To restore States’ sovereign rights to enforce State and local sales and use tax laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 27, 2017

Mr. Enzi (for himself, Mr. Durbin, Mr. Alexander, Ms. Heitkamp, Ms. Warren, Mr. Reed, Mr. Whitehouse, Mr. Warner, Mr. Cardin, Mr. Kaine, Mr. Markey, Mr. Blunt, Mr. Rounds, Ms. Duckworth, and Ms. Collins) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To restore States’ sovereign rights to enforce State and local sales and use tax laws, and for other purposes.

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 “Marketplace Fairness Act of 2017”.

SEC. 2. AUTHORIZATION TO REQUIRE COLLECTION OF SALES AND USE TAXES.

(a) STREAMLINED SALES AND USE TAX AGREEMENT.—Each Member State under the Streamlined Sales
and Use Tax Agreement is authorized to require all sellers not qualifying for the small seller exception described in subsection (c) to collect and remit sales and use taxes with respect to remote sales sourced to that Member State pursuant to the provisions of the Streamlined Sales and Use Tax Agreement, but only if any changes to the Streamlined Sales and Use Tax Agreement made after the date of the enactment of this Act are not in conflict with the minimum simplification requirements in subsection (b)(2).

Subject to section 3(h), a State may exercise authority under this Act beginning 180 days after the State publishes notice of the State’s intent to exercise the authority under this Act, but no earlier than the first day of the calendar quarter that is at least 180 days after the date of the enactment of this Act.

(b) ALTERNATIVE.—A State that is not a Member State under the Streamlined Sales and Use Tax Agreement is authorized notwithstanding any other provision of law to require all sellers not qualifying for the small seller exception described in subsection (c) to collect and remit sales and use taxes with respect to remote sales sourced to that State, but only if the State adopts and implements the minimum simplification requirements in paragraph (2). Subject to section 3(h), such authority shall commence beginning no earlier than the first day of the cal-
endor quarter that is at least 6 months after the date that
the State—

(1) enacts legislation to exercise the authority

given by this Act—

(A) specifying the tax or taxes to which
such authority and the minimum simplification
requirements in paragraph (2) shall apply; and

(B) specifying the products and services
otherwise subject to the tax or taxes identified
by the State under subparagraph (A) to which
the authority of this Act shall not apply; and

(2) implements each of the following minimum
simplification requirements:

(A) Provide—

(i) a single entity within the State re-
ponsible for all State and local sales and
use tax administration, return processing,
and audits for remote sales sourced to the
State;

(ii) a single audit of a remote seller
for all State and local taxing jurisdictions
within that State; and

(iii) a single sales and use tax return
to be used by remote sellers to be filed
with the single entity responsible for tax administration.

A State may not require a remote seller to file sales and use tax returns any more frequently than returns are required for nonremote sellers or impose requirements on remote sellers that the State does not impose on nonremote sellers with respect to the collection of sales and use taxes under this Act. No local jurisdiction may require a remote seller to submit a sales and use tax return or to collect sales and use taxes other than as provided by this paragraph.

(B) Provide a uniform sales and use tax base among the State and the local taxing jurisdictions within the State pursuant to paragraph (1).

(C) Source all remote sales in compliance with the sourcing definition set forth in section 4(7).

(D) Provide—

(i) information indicating the taxability of products and services along with any product and service exemptions from sales and use tax in the State and a rates and boundary database;
(ii) software free of charge for remote sellers that calculates sales and use taxes due on each transaction at the time the transaction is completed, that files sales and use tax returns, and that is updated to reflect rate changes as described in subparagraph (H); and

(iii) certification procedures for persons to be approved as certified software providers.

For purposes of clause (iii), the software provided by certified software providers shall be capable of calculating and filing sales and use taxes in all States qualified under this Act.

(E) Relieve remote sellers from liability to the State or locality for the incorrect collection, remittance, or noncollection of sales and use taxes, including any penalties or interest, if the liability is the result of an error or omission made by a certified software provider.

(F) Relieve certified software providers from liability to the State or locality for the incorrect collection, remittance, or noncollection of sales and use taxes, including any penalties or interest, if the liability is the result of mis-
leading or inaccurate information provided by a remote seller.

(G) Relieve remote sellers and certified software providers from liability to the State or locality for incorrect collection, remittance, or noncollection of sales and use taxes, including any penalties or interest, if the liability is the result of incorrect information or software provided by the State.

(H) Provide remote sellers and certified software providers with 90 days notice of a rate change by the State or any locality in the State and update the information described in subparagraph (D)(i) accordingly and relieve any remote seller or certified software provider from liability for collecting sales and use taxes at the immediately preceding effective rate during the 90-day notice period if the required notice is not provided.

(c) SMALL SELLER EXCEPTION.—A State is authorized to require a remote seller to collect sales and use taxes under this Act only if the remote seller has gross annual receipts in total remote sales in the United States in the preceding calendar year exceeding $1,000,000. For purposes of determining whether the threshold in this section
is met, the gross annual receipts from remote sales of two or more persons shall be aggregated if—

(1) such persons are related to the remote seller within the meaning of subsections (b) and (c) of section 267 or section 707(b)(1) of the Internal Revenue Code of 1986; or

(2) such persons have one or more ownership relationships and such relationships were designed with a principal purpose of avoiding the application of these rules.

SEC. 3. LIMITATIONS.

(a) IN GENERAL.—Nothing in this Act shall be construed as—

(1) subjecting a seller or any other person to franchise, income, occupation, or any other type of taxes, other than sales and use taxes;

(2) affecting the application of such taxes; or

(3) enlarging or reducing State authority to impose such taxes.

(b) NO EFFECT ON NEXUS.—This Act shall not be construed to create any nexus or alter the standards for determining nexus between a person and a State or locality.

(c) NO EFFECT ON SELLER CHOICE.—Nothing in this Act shall be construed to deny the ability of a remote
seller to deploy and utilize a certified software provider
of the seller’s choice.

(d) LICENSING AND REGULATORY REQUIREMENTS.—Nothing in this Act shall be construed as permit-
ting or prohibiting a State from—

(1) licensing or regulating any person;

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

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

(4) exercising authority over matters of inter-
state commerce.

(e) NO NEW TAXES.—Nothing in this Act shall be
construed as encouraging a State to impose sales and use
taxes on any products or services not subject to taxation
prior to the date of the enactment of this Act.

(f) NO EFFECT ON INTRASTATE SALES.—The provi-
sions of this Act shall apply only to remote sales and shall
not apply to intrastate sales or intrastate sourcing rules.
States granted authority under section 2(a) shall comply
with all intrastate provisions of the Streamlined Sales and
Use Tax Agreement.

(g) NO EFFECT ON MOBILE TELECOMMUNICATIONS
SOURCING ACT.—Nothing in this Act shall be construed
as altering in any manner or preempting the Mobile Tele-

(h) LIMITATION ON INITIAL COLLECTION OF SALES
AND USE TAXES FROM REMOTE SALES.—A State may
not begin to exercise the authority under this Act—

(1) before the date that is 1 year after the date
of the enactment of this Act; and

(2) during the period beginning October 1 and
ending on December 31 of the first calendar year
beginning after the date of the enactment of this
Act.

SEC. 4. DEFINITIONS AND SPECIAL RULES.

In this Act:

(1) CERTIFIED SOFTWARE PROVIDER.—The
term “certified software provider” means a person
that—

(A) provides software to remote sellers to
facilitate State and local sales and use tax com-
pliance pursuant to section 2(b)(2)(D)(ii); and

(B) is certified by a State to so provide
such software.

(2) LOCALITY; LOCAL.—The terms “locality”
and “local” refer to any political subdivision of a
State.
(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 in effect on the date of the enactment of this Act; and

(B) does not include any associate member under the Streamlined Sales and Use Tax Agreement.

(4) **Person.**—The term “person” means an individual, trust, estate, fiduciary, partnership, corporation, limited liability company, or other legal entity, and a State or local government.

(5) **Remote Sale.**—The term “remote sale” means a sale into a State, as determined under the sourcing rules under paragraph (7), in which the seller would not legally be required to pay, collect, or remit State or local sales and use taxes unless provided by this Act.

(6) **Remote Seller.**—The term “remote seller” means a person that makes remote sales in the State.

(7) **Sourced.**—For purposes of a State granted authority under section 2(b), the location to which a remote sale is sourced refers to the location
where the product or service sold is received by the
purchaser, based on the location indicated by in-
structions for delivery that the purchaser furnishes
to the seller. When no delivery location is specified,
the remote sale is sourced to the customer’s address
that is either known to the seller or, if not known,
obtained by the seller during the consummation of
the transaction, including the address of the cus-
tomer’s payment instrument if no other address is
available. If an address is unknown and a billing ad-
dress cannot be obtained, the remote sale is sourced
to the address of the seller from which the remote
sale was made. A State granted authority under sec-
tion 2(a) shall comply with the sourcing provisions
of the Streamlined Sales and Use Tax Agreement.

(8) 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 Com-
monwealth of the Northern Mariana Islands, and
any other territory or possession of the United
States, and any tribal organization (as defined in
section 4 of the Indian Self-Determination and Edu-
cation Assistance Act (25 U.S.C. 450b)).
(9) Streamlined Sales and Use Tax Agreement.—The term “Streamlined Sales and Use Tax Agreement” means the multi-State agreement with that title adopted on November 12, 2002, as in effect on the date of the enactment of this Act and as further amended from time to time.

SEC. 5. SEVERABILITY.

If any provision of this Act or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 6. PREEMPTION.

Except as 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.