

Federal Sales Tax Fairness and Simplification Act

S 34 IS

110th CONGRESS

1st Session

S. 34

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

IN THE SENATE OF THE UNITED STATES

May 22, 2007

Mr. ENZI 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 'Sales Tax Fairness and Simplification Act'.

SEC. 2. CONSENT OF CONGRESS.

The Congress consents to the Streamlined Sales and Use Tax Agreement.

SEC. 3. SENSE OF THE CONGRESS.

(a) Sales and Use Tax System- 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 7, provides sufficient simplification and uniformity to warrant Federal authorization to Member 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 Member States and of local taxing jurisdictions of such Member States.

(b) Purpose- The purpose of this Act is to--

(1) effectuate the limited authority granted to Member States under the Streamlined Sales and Use Tax Agreement; and

(2) not grant additional authority unrelated to the accomplishment of the purpose described in paragraph (1).

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

(a) Grant of Authority-

(1) IN GENERAL- Each Member State under the Streamlined Sales and Use Tax Agreement is authorized, subject to the requirements of this section, to require all sellers not qualifying for the small business exception provided under subsection (d) to collect and remit sales and use taxes with respect to remote sales sourced to that Member State under the Agreement.

(2) REQUIREMENTS FOR AUTHORITY- The authorization provided under paragraph (1) shall be granted once all of the following have occurred:

(A) 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 and have become Member States under the Agreement.

(B) The following necessary operational aspects of the Agreement have been implemented by the Governing Board:

- (i) Provider and system certification.
- (ii) Setting of monetary allowance by contract with providers.
- (iii) Implementation of an on-line multistate registration system.
- (iv) Adoption of a standard form for claiming exemptions electronically.
- (v) Establishment of advisory councils.
- (vi) Promulgation of rules and procedures for dispute resolution.
- (vii) Promulgation of rules and procedures for audits.
- (viii) Provisions for funding and staffing the Governing Board.

(C) Each Member State has met the requirements to provide and maintain the databases and the taxability matrix described in the Agreement, pursuant to requirements of the Governing Board.

(3) LIMITATION OF AUTHORITY- The authorization provided under paragraph (1)--

(A) shall be granted notwithstanding any other provision of law; and

(B) is dependent upon the Agreement, as amended, meeting the minimum simplification requirements of section 7.

(b) Termination of Authority-

(1) IN GENERAL- The authorization provided under subsection (a) shall terminate for all States if--

(A) the requirements contained in subsection (a) cease to be satisfied;
or

(B) any amendment adopted to the Agreement after the date of enactment of this Act is not within the scope of the administration of sales and use taxes or taxes on telecommunications services by the Member States.

(2) LOSS OF MEMBER STATE STATUS- The authorization provided under subsection (a) shall terminate for a Member State, if such Member State no longer meets the requirements for Member State status under the terms of the Agreement.

(c) Determination of Status-

(1) IN GENERAL- The Governing Board shall determine if Member States are in compliance with the requirements of subsections (a) and (b).

(2) COMPLIANCE DETERMINATION- Upon the determination of the Governing Board that all the requirements of subsection (a) have been satisfied, the authority of each Member State to require a seller to collect and remit sales and use taxes shall commence on the first day of a calendar quarter at least 6 months after the date the Governing Board makes its determination.

(d) 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 if--

(1) 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; or

(2) 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.

SEC. 5. TRIBAL GOVERNMENTS.

(a) Status as Member State-

(1) IN GENERAL- Any federally recognized Indian Tribe that imposes a generally applicable sales tax may, if such Tribe complies with the terms of this Act--

(A) petition to become a Member State under the Agreement; and

(B) exercise the authority provided under section 4.

(2) DECISION OF THE GOVERNING BOARD-

(A) IN GENERAL- If the effect of any federally recognized Indian Tribe's law, rules, regulations, and policies is compliant with each of the terms of the Agreement, and the Indian Tribe has entered an agreement with the primary State

where it is located, the Governing Board shall consider such Tribe for admission as a Member State to the Agreement on the same basis as States.

(B) NO STATE-TRIBAL AGREEMENT PRESENT- If a petitioning Indian Tribe and the primary State in which it is located have attempted to negotiate, but have not reached, an agreement as described in subparagraph (A) within 2 years after the date of the submission of such petition, the Governing Board shall consider such Tribe for admission as a Member State to the Agreement on the same basis as States without regard to the presence of a State-tribal agreement.

(3) MEMBERSHIP ON THE GOVERNING BOARD-

(A) IN GENERAL- If any federally recognized Indian Tribes are accorded Member State status under the Agreement under this section, those Tribes shall be represented on the Governing Board by at least 1 member.

(B) MULTIPLE TRIBES- If 2 or more federally recognized Indian Tribes are accorded Member State status under the Agreement under this section, additional representation of such Tribes on the Governing Board shall be determined by the Governing Board, in consultation with those Tribes that are Member States.

(b) Rule of Construction- Nothing in this Act or the Agreement shall be construed as--

(1) diminishing an Indian Tribe's sovereignty or characterizing an Indian Tribe as a State for other purposes;

(2) affecting existing tax agreements between Indian Tribal Governments and States;

(3) preventing Indian Tribal Governments and States from entering into bilateral agreements for the collection and allocation of sales taxes (whether or not such bodies are admitted as Member States to the Agreement); or

(4) overriding established principles of Federal law governing--

(A) the taxing jurisdiction of Indian Tribal Governments; and

(B) the immunities of Indian Tribal Governments and their members from State taxation with respect to on-reservation transactions.

SEC. 6. DETERMINATIONS BY GOVERNING BOARD AND JUDICIAL REVIEW OF SUCH DETERMINATIONS.

(a) Petition- At any time after the Governing Board has made the determination required under section 4(c)(2), 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 Member State has satisfied or continues to satisfy 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 satisfy the minimum simplification requirements set forth in section 7; or

(D) any other requirement of section 4 has been satisfied; 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 6 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 denial of the petition by the Governing Board, or, if the Governing Board failed to act on the petition, not later than 60 days after the end of the 6-month period beginning on the day after the date on which the petition was submitted.

(d) Standard of Review-

(1) IN GENERAL- 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.

(2) REMAND- If the court sets aside any action, finding, or conclusion of the Governing Board under paragraph (1), the court shall remand the case to the Governing Board for further action consistent with the decision of the court.

(e) Jurisdiction-

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

`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 Sales Tax Fairness and Simplification 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. 7. MINIMUM SIMPLIFICATION REQUIREMENTS.

(a) In General- The minimum simplification requirements for the Agreement, which shall relate to the conduct of Member States under the Agreement and to the administration and supervision of such conduct, are as follows:

(1) A centralized, one-stop, multistate registration system that a seller may elect to use to register with the Member States, provided a 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. Furthermore, no taxing authority within a Member State or a Member State that has withdrawn or been expelled from the Agreement may use registration with the centralized registration system for the purpose of, or as a factor in determining, whether a seller has a nexus with that Member State for any tax at any time.

(2) Uniform definitions of products and product-based exemptions from which a Member State may choose its individual tax base, provided, however, that all local jurisdictions in that Member State shall have a common tax base identical to the State tax base of that Member State. A Member State 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. A Member State shall relax the good faith requirement for acceptance of exemption certificates in accordance with section 317 of the Agreement, as amended through the date of enactment of this Act.

(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 Member State sales and use tax rates and taxability.

(5) Uniform rules for bad debts and rounding.

(6) Uniform requirements for tax returns and remittances.

(7) Consistent electronic filing and remittance methods.

(8) Single, State-level administration of all Member State and local sales and use taxes, including a requirement for a State-level filing of tax returns in each Member State.

(9) A single sales and use tax rate per taxing jurisdiction, except that a State may impose a single additional rate, which may be zero, on food, food ingredients, and drugs, provided that this limitation does not apply to the items identified in section 308 C of the Agreement, as amended through the date of enactment of this Act.

(10) A Member State shall eliminate caps and thresholds on the application of sales and use tax rates and exemptions based on value, provided that this limitation does not apply to the items identified in section 308 C of the Agreement, as amended through the date of enactment of this Act.

(11) A provision requiring each Member State to complete a taxability matrix, as adopted by the Governing Board. The matrix shall include information regarding terms defined by the Agreement in the Library of Definitions. The matrix shall also include, pursuant to the requirements of the Governing Board, information on use, entity, and product based exemptions.

(12) A provision requiring that each Member State relieves a seller or service provider from liability to that Member State and local jurisdiction for collection of the incorrect amount of sales or use tax, and relieves the purchaser from penalties stemming from such liability, provided that collection of the improper amount is the result of relying on information provided by that Member State regarding tax rates, boundaries, or taxing jurisdiction assignments, or in the taxability matrix regarding terms defined by the Agreement in the Library of Definitions.

(13) Audit procedures for sellers, including an option under which a seller not qualifying for the small business exception in section 4(d) may request, by notifying the Governing Board, to be subject to a single audit on behalf of all Member States for sales and use taxes (other than use taxes on goods and services purchased for the consumption of the seller). The Governing Board, in its discretion, shall authorize such a single audit.

(14) As of the day that authority to require collection commences under section 4, each Member State shall provide reasonable compensation for expenses incurred by a seller directly in administering, collecting, and remitting sales and use taxes (other than use taxes on goods and services purchased for the consumption of the seller) to that Member State. Such compensation may vary in each Member State depending on the complexity of the sales and use tax laws in that Member State and may vary by the characteristics of sellers in order to reflect differences in collection costs. Such compensation may be provided to a seller or a third party service provider whom a seller has contracted with to perform all the sales and use tax responsibilities of a seller.

(15) Appropriate protections for consumer privacy.

(16) 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.

(17) Each Member State shall apply the simplification requirements of the Agreement to taxes on telecommunications services, except as provided herein. This requirement is applicable to Member States as of July 1, 2010, except that sales and use taxes on telecommunications services shall be subject to the Agreement and the authority granted to the Member States when the requirements of section 4(a) are met. On or after July 1, 2010, for those Member States which meet the requirements of this paragraph, the authority granted such Member States under section 4 may be exercised by such Member States, pursuant to the terms of section 4 and section 6, with respect to taxes on telecommunications services other than sales and use taxes on such services. The following are exceptions to the requirement established under this paragraph:

(A) The requirement for one uniform return shall not apply, provided, however, there shall be one uniform return for each type of tax on telecommunications services within a State.

(B) The requirements for rate simplification are modified to require that each taxing jurisdiction shall have only one rate for each type of tax on telecommunications services.

(C) The requirements for tax base uniformity in section 302 of the Agreement shall apply to each type of tax on telecommunications services within a State, but shall not be construed to require that the tax base for different types of taxes on telecommunications services must be identical to the tax base for sales and use taxes imposed on telecommunications services.

(18) Uniform rules and procedures for `sales tax holidays'.

(19) 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.

(b) Requirement to Provide Simplified Tax Systems-

(1) IN GENERAL- The requirements of this section are intended to ensure that each Member State provides and maintains the necessary simplifications to its sales and use tax system to warrant the collection authority granted to it in section 4.

(2) REDUCTION OF ADMINISTRATIVE BURDENS- The requirements of this section should be construed--

(A) to require each Member State to substantially reduce the administrative burdens associated with sales and use taxes; and

(B) as allowing each Member State to exercise flexibility in how these requirements are satisfied.

(3) EXCEPTION- In instances where exceptions to the requirements of this section can be exercised in a manner that does not materially increase the administrative burden on a seller obligated to collect or pay the taxes, such exceptions are permissible.

SEC. 8. LIMITATION.

(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 Member State or political subdivision thereof; or

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

(b) No Effect on Nexus, etc-

(1) IN GENERAL- 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 Member State for any other tax purpose.

(2) PERMISSIBLE MEMBER STATE AUTHORITY- Except as provided in subsection (a), and in section 4, nothing in this Act permits or prohibits a Member 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.

SEC. 9. EXPEDITED JUDICIAL REVIEW.

(a) Three-Judge District Court Hearing- Notwithstanding any other provision of law, any civil action challenging the constitutionality 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-

(1) IN GENERAL- 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.

(2) 30-day TIME LIMIT- Any appeal under paragraph (1) shall be filed not more than 30 days after the date of entry of such judgment, decree, or order.

SEC. 10. 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'--

(A) means a Member State as that term is used under the Streamlined Sales and Use Tax Agreement as of the date of enactment of this Act;

(B) does not include associate members under the Agreement; and

(C) includes any federally recognized Indian Tribe that is accorded Member State status under the Agreement pursuant to section 5.

(4) NATIONWIDE- The term `nationwide' means throughout each of the several States and the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and any other territory or possession of the United States.

(5) NONDISCRETIONARY DUTY OF THE GOVERNING BOARD- The phrase `nondiscretionary duty of the Governing Board' means any duty of the Governing Board specified in the Agreement as a requirement for action by use of the term `shall', `will', or `is required to'.

(6) PERSON- The term `person' means an individual, trust, estate, fiduciary, partnership, corporation, federally recognized Indian Tribe or Tribal government, State or local government, or any other legal entity.

(7) REMOTE SALE- The term `remote sale' refers to a sale of goods or services attributed to a particular Member 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 enactment of this Act so as to allow such Member State to require, without regard to the authority granted by this Act, the seller to collect and remit sales or use taxes with respect to such sale.

(8) REMOTE SELLER- The term `remote seller' means any seller who makes a remote sale.

(9) 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.

(10) 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, as amended through the date of enactment of this Act and unless the context otherwise indicates as further amended from time to time.

(11) TAX ON TELECOMMUNICATIONS SERVICES- The term `tax on telecommunications services' or `taxes on telecommunication services' shall encompass the same taxes, charges, or fees as are included in section 116 of title 4, United States Code, except that `telecommunication services' shall replace `mobile telecommunications services' whenever such term appears.

(12) TELECOMMUNICATIONS SERVICE-

(A) IN GENERAL- The term `telecommunications service' means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.

(B) INCLUSION- The term `telecommunication service'--

(i) includes transmission services in which computer processing applications are used to act on the form, code, or protocol of the content for

purposes of transmission, conveyance, or routing without regard to whether such services are referred to as voice over Internet protocol services or are classified by the Federal Communications Commission as enhanced or value added services; and

(ii) does not include the data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the primary purpose of such purchaser for the underlying transaction is the processed data or information.

SEC. 11. SENSE OF THE CONGRESS ON DIGITAL GOODS AND SERVICES.

It is the sense of the Congress that each State that is a party to the Agreement should work with other States that are also party to the Agreement to prevent double taxation in situations where a foreign country has imposed a transaction tax on a digital good or service.