

109TH CONGRESS  
1ST SESSION

# S. 2153

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

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IN THE SENATE OF THE UNITED STATES

DECEMBER 20, 2005

Mr. DORGAN introduced the following bill; which was read twice and referred  
to the Committee on Finance

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## A BILL

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

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 “Streamlined Sales Tax  
5 Simplification Act”.

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

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

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

2 (a) SALES AND USE TAX SYSTEM.—It is the sense  
 3 of the Congress that the sales and use tax system estab-  
 4 lished by the Streamlined Sales and Use Tax Agreement,  
 5 to the extent that it meets the minimum simplification re-  
 6 quirements of section 6, provides sufficient simplification  
 7 and uniformity to warrant Federal authorization to Mem-  
 8 ber States that are parties to the Agreement to require  
 9 remote sellers, subject to the conditions provided in this  
 10 Act, to collect and remit the sales and use taxes of such  
 11 Member States and of local taxing jurisdictions of such  
 12 Member States.

13 (b) PURPOSE.—The purpose of this Act is to—

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

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

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

22 (a) GRANT OF AUTHORITY.—

23 (1) IN GENERAL.—Each Member State under  
 24 the Streamlined Sales and Use Tax Agreement is  
 25 authorized, subject to the requirements of this sec-  
 26 tion, to require all sellers not qualifying for the

1 small business exception provided under subsection  
2 (d) to collect and remit sales and use taxes with re-  
3 spect to remote sales sourced to that Member State  
4 under the Agreement.

5 (2) REQUIREMENTS FOR AUTHORITY.—The au-  
6 thorization provided under paragraph (1) shall be  
7 granted once all of the following have occurred:

8 (A) 10 States comprising at least 20 per-  
9 cent of the total population of all States impos-  
10 ing a sales tax, as determined by the 2000 Fed-  
11 eral census, have petitioned for membership and  
12 have become Member States under the Agree-  
13 ment.

14 (B) The following necessary operational as-  
15 pects of the Agreement have been implemented  
16 by the Governing Board:

17 (i) Provider and system certification.

18 (ii) Setting of monetary allowance by  
19 contract with providers.

20 (iii) Implementation of an on-line  
21 multistate registration system.

22 (iv) Adoption of a standard form for  
23 claiming exemptions electronically.

24 (v) Establishment of advisory coun-  
25 cils.

1 (vi) Promulgation of rules and proce-  
 2 dures for dispute resolution.

3 (vii) Promulgation of rules and proce-  
 4 dures for audits.

5 (viii) Provisions for funding and staff-  
 6 ing the Governing Board.

7 (C) Each Member State has met the re-  
 8 quirements to provide and maintain the data-  
 9 bases and the taxability matrix described in the  
 10 Agreement, pursuant to requirements of the  
 11 Governing Board.

12 (3) LIMITATION OF AUTHORITY.—The author-  
 13 ization provided under paragraph (1)—

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

16 (B) is dependent upon the Agreement, as  
 17 amended, meeting the minimum simplification  
 18 requirements of section 6.

19 (b) TERMINATION OF AUTHORITY.—

20 (1) IN GENERAL.—The authorization provided  
 21 under subsection (a) shall terminate for all States  
 22 if—

23 (A) the requirements contained in sub-  
 24 section (a) cease to be satisfied; or

1 (B) any amendment adopted to the Agree-  
 2 ment after the date of enactment of this Act is  
 3 not within the scope of the administration of  
 4 sales and use taxes or taxes on telecommuni-  
 5 cations services by the Member States.

6 (2) LOSS OF MEMBER STATE STATUS.—The au-  
 7 thorization provided under subsection (a) shall ter-  
 8minate for a Member State, if such Member State  
 9 no longer meets the requirements for Member State  
 10 status under the terms of the Agreement.

11 (c) DETERMINATION OF STATUS.—

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

15 (2) COMPLIANCE DETERMINATION.—Upon the  
 16 determination of the Governing Board that all the  
 17 requirements of subsection (a) have been satisfied,  
 18 the authority of each Member State to require a sell-  
 19 er to collect and remit sales and use taxes shall com-  
 20 mence on the first day of a calendar quarter at least  
 21 6 months after the date the Governing Board makes  
 22 its determination.

23 (d) SMALL BUSINESS EXCEPTION.—

24 (1) IN GENERAL.—Not later than 180 days  
 25 after the date of enactment of this Act, and every

60 days thereafter until a vote of approval occurs under paragraph (2), the Administrator of the Small Business Administration shall, after soliciting comments from all interested entities, including the Secretary of the Treasury, the Governing Board, and organizations representing the interests of small businesses, and after considering all relevant factors—

(A) develop a rulemaking and propose to Congress a definition of those small sellers, including small businesses, that a Member State shall not require under subsection (a) to collect and remit sales and use taxes with respect to remote sales sourced to that Member State under the Agreement; and

(B) submit such proposal to the Committees on Small Business and Entrepreneurship and Finance of the Senate and the Committees on Small Business and the Judiciary of the House of Representatives.

(2) CONGRESSIONAL REVIEW.—

(A) IN GENERAL.—Not later than 60 days after the date that a proposal described in paragraph (1) is submitted to the Committees on Small Business and Entrepreneurship and Fi-

1 nance of the Senate and the Committees on  
 2 Small Business and the Judiciary of the House  
 3 of Representatives, the House of Representa-  
 4 tives and the Senate shall vote on a joint reso-  
 5 lution on whether or not to approve such pro-  
 6 posal.

7 (B) JOINT RESOLUTION.—For purposes of  
 8 this section—

9 (i) the term “joint resolution” means  
 10 only a joint resolution introduced in the  
 11 period beginning on the date on which the  
 12 proposal described in paragraph (1) is sub-  
 13 mitted by the Administrator of the Small  
 14 Business Administration to the Commit-  
 15 tees on Small Business and Entrepreneur-  
 16 ship and Finance of the Senate and the  
 17 Committees on Small Business and the Ju-  
 18 diciary of the House of Representatives,  
 19 the matter after the resolving clause of  
 20 which is as follows: “That the Congress  
 21 approves the proposal transmitted to the  
 22 Congress by the Administrator of the  
 23 Small Business Administration on -----,  
 24 20—”. (The blank spaces being appro-  
 25 priately filled in); and

1           (ii) the submission of the proposal  
2           under paragraph (1)(B) shall be deemed to  
3           be the introduction of a joint resolution de-  
4           scribed in clause (i).

5           (C) SENATE REVIEW.—

6           (i) MOTION TO PROCEED.—In the  
7           Senate, at the end of 60 calendar days  
8           after the date on which the Committees on  
9           Small Business and Entrepreneurship and  
10          Finance of the Senate have reported a pro-  
11          posal described in paragraph (1), or when  
12          such Committees are discharged (under  
13          clause (ii)) from further consideration of  
14          the proposal, it is at any time thereafter in  
15          order (even though a previous motion to  
16          the same effect has been disagreed to) for  
17          a motion to proceed to the consideration of  
18          the joint resolution on such proposal, and  
19          all points of order against such resolution  
20          (and against consideration of such resolu-  
21          tion) are waived.

22          (ii) FAILURE TO REPORT.—In the  
23          Senate, if the Committees referred to in  
24          clause (i) have not reported joint resolution  
25          at the end of 60 calendar days after sub-



mission of the proposal, such Committees may be discharged from further consideration of such joint resolution upon a petition supported in writing by 30 Members of the Senate, and such joint resolution shall be placed on the calendar.

(iii) NOT AMENDABLE.—The motion to proceed is not subject—

(I) to amendment;

(II) to a motion to postpone; or

(III) to a motion to proceed to the consideration of other business.

(iv) NOT TO BE RECONSIDERED.—A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order.

(v) REMAINING BUSINESS.—If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

(vi) DEBATE TIME.—In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more

1 than 10 hours, which shall be divided  
2 equally between those favoring and those  
3 opposing the joint resolution.

4 (vii) MOTION TO FURTHER LIMIT DE-  
5 BATE.—A motion further to limit debate is  
6 in order and not debatable.

7 (viii) OTHER MOTIONS.—An amend-  
8 ment to, or a motion to postpone, or a mo-  
9 tion to proceed to the consideration of  
10 other business, or a motion to recommit  
11 the proposal is not in order.

12 (ix) FINAL PASSAGE.—In the Senate,  
13 immediately following the conclusion of the  
14 debate on the motion, and a single quorum  
15 call at the conclusion of the debate if re-  
16 quested in accordance with the rules of the  
17 Senate, the vote on final passage of the  
18 joint resolution shall occur.

19 (x) APPEALS.—Appeals from the deci-  
20 sions of the Chair relating to the applica-  
21 tion of the rules of the Senate to the pro-  
22 cedure relating to the joint resolution shall  
23 be decided without debate.

24 (D) HOUSE REVIEW.—

1 (i) MOTION TO PROCEED.—In the  
2 House of Representatives, at the end of 60  
3 calendar days after the date on which the  
4 Committees on Small Business and the Ju-  
5 diciary of the House of Representatives  
6 have reported a proposal described in para-  
7 graph (1), or when such Committees are  
8 discharged (under clause (ii)) from further  
9 consideration of the proposal, it is in order  
10 for any Member of the House to move to  
11 proceed to consideration of the joint reso-  
12 lution on such proposal.

13 (ii) FAILURE TO REPORT.—In the  
14 House, if the Committees referred to in  
15 clause (i) have not reported the joint reso-  
16 lution at the end of 60 calendar days after  
17 submission of the proposal, such Commit-  
18 tees may be discharged from further con-  
19 sideration of such proposal.

20 (iii) POINTS OF ORDER.—All points of  
21 order against any such motion to proceed  
22 and against consideration of that motion  
23 are waived.

24 (iv) PRIVILEGE.—The motion is privi-  
25 leged in the House and is not debatable.

1 (v) NOT AMENDABLE.—The motion is  
 2 not subject to amendment, or to a motion  
 3 to postpone, or to a motion to proceed to  
 4 the consideration of other business.

5 (vi) NOT TO BE RECONSIDERED.—A  
 6 motion to reconsider the vote by which the  
 7 motion is agreed to or disagreed to shall  
 8 not be in order.

9 (vii) NO INTERVENING MOTION.—If a  
 10 motion to proceed to the consideration of  
 11 the joint resolution is agreed to, the House  
 12 shall immediately proceed to consideration  
 13 of such joint resolution without intervening  
 14 motion (except 1 motion to adjourn),  
 15 order, or other business.

16 (viii) DEBATE TIME.—In the House,  
 17 debate shall—

18 (I) be confined to the joint reso-  
 19 lution; and

20 (II) not exceed 1 hour equally di-  
 21 vided and controlled by a proponent  
 22 and an opponent of the joint resolu-  
 23 tion.

24 (ix) FINAL PASSAGE.—The previous  
 25 question shall be considered as ordered on

1 the joint resolution to final passage with-  
 2 out intervening motion, except 1 motion to  
 3 recommit.

4 (x) MOTION TO RECONSIDER ON  
 5 FINAL PASSAGE.—A motion to reconsider  
 6 the vote on passage of the joint resolution  
 7 shall not be in order.

8 (E) RULES OF SENATE AND HOUSE OF  
 9 REPRESENTATIVES ON JOINT RESOLUTIONS.—  
 10 Subparagraphs (A) through (D) are enacted by  
 11 Congress—

12 (i) as an exercise of the rulemaking  
 13 power of the Senate and the House of Rep-  
 14 resentatives, respectively, and as such they  
 15 are deemed a part of the rules of each  
 16 House, respectively, but applicable only  
 17 with respect to the procedure to be fol-  
 18 lowed in that House in the case of resolu-  
 19 tions with respect to proposal transmitted  
 20 under paragraph (1);

21 (ii) supersede other rules of each  
 22 House only to the extent that they are in-  
 23 consistent therewith; and

24 (iii) with full recognition of the con-  
 25 stitutional right of either House to change

1           the rules (so far as relating to the proce-  
 2           dure of that House) at any time, in the  
 3           same manner and to the same extent as in  
 4           the case of any other rule of that House.

5           (3) EFFECTIVE DATE OF SECTION.—Notwith-  
 6           standing subsection (a), no Member State shall have  
 7           the authority to require any remote seller to collect  
 8           and remit sales and use taxes with respect to any re-  
 9           mote sales sourced to that Member State under the  
 10          Agreement, unless a small business exception for re-  
 11          mote sales is approved under paragraph (2).

12 **SEC. 5. DETERMINATIONS BY GOVERNING BOARD AND JU-**  
 13 **DICIAL REVIEW OF SUCH DETERMINATIONS.**

14          (a) PETITION.—At any time after the Governing  
 15          Board has made the determination required under section  
 16          4(c)(2), any person who may be affected by the Agreement  
 17          may petition the Governing Board for a determination on  
 18          any issue relating to the implementation of the Agreement.

19          (b) REVIEW IN COURT OF FEDERAL CLAIMS.—Any  
 20          person who submits a petition under subsection (a) may  
 21          bring an action against the Governing Board in the United  
 22          States Court of Federal Claims for judicial review of the  
 23          action of the Governing Board on that petition if—

24                (1) the petition relates to an issue of whether—

1 (A) a Member State has satisfied or con-  
2 tinues to satisfy the requirements for Member  
3 State status under the Agreement;

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

7 (C) the Agreement continues to satisfy the  
8 minimum simplification requirements set forth  
9 in section 6; or

10 (D) any other requirement of section 4 has  
11 been satisfied; and

12 (2) the petition is denied by the Governing  
13 Board in whole or in part with respect to that issue,  
14 or the Governing Board fails to act on the petition  
15 with respect to that issue not later than 6 months  
16 after the date on which the petition is submitted.

17 (c) TIMING OF ACTION FOR REVIEW.—An action for  
18 review under this section shall be initiated not later than  
19 60 days after the denial of the petition by the Governing  
20 Board, or, if the Governing Board failed to act on the peti-  
21 tion, not later than 60 days after the end of the 6-month  
22 period beginning on the day after the date on which the  
23 petition was submitted.

24 (d) STANDARD OF REVIEW.—

1           (1) IN GENERAL.—In any action for review  
 2           under this section, the court shall set aside the ac-  
 3           tions, findings, and conclusions of the Governing  
 4           Board found to be arbitrary, capricious, an abuse of  
 5           discretion, or otherwise not in accordance with law.

6           (2) REMAND.—If the court sets aside any ac-  
 7           tion, finding, or conclusion of the Governing Board  
 8           under paragraph (1), the court shall remand the  
 9           case to the Governing Board for further action con-  
 10          sistent with the decision of the court.

11          (e) JURISDICTION.—

12           (1) GENERALLY.—Chapter 91 of title 28,  
 13          United States Code, is amended by adding at the  
 14          end the following:

15      **“§ 1510. Jurisdiction regarding the Streamlined Sales**  
 16                      **and Use Tax Agreement**

17          “The United States Court of Federal Claims shall  
 18          have exclusive jurisdiction over actions for judicial review  
 19          of determinations of the Governing Board of the Stream-  
 20          lined Sales and Use Tax Agreement under the terms and  
 21          conditions provided in section 5 of the Streamlined Sales  
 22          Tax Simplification Act.”.

23           (2) CONFORMING AMENDMENT TO TABLE OF  
 24          SECTIONS.—The table of sections at the beginning  
 25          of chapter 91 of title 28, United States Code, is



1       amended by adding at the end the following new  
2       item:

“1510. Jurisdiction regarding the streamlined sales and use tax agreement.”.

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

4       (a) IN GENERAL.—The minimum simplification re-  
5       quirements for the Agreement, which shall relate to the  
6       conduct of Member States under the Agreement and to  
7       the administration and supervision of such conduct, are  
8       as follows:

9               (1) A centralized, one-stop, multistate registra-  
10       tion system that a seller may elect to use to register  
11       with the Member States, provided a seller may also  
12       elect to register directly with a Member State, and  
13       further provided that privacy and confidentiality  
14       controls shall be placed on the multistate registra-  
15       tion system so that it may not be used for any pur-  
16       pose other than the administration of sales and use  
17       taxes. Furthermore, no taxing authority within a  
18       Member State or a Member State that has with-  
19       drawn or been expelled from the Agreement may use  
20       registration with the centralized registration system  
21       for the purpose of, or as a factor in determining,  
22       whether a seller has a nexus with that Member State  
23       for any tax at any time.

24               (2) Uniform definitions of products and prod-  
25       uct-based exemptions from which a Member State

1       may choose its individual tax base, provided, how-  
2       ever, that all local jurisdictions in that Member  
3       State shall have a common tax base identical to the  
4       State tax base of that Member State. A Member  
5       State may enact other product-based exemptions  
6       without restriction if the Agreement does not have  
7       a definition for the product or for a term that in-  
8       cludes the product. A Member State shall relax the  
9       good faith requirement for acceptance of exemption  
10      certificates in accordance with section 317 of the  
11      Agreement, as amended through the date of enact-  
12      ment of this Act.

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

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

19           (5) Uniform rules for bad debts and rounding.

20           (6) Uniform requirements for tax returns and  
21      remittances.

22           (7) Consistent electronic filing and remittance  
23      methods.

24           (8) Single, State-level administration of all  
25      Member State and local sales and use taxes, includ-

1       ing a requirement for a State-level filing of tax re-  
2       turns in each Member State.

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

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

16          (11) A provision requiring each Member State  
17       to complete a taxability matrix, as adopted by the  
18       Governing Board. The matrix shall include informa-  
19       tion regarding terms defined by the Agreement in  
20       the Library of Definitions. The matrix shall also in-  
21       clude, pursuant to the requirements of the Gov-  
22       erning Board, information on use, entity, and prod-  
23       uct based exemptions.

24          (12) A provision requiring that each Member  
25       State relieves a seller or service provider from liabil-

1       ity to that Member State and local jurisdiction for  
2       collection of the incorrect amount of sales or use tax,  
3       and relieves the purchaser from penalties stemming  
4       from such liability, provided that collection of the  
5       improper amount is the result of relying on informa-  
6       tion provided by that Member State regarding tax  
7       rates, boundaries, or taxing jurisdiction assignments,  
8       or in the taxability matrix regarding terms defined  
9       by the Agreement in the Library of Definitions.

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

19       (14) As of the day that authority to require col-  
20       lection commences under section 4, each Member  
21       State shall provide reasonable compensation for ex-  
22       penses incurred by a seller directly in administering,  
23       collecting, and remitting sales and use taxes (other  
24       than use taxes on goods and services purchased for  
25       the consumption of the seller) to that Member State.

1       Such compensation may vary in each Member State  
2       depending on the complexity of the sales and use tax  
3       laws in that Member State and may vary by the  
4       characteristics of sellers in order to reflect dif-  
5       ferences in collection costs. Such compensation may  
6       be provided to a seller or a third party service pro-  
7       vider whom a seller has contracted with to perform  
8       all the sales and use tax responsibilities of a seller.

9               (15) Appropriate protections for consumer pri-  
10       vacy.

11              (16) Governance procedures and mechanisms to  
12       ensure timely, consistent, and uniform implementa-  
13       tion and adherence to the principles of the stream-  
14       lined system and the terms of the Agreement.

15              (17) Each Member State shall apply the sim-  
16       plification requirements of the Agreement to taxes  
17       on telecommunications services, except as provided  
18       herein. This requirement is applicable to Member  
19       States as of July 1, 2008, except that sales and use  
20       taxes on telecommunications services shall be subject  
21       to the Agreement and the authority granted to the  
22       Member States when the requirements of section  
23       4(a) are met. On or after July 1, 2008, for those  
24       Member States which meet the requirements of this  
25       paragraph, the authority granted such Member

1 States under section 4 may be exercised by such  
2 Member States, pursuant to the terms of section 4  
3 and section 5, with respect to taxes on telecommuni-  
4 cations services other than sales and use taxes on  
5 such services. The following are exceptions to the re-  
6 quirement established under this paragraph:

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

11 (B) The requirements for rate simplifica-  
12 tion are modified to require that each taxing ju-  
13 risdiction shall have only one rate for each type  
14 of tax on telecommunications services.

15 (C) The requirements for tax base uni-  
16 formity in section 302 of the Agreement shall  
17 apply to each type of tax on telecommunications  
18 services within a State, but shall not be con-  
19 strued to require that the tax base for different  
20 types of taxes on telecommunications services  
21 must be identical to the tax base for sales and  
22 use taxes imposed on telecommunications serv-  
23 ices.

24 (18) Uniform rules and procedures for “sales  
25 tax holidays”.

1           (19) Uniform rules and procedures to address  
 2           refunds and credits for sales taxes relating to cus-  
 3           tomer returns, restocking fees, discounts and cou-  
 4           pons, and rules to address allocations of shipping  
 5           and handling and discounts applied to multiple item  
 6           and multiple seller orders.

7           (b) REQUIREMENT TO PROVIDE SIMPLIFIED TAX  
 8           SYSTEMS.—

9           (1) IN GENERAL.—The requirements of this  
 10          section are intended to ensure that each Member  
 11          State provides and maintains the necessary sim-  
 12          plifications to its sales and use tax system to war-  
 13          rant the collection authority granted to it in section  
 14          4.

15          (2) REDUCTION OF ADMINISTRATIVE BUR-  
 16          DENS.—The requirements of this section should be  
 17          construed—

18                 (A) to require each Member State to sub-  
 19                 stantially reduce the administrative burdens as-  
 20                 sociated with sales and use taxes; and

21                 (B) as allowing each Member State to ex-  
 22                 ercise flexibility in how these requirements are  
 23                 satisfied.

24          (3) EXCEPTION.—In instances where exceptions  
 25          to the requirements of this section can be exercised

1 in a manner that does not materially increase the  
 2 administrative burden on a seller obligated to collect  
 3 or pay the taxes, such exceptions are permissible.

4 **SEC. 7. LIMITATION.**

5 (a) IN GENERAL.—Nothing in this Act shall be con-  
 6 strued as—

7 (1) subjecting a seller to franchise taxes, in-  
 8 come taxes, or licensing requirements of a Member  
 9 State or political subdivision thereof; or

10 (2) affecting the application of such taxes or re-  
 11 quirements or enlarging or reducing the authority of  
 12 any Member State to impose such taxes or require-  
 13 ments.

14 (b) NO EFFECT ON NEXUS, ETC.—

15 (1) IN GENERAL.—No obligation imposed by  
 16 virtue of the authority granted by section 4 shall be  
 17 considered in determining whether a seller has a  
 18 nexus with any Member State for any other tax pur-  
 19 pose.

20 (2) PERMISSIBLE MEMBER STATE AUTHOR-  
 21 ITY.—Except as provided in subsection (a), and in  
 22 section 4, nothing in this Act permits or prohibits a  
 23 Member State from—

24 (A) licensing or regulating any person;



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

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

5 (D) exercising authority over matters of  
6 interstate commerce.

7 **SEC. 8. EXPEDITED JUDICIAL REVIEW.**

8 (a) **THREE-JUDGE DISTRICT COURT HEARING.**—  
9 Notwithstanding any other provision of law, any civil ac-  
10 tion challenging the constitutionality of this Act, or any  
11 provision thereof, shall be heard by a district court of  
12 three judges convened pursuant to the provisions of sec-  
13 tion 2284 of title 28, United States Code.

14 (b) **APPELLATE REVIEW.**—

15 (1) **IN GENERAL.**—Notwithstanding any other  
16 provision of law, an interlocutory or final judgment,  
17 decree, or order of the court of three judges in an  
18 action under subsection (a) holding this Act, or any  
19 provision thereof, unconstitutional shall be review-  
20 able as a matter of right by direct appeal to the Su-  
21 preme Court.

22 (2) **30-DAY TIME LIMIT.**—Any appeal under  
23 paragraph (1) shall be filed not more than 30 days  
24 after the date of entry of such judgment, decree, or  
25 order.

1 **SEC. 9. DEFINITIONS.**

2 For the purposes of this Act the following definitions  
3 apply:

4 (1) **AFFILIATE.**—The term “affiliate” means  
5 any entity that controls, is controlled by, or is under  
6 common control with a seller.

7 (2) **GOVERNING BOARD.**—The term “Governing  
8 Board” means the governing board established by  
9 the Streamlined Sales and Use Tax Agreement.

10 (3) **MEMBER STATE.**—The term “Member  
11 State”—

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

16 (B) does not include associate members  
17 under the Agreement.

18 (4) **NATIONWIDE.**—The term “nationwide”  
19 means throughout each of the several States and the  
20 District of Columbia, the Commonwealth of Puerto  
21 Rico, Guam, American Samoa, the Virgin Islands,  
22 the Northern Mariana Islands, and any other terri-  
23 tory or possession of the United States.

24 (5) **NONDISCRETIONARY DUTY OF THE GOV-  
25 ERNING BOARD.**—The phrase “nondiscretionary  
26 duty of the Governing Board” means any duty of

1 the Governing Board specified in the Agreement as  
2 a requirement for action by use of the term “shall”,  
3 “will”, or “is required to”.

4 (6) PERSON.—The term “person” means an in-  
5 dividual, trust, estate, fiduciary, partnership, cor-  
6 poration, or any other legal entity, and includes a  
7 State or local government.

8 (7) REMOTE SALE.—The term “remote sale”  
9 refers to a sale of goods or services attributed to a  
10 particular Member State with respect to which a  
11 seller does not have adequate physical presence to  
12 establish nexus under the law existing on the day be-  
13 fore the date of enactment of this Act so as to allow  
14 such Member State to require, without regard to the  
15 authority granted by this Act, the seller to collect  
16 and remit sales or use taxes with respect to such  
17 sale.

18 (8) REMOTE SELLER.—The term “remote sell-  
19 er” means any seller who makes a remote sale.

20 (9) STATE.—The term “State” means any  
21 State of the United States of America and includes  
22 the District of Columbia, Puerto Rico, and any other  
23 territory or possession of the United States.

24 (10) STREAMLINED SALES AND USE TAX  
25 AGREEMENT.—The term “Streamlined Sales and

1       Use Tax Agreement” (or “the Agreement”) means  
 2       the multistate agreement with that title adopted on  
 3       November 12, 2002, as amended through the date of  
 4       enactment of this Act and unless the context other-  
 5       wise indicates as further amended from time to time.

6           (11) TAX ON TELECOMMUNICATIONS SERV-  
 7       ICES.—The term “tax on telecommunications serv-  
 8       ices” or “taxes on telecommunication services” shall  
 9       encompass the same taxes, charges, or fees as are  
 10      included in section 116 of title 4, United States  
 11      Code, except that “telecommunication services” shall  
 12      replace “mobile telecommunications services” when-  
 13      ever such term appears.

14          (12) TELECOMMUNICATIONS SERVICE.—

15           (A) IN GENERAL.—The term “tele-  
 16       communications service” means the electronic  
 17       transmission, conveyance, or routing of voice,  
 18       data, audio, video, or any other information or  
 19       signals to a point, or between or among points.

20           (B) INCLUSION.—The term “telecommuni-  
 21       cation service”—

22           (i) includes transmission services in  
 23       which computer processing applications are  
 24       used to act on the form, code, or protocol  
 25       of the content for purposes of trans-

mission, 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. 10. 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.

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