

[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-

1 tion to collect such a tax imposed on a purchaser, with
2 respect to a remote sale of a product or service only if—

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

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

7 (3) the State participates in the State tax clear-
8 inghouse.

9 (b) **RATE OF TAX.**—The tax imposed by a State pur-
10 suant to subsection (a) on a remote sale shall be applied
11 at the destination rate, unless the destination State does
12 not participate in the clearinghouse, in which case the sell-
13 er shall apply the tax at the origin rate. **[Placeholder for**
14 **language from separate clothing exemption document po-**
15 **tentially to be added for final agreement only.]**

16 (c) **PRIVACY PROTECTION.**—Except as provided in
17 section 4, a seller who makes a remote sale shall not be
18 required to report information pertaining to that sale to
19 a State other than the origin State. The information re-
20 ported by the origin State to any entity other than a des-
21 tination State and related to a compliance certificate in
22 the course of an audit of a remote seller shall be limited
23 to the amount of the sales, use or similar tax paid and
24 the destination State.

1 (d) PRESERVATION OF STATE SOVEREIGNTY IN EN-
2 FORCEMENT.—A State may conduct an audit of a seller
3 with respect to sales, use or similar tax on remote sales
4 only if the State is the origin State with regard to that
5 remote sale.

6 (e) PREVENTION OF DOUBLE TAXATION.—A State
7 that participates in the clearinghouse may not impose any
8 sales, use, or similar tax on a purchaser with respect to
9 a purchase from a remote seller, unless that State allows
10 such purchaser a credit for any sales, use, or similar tax
11 that was paid by the remote seller with respect to the pur-
12 chase.

13 **SEC. 3. DISTRIBUTION OF TAX REVENUE AMONG THE**
14 **STATES.**

15 (a) IN GENERAL.—The State tax clearinghouse, to
16 be established by the participating States, shall conform
17 to the following:

18 (1) Each State participating in the clearing-
19 house shall establish a single state-wide destination
20 rate to apply to sales by a remote seller to pur-
21 chasers in such State. The clearinghouse shall pub-
22 lish the destination rates on July 1 of each year.

23 (2) Each State participating in the clearing-
24 house shall determine the amount of sales, use or
25 similar tax paid or collected by remote sellers in that

1 State for remote sales to each other participating
2 State.

3 (3) Each State participating in the clearing-
4 house shall distribute the tax received from remote
5 sellers with respect to remote sales for which that
6 State was the origin State to each State that was a
7 destination State for such sales using a method simi-
8 lar to the clearinghouse operated pursuant to the
9 Intermodal Surface Transportation Efficiency Act of
10 1991 (relating to Fuel Tax) (P.L. 102-240).

11 (4) Each State not participating in the clear-
12 inghouse may not receive any distribution from the
13 clearinghouse.

14 (5) The clearinghouse shall establish a method
15 for—

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

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

22 (C) providing, whenever a purchaser re-
23 quests, access within a reasonable period of
24 time to such sales information pertaining to
25 such purchaser's transactions.

1 (6) The clearinghouse shall adopt a uniform
2 compliant purchaser certificate, in accordance with
3 the following:

4 (A) Features that—

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

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

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

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

19 (C) Receipt by a remote seller of such a
20 certificate with respect to a remote sale shall be
21 prima facie evidence that the seller had no obli-
22 gation to pay tax with respect to that sale.

23 (D) Delivery of a compliant taxpayer cer-
24 tificate to a remote seller requires that the pur-
25 chaser remit any sales, use or similar tax that

1 may be due directly to the destination State
2 based on that destination State's tax rate and
3 tax base and subject to the conditions and ex-
4 ceptions of that destination State.

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

11 (A) does not—

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

13 or

14 (ii) participate in the clearinghouse;

15 and

16 (B) formally declines a reasonable request
17 for audit by a State that is participating in the
18 clearinghouse, provided that the request in-
19 cluded an offer to compensate the origin State
20 for reasonable administrative costs.

21 (8) The clearinghouse shall—

22 (A) implement reasonable security safe-
23 guards and internal access controls to protect
24 the integrity of the personal information that it
25 collects and maintains;

1 (B) implement a data privacy and security
2 program designed to ensure the privacy, secu-
3 rity, and confidentiality of personal information;

4 (C) protect against vulnerability to the pri-
5 vacy, security, or integrity of personal informa-
6 tion;

7 (D) protect against unauthorized, illegit-
8 imate, or unnecessary access to or use of per-
9 sonal information;

10 (E) designate a specific employee or em-
11 ployees to coordinate the implementation of
12 these safeguards;

13 (F) maintain a written security plan and
14 process for the implementation of these safe-
15 guards; and

16 (G) not disclose personal information ex-
17 cept—

18 (i) upon a request by the purchaser
19 regarding the purchaser's transactions;

20 (ii) as required pursuant to the meth-
21 od described in section (3)(a)(5)(B);

22 (iii) as required by law; or

23 (iv) as necessary for a service provider
24 operating at the direction and on behalf of
25 the clearinghouse.

1 (b) SALES TO PURCHASERS IN STATES THAT DO
2 NOT PARTICIPATE IN THE CLEARINGHOUSE.—The taxes
3 imposed on remote sellers with respect to remote sales to
4 purchasers in destination States that do not participate
5 in the clearinghouse shall be determined by the rate and
6 base of the origin locality.

7 (c) RESPONSIBILITIES OF PARTICIPATING STATES.—
8 A State participating in the clearinghouse shall conform
9 its laws to be consistent with this Act, applicable Constitu-
10 tional standards, require remote sellers whose origin State
11 is such State to pay sales, use or similar tax at the des-
12 tination rate for applicable sales, and permit or require
13 sellers to seek reimbursement of such tax from purchasers.

14 **SEC. 4. TREATMENT OF SELLERS IN STATES THAT DO NOT**
15 **IMPOSE A SALES, USE OR SIMILAR TAX, OR**
16 **THAT LACK A PHYSICAL PRESENCE IN ANY**
17 **STATE.**

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

23 (1) except in the case of a remote seller without
24 a physical presence in any State, report the buyer's

1 name, address and the amount of the sale for each
2 such remote sale, to the clearinghouse—

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

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

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

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

20 (c) RECIPROCAL TREATMENT FOR SELLERS WITH-
21 OUT A PHYSICAL PRESENCE IN ANY STATE.—This sec-
22 tion applies to a remote seller without a physical presence
23 in any State only if such remote seller resides in any coun-
24 try that imposes an obligation on remote sellers located
25 in the United State for accounting for such country's value

1 added, goods and services or other consumption tax with
2 respect to sales to consumers in such country.

3 (d) EFFECTIVE DATE.—This section shall take effect
4 for sales made during the first full calendar quarter fol-
5 lowing the effective date of the distribution agreement.

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

10 (a) IN GENERAL.—In the case of a State that im-
11 poses a general sales, use, or similar tax, but does not
12 participate in the clearinghouse, remote sellers in such a
13 State shall report the buyer’s name, address and the
14 amount of the sale for each such remote sale, to the clear-
15 ighthouse not later than 90 days after the close of the cal-
16 endar quarter in which the remote sale was made.

17 (b) EFFECTIVE DATE.—This section shall take effect
18 for sales made during the first full calendar quarter fol-
19 lowing the effective date of the distribution agreement.

20 **SEC. 6. DEFINITIONS.**

21 In this Act:

22 (1) The term “alternate base” means with re-
23 gard to a remote sale during any calendar year, the
24 sales, use or similar tax base determined under the
25 laws of the State in which the remote seller had the

1 most gross receipts the preceding calendar year, de-
2 termined excluding any State described in section 4.
3 For purposes of this paragraph in the case of a re-
4 mote seller which was not in existence throughout
5 such preceding calendar year, the determination
6 under the preceding sentence shall be based on the
7 average gross receipts that it is reasonably expected
8 such remote seller will receive on business days in
9 the current calendar year.

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

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

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

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

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

24 (4) The term “destination rate” means the sin-
25 gle statewide rate established by the destination

1 State applicable to sales by remote sellers to pur-
2 chasers in such State. [Such rate may not be higher
3 than such State’s sales, use or similar tax rate plus
4 the weighted average of any sales, use or similar tax
5 rate imposed with respect to a unit of local govern-
6 ment in that State.]

7 (5) The term “origin locality” means, with re-
8 gard to a remote sale during any calendar year, the
9 location in the origin State in which the remote sell-
10 er has employed the greatest average number of em-
11 ployees on business days during the preceding cal-
12 endar year.

13 (6) The term “origin rate” means the tax rate
14 (including any tax imposed by the tax jurisdiction
15 for the origin locality), subject to the same condi-
16 tions and exceptions, that would apply were the pur-
17 chase made in person in the remote seller’s origin
18 State and origin locality.

19 (7) The term “origin State” means, with regard
20 to a remote sale during any calendar year, the State
21 in which the remote seller has physical presence and
22 has employed the greatest average number of em-
23 ployees in the United States on business days during
24 the preceding calendar year. For purposes of this
25 paragraph and paragraphs (1) and (5), in the case

1 of a remote seller which was not in existence
2 throughout such preceding calendar year, the deter-
3 mination under the preceding sentence (and under
4 paragraph (5)) shall be based on the average num-
5 ber of employees that it is reasonably expected such
6 remote seller will employ on business days in the
7 current calendar year. For purposes of this para-
8 graph and paragraph (5), all persons treated as a
9 single employer under subsection (b), (c), (m), (n),
10 or (o) of section 414 of the Internal Revenue Code
11 of 1986 shall be treated as a single person, except
12 that “controlled group” or “common control” is de-
13 fined as ownership or control of more than 50 per-
14 cent. Any reference in this paragraph or paragraph
15 (5) to any person shall include a reference to any
16 predecessor of such person. [In determining the in-
17 dividuals that are employees of the single person,
18 section 414(n) of the Code applies, without regard
19 to section 414(n)(2)(B).] If there are two States
20 that are both origin States for a remote seller that
21 seller may elect either State. If a remote seller does
22 not have an origin State under this paragraph, the
23 origin State shall be the State in which the remote
24 seller has its alternate base.

25 (8) The term “physical presence”—

1 (A) means that a seller, in a State—

2 (i) owns, holds a leasehold interest in
3 or maintains real property such as a retail
4 store, kiosk, warehouse, distribution cen-
5 ter, manufacturing operation, or assembly
6 facility in the State;

7 (ii) leases or owns tangible personal
8 property (other than computer software),
9 excluding inventory (other than inventory
10 with a cost value more than \$100,000 held
11 for more than 30 consecutive days in a cal-
12 endar year), in the state;

13 (iii) has one or more employees,
14 agents or independent contractors present
15 in the State who engage in specific solici-
16 tations toward obtaining product or service
17 orders from customers in that State, or
18 prospective customers in that State, on be-
19 half of the seller, excluding general solici-
20 tation campaigns or participation at na-
21 tional or regional trade shows and conven-
22 tions conducted in the State; or

23 (iv) has one or more employees
24 present in the State who provide on-site

1 design, installation, or repair services on
2 behalf of the remote seller;

3 (B) does not include entering into an
4 agreement under which a person, for a commis-
5 sion or other consideration, directly or indi-
6 rectly refers potential purchasers to a seller
7 outside the State, whether by an Internet-based
8 link or platform, Internet Web site or other-
9 wise;

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

14 (D) does not include delivery and product
15 placement services offered by an in-State com-
16 mon carrier and Internet advertising services
17 provided by in-State residents which are not ex-
18 clusively directed towards, or do not solicit ex-
19 clusively, in-State customers.

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

23 (10) The term “remote sale” means a sale
24 made to a purchaser in a State in which the seller
25 has no physical presence.

1 (11) The term “remote seller” means a person
2 that makes a remote sale.

3 (12) The term “similar tax” means a tax,
4 whether measured by gross receipts or selling price,
5 imposed with respect to the sale or use of a product
6 or service, regardless whether the tax is imposed on
7 the seller or the purchaser, with the right or obliga-
8 tion of the seller to obtain reimbursement for the
9 amount of the tax from the purchaser at the time
10 of the transaction.

11 (13) The term “State” means the several
12 States, the District of Columbia, the Commonwealth
13 of Puerto Rico, Guam, American Samoa, the United
14 States Virgin Islands, the Commonwealth of the
15 Northern Mariana Islands, and any other territory
16 or possession of the United States.

17 **SEC. 7. DISPUTE RESOLUTION.**

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