERAL- Nothing in this Act shall be construed as subjecting sellers to franchise taxes, income taxes, or licensing requirements of a State or political subdivision thereof, nor shall anything in this Act be construed as affecting the application of such taxes or requirements or enlarging or reducing the authority of any State to impose such taxes or requirements.

(b) NO EFFECT ON NEXUS, ETC- No obligation imposed by virtue of the authority granted by section 4 shall be considered in determining whether a seller has a nexus with any State for any other tax purpose. Except as provided in subsection (a), and in section 4, nothing in this Act permits or prohibits a State's--

(1) licensing or regulating any person;

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

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

(4) exercising authority over matters of interstate commerce.

## **SEC. 8. EXPEDITED JUDICIAL REVIEW.**

(a) THREE-JUDGE DISTRICT COURT HEARING-

Notwithstanding any other provision of law, any civil action challenging the constitutionality, on its face, of this Act, or any provision thereof, shall be heard by a district court of three judges convened pursuant to the provisions of section 2284 of title 28, United States Code.

(b) APPELLATE REVIEW- Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of three judges in an action under subsection (a) holding this Act, or any provision thereof, unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be filed not more than 20 days after entry of such judgment, decree, or order.

## **SEC. 9. DEFINITIONS.**

For the purposes of this Act the following definitions apply:

(1) AFFILIATE- The term `affiliate' means any entity that controls, is controlled by, or is under common control with a seller.

- (2) GOVERNING BOARD- The term `Governing Board' means the governing board established by the Streamlined Sales and Use Tax Agreement.
- (3) MEMBER STATE- The term `Member State' means a member state under the Streamlined Sales and Use Tax Agreement.
- (4) NATIONWIDE- The term `nationwide' means throughout the territory of the United States, including any of its territories and possessions.
- (5) PERSON- The term `person' means an individual, trust, estate, fiduciary, partnership, corporation, or any other legal entity, and includes a State or local government.
- (6) REMOTE SALE AND REMOTE SELLER- The terms `remote sale' and `remote seller' refer to a sale of goods or services attributed to a particular taxing jurisdiction with respect to which the seller did not have adequate physical presence to establish nexus under the law existing on the day before the date of enactment of this Act so as to allow such jurisdiction to require the seller to collect and remit sales or use taxes with respect to such sale.
- (7) STATE- The term `State' means any State of the United States of America and includes the District of Columbia, Puerto Rico, and any other territory or possession of the United States.
- (8) STREAMLINED SALES AND USE TAX AGREEMENT- The term `Streamlined Sales and Use Tax Agreement' (or `the Agreement') means the multistate agreement with that title adopted on November 12, 2002, and as amended from time to time.

END