[DISCUSSION DRAFT]

114TH CONGRESS
2D SESSION

H. R. ______

To

IN THE HOUSE OF REPRESENTATIVES

M. __________ introduced the following bill; which was referred to the Committee on ______________________

________________________________________

A BILL

To

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 “Online Sales Sim-
5 plification Act of 2016”.

6 SEC. 2. AUTHORITY OF STATES TO IMPOSE SALES, USE OR
7 SIMILAR TAX ON REMOTE SALES.
8 (a) IN GENERAL.—A State may impose a sales, use
9 or similar tax on a seller, or impose on a seller an obliga-
tion to collect such a tax imposed on a purchaser, with respect to a remote sale of a product or service only if—

(1) the State is the origin State for the remote sale;

(2) the tax is applied using the origin State’s tax base applicable to non-remote sales; and

(3) the State participates in the State tax clearinghouse.

(b) RATE OF TAX.—The tax imposed by a State pursuant to subsection (a) on a remote sale shall be applied at the destination rate, unless the destination State does not participate in the clearinghouse, in which case the seller shall apply the tax at the origin rate. [Placeholder for language from separate clothing exemption document potentially to be added for final agreement only.]

(e) PRIVACY PROTECTION.—Except as provided in section 4, a seller who makes a remote sale shall not be required to report information pertaining to that sale to a State other than the origin State. The information reported by the origin State to any entity other than a destination State and related to a compliance certificate in the course of an audit of a remote seller shall be limited to the amount of the sales, use or similar tax paid and the destination State.
(d) Preservation of State Sovereignty in Enforcement.—A State may conduct an audit of a seller with respect to sales, use or similar tax on remote sales only if the State is the origin State with regard to that remote sale.

(e) Prevention of Double Taxation.—A State that participates in the clearinghouse may not impose any sales, use, or similar tax on a purchaser with respect to a purchase from a remote seller, unless that State allows such purchaser a credit for any sales, use, or similar tax that was paid by the remote seller with respect to the purchase.

SEC. 3. DISTRIBUTION OF TAX REVENUE AMONG THE STATES.

(a) In General.—The State tax clearinghouse, to be established by the participating States, shall conform to the following:

(1) Each State participating in the clearinghouse shall establish a single state-wide destination rate to apply to sales by a remote seller to purchasers in such State. The clearinghouse shall publish the destination rates on July 1 of each year.

(2) Each State participating in the clearinghouse shall determine the amount of sales, use or similar tax paid or collected by remote sellers in that
State for remote sales to each other participating State.

(3) Each State participating in the clearing-house shall distribute the tax received from remote sellers with respect to remote sales for which that State was the origin State to each State that was a destination State for such sales using a method similar to the clearinghouse operated pursuant to the Intermodal Surface Transportation Efficiency Act of 1991 (relating to Fuel Tax) (P.L. 102-240).

(4) Each State not participating in the clearinghouse may not receive any distribution from the clearinghouse.

(5) The clearinghouse shall establish a method for—

(A) submission of sales information reports by remote sellers in States that do not impose a sales, use or similar tax;

(B) making such sales information reports available to the destination State of each sale; and

(C) providing, whenever a purchaser requests, access within a reasonable period of time to such sales information pertaining to such purchaser’s transactions.
(6) The clearinghouse shall adopt a uniform compliant purchaser certificate, in accordance with the following:

(A) Features that—

(i) allow recognition by remote sellers of sales for resale;

(ii) permits a business purchaser to directly pay applicable tax, if any, to the destination State; and

(iii) provide for entity-and use-based exemptions of the destination State, where applicable.

(B) Each destination State may establish its own rules governing purchaser qualification criteria, application process, and reporting and tax remittance requirements for the grant and use of uniform compliant purchaser certificates by purchasers in such State.

(C) Receipt by a remote seller of such a certificate with respect to a remote sale shall be prima facie evidence that the seller had no obligation to pay tax with respect to that sale.

(D) Delivery of a compliant taxpayer certificate to a remote seller requires that the purchaser remit any sales, use or similar tax that
may be due directly to the destination State based on that destination State’s tax rate and tax base and subject to the conditions and exceptions of that destination State.

(7) A method shall be established for a single audit of remote sellers whose origin State does not impose any sales, use or similar tax, for compliance with the Federal reporting and collection requirements of sections 4 and 5. This authority shall extend only to remote sellers whose origin State—

(A) does not—

(i) impose a sales, use or similar tax; or

(ii) participate in the clearinghouse;

and

(B) formally declines a reasonable request for audit by a State that is participating in the clearinghouse, provided that the request included an offer to compensate the origin State for reasonable administrative costs.

(8) The clearinghouse shall—

(A) implement reasonable security safeguards and internal access controls to protect the integrity of the personal information that it collects and maintains;
(B) implement a data privacy and security program designed to ensure the privacy, security, and confidentiality of personal information;

(C) protect against vulnerability to the privacy, security, or integrity of personal information;

(D) protect against unauthorized, illegitimate, or unnecessary access to or use of personal information;

(E) designate a specific employee or employees to coordinate the implementation of these safeguards;

(F) maintain a written security plan and process for the implementation of these safeguards; and

(G) not disclose personal information except—

   (i) upon a request by the purchaser regarding the purchaser’s transactions;

   (ii) as required pursuant to the method described in section (3)(a)(5)(B);

   (iii) as required by law; or

   (iv) as necessary for a service provider operating at the direction and on behalf of the clearinghouse.
(b) Sales to Purchasers in States That Do Not Participate in the Clearinghouse.—The taxes imposed on remote sellers with respect to remote sales to purchasers in destination States that do not participate in the clearinghouse shall be determined by the rate and base of the origin locality.

(c) Responsibilities of Participating States.—A State participating in the clearinghouse shall conform its laws to be consistent with this Act, applicable Constitutional standards, require remote sellers whose origin State is such State to pay sales, use or similar tax at the destination rate for applicable sales, and permit or require sellers to seek reimbursement of such tax from purchasers.

SEC. 4. Treatment of Sellers in States That Do Not Impose a Sales, Use or Similar Tax, or That Lack a Physical Presence in Any State.

(a) In General.—In the case of a remote seller in a State that does not impose a general sales, use or similar tax, and does not participate in the clearinghouse, or a remote seller without a physical presence in any State, such a remote seller shall—

(1) except in the case of a remote seller without a physical presence in any State, report the buyer’s
name, address and the amount of the sale for each
such remote sale, to the clearinghouse—

(A) not later than [90] days after a remote
sale for which that State was the origin State;
or

(B) not later than 90 days after the close
of the calendar quarter in which the remote sale
was made; and

(2) determine the applicable tax on each remote
sale using the alternate base and destination rate for
each State that participates in the clearinghouse,
and remit such tax to the clearinghouse with suffi-
cient information to identify the destination State.

(b) STATES THAT PARTICIPATE IN THE CLEARING-
HOUSE.—A State that participates in the clearinghouse
may not require a remote seller to pay or collect a sales,
use or similar tax with respect to a sale made to a cus-
tomer in a State that does not impose such a tax and is
also a participant in the clearinghouse.

(c) RECIPROCAL TREATMENT FOR SELLERS WITH-
OUT A PHYSICAL PRESENCE IN ANY STATE.—This sec-
tion applies to a remote seller without a physical presence
in any State only if such remote seller resides in any coun-
try that imposes an obligation on remote sellers located
in the United State for accounting for such country’s value
added, goods and services or other consumption tax with respect to sales to consumers in such country.

(d) EFFECTIVE DATE.—This section shall take effect for sales made during the first full calendar quarter following the effective date of the distribution agreement.

SEC. 5. TREATMENT OF REMOTE SELLERS IN STATES THAT DO IMPOSE A SALES, USE OR SIMILAR TAX BUT DO NOT PARTICIPATE IN THE CLEARING-HOUSE.

(a) IN GENERAL.—In the case of a State that imposes a general sales, use, or similar tax, but does not participate in the clearinghouse, remote sellers in such a State shall report the buyer’s name, address and the amount of the sale for each such remote sale, to the clearinghouse not later than 90 days after the close of the calendar quarter in which the remote sale was made.

(b) EFFECTIVE DATE.—This section shall take effect for sales made during the first full calendar quarter following the effective date of the distribution agreement.

SEC. 6. DEFINITIONS.

In this Act:

(1) The term “alternate base” means with regard to a remote sale during any calendar year, the sales, use or similar tax base determined under the laws of the State in which the remote seller had the
most gross receipts the preceding calendar year, de-
determined excluding any State described in section 4.
For purposes of this paragraph in the case of a re-
 mote seller which was not in existence throughout
such preceding calendar year, the determination
under the preceding sentence shall be based on the
average gross receipts that it is reasonably expected
such remote seller will receive on business days in
the current calendar year.

(2) Placeholder for language from separate
clothing exemption document potentially to be added
for final agreement only.

(3) The term “destination State” means with
regard to a remote sale—

(A) the State in which the product or serv-
  ice sold is received by the buyer, based on the
  location indicated by instructions for delivery
  that the buyer furnishes to the seller;

(B) if no delivery location is specified, the
  State of any address the seller obtains from the
  buyer during the sale; or

(C) if the seller has no address for the
  buyer, the origin State for the remote sale.

(4) The term “destination rate” means the sin-
gle statewide rate established by the destination
State applicable to sales by remote sellers to purchasers in such State. Such rate may not be higher than such State’s sales, use or similar tax rate plus the weighted average of any sales, use or similar tax rate imposed with respect to a unit of local government in that State.

(5) The term “origin locality” means, with regard to a remote sale during any calendar year, the location in the origin State in which the remote seller has employed the greatest average number of employees on business days during the preceding calendar year.

(6) The term “origin rate” means the tax rate (including any tax imposed by the tax jurisdiction for the origin locality), subject to the same conditions and exceptions, that would apply were the purchase made in person in the remote seller’s origin State and origin locality.

(7) The term “origin State” means, with regard to a remote sale during any calendar year, the State in which the remote seller has physical presence and has employed the greatest average number of employees in the United States on business days during the preceding calendar year. For purposes of this paragraph and paragraphs (1) and (5), in the case
of a remote seller which was not in existence throughout such preceding calendar year, the deter-
mination under the preceding sentence (and under paragraph (5)) shall be based on the average num-
ber of employees that it is reasonably expected such remote seller will employ on business days in the current calendar year. For purposes of this para-
graph and paragraph (5), all persons treated as a single employer under subsection (b), (c), (m), (n), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as a single person, except that “controlled group” or “common control” is de-
defined as ownership or control of more than 50 per-
cent. Any reference in this paragraph or paragraph (5) to any person shall include a reference to any predecessor of such person. In determining the in-
dividuals that are employees of the single person, section 414(n) of the Code applies, without regard to section 414(n)(2)(B). If there are two States that are both origin States for a remote seller that seller may elect either State. If a remote seller does not have an origin State under this paragraph, the origin State shall be the State in which the remote seller has its alternate base.

(8) The term “physical presence”—
(A) means that a seller, in a State—

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

(ii) leases or owns tangible personal property (other than computer software), excluding inventory (other than inventory with a cost value more than $100,000 held for more than 30 consecutive days in a calendar year), in the state;

(iii) 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 seller, excluding general solicitation campaigns or participation at national or regional trade shows and conventions conducted in the State; or

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

(B) does not include entering into an agreement under which a person, for a commission or other consideration, directly or indirectly refers potential purchasers to a seller outside the State, whether by an Internet-based link or platform, Internet Web site or otherwise;

(C) does not include a presence in a State for less than 15 days in a taxable year (or a greater number of days if provided by State law); and

(D) does not include delivery and product placement services offered by an in-State common carrier and Internet advertising services provided by in-State residents which are not exclusively directed towards, or do not solicit exclusively, in-State customers.

(9) The term “personal information” means information provided by a remote seller or State to the clearinghouse described in section (3)(a)(5).

(10) The term “remote sale” means a sale made to a purchaser in a State in which the seller has no physical presence.
(11) The term “remote seller” means a person that makes a remote sale.

(12) The term “similar tax” means a tax, whether measured by gross receipts or selling price, imposed with respect to the sale or use of a product or service, regardless whether the tax is imposed on the seller or the purchaser, with the right or obligation of the seller to obtain reimbursement for the amount of the tax from the purchaser at the time of the transaction.

(13) The term “State” means 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, and any other territory or possession of the United States.

SEC. 7. DISPUTE RESOLUTION.

With the exception of assessment, levy, or collection of any tax by an origin State in regard to a remote seller in that State, section 1341 of title 28, United States Code, (known as the “Tax Injunction Act”) shall not be construed to prohibit actions in Federal courts arising under this Act pursuant to section 1331 of such title.