



# H. R. ~~5893~~ 2887

To regulate certain State impositions on interstate commerce.

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## IN THE HOUSE OF REPRESENTATIVES

~~JULY 14~~ JUNE 12, 2016 ~~2017~~

Mr. SENSENBRENNER (for himself, Mr. GOODLATTE, Mr. DESJARLAIS, Mr. McCLINTOCK, Mr. GROTHMAN, Mr. MEADOWS, Mr. CONAWAY, and Mr. TROTT) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To regulate certain State impositions on interstate commerce.

*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 “No Regulation Without Representation Act of ~~2016~~ 2017”.

### SEC. 2. MINIMUM JURISDICTIONAL STANDARDS FOR STATE AND LOCAL ~~SALE TAXATION AND USE TAX COLLECTION~~ REGULATION OF ITEMS IN INTERSTATE COMMERCE.

(a) IN GENERAL.—To the extent otherwise permissible under Federal law, a State may tax or regulate a person’s activity in interstate commerce only when such person is physically present in the State during the period in which the tax or regulation is imposed.

~~(a) IN GENERAL.—A State may —~~

~~(1) impose an obligation on a person for —~~

~~(A) the collection of a sales, use, or similar tax, or~~

~~(B) the reporting of any information with respect thereto, on a person,~~

~~(2) assess a sales, use or similar tax on a person, or~~

~~(3) treat a person as doing business in a State for purposes of such a tax,~~

~~only if such person had a physical presence in the State during the calendar quarter with respect to which the obligation or assessment is imposed.~~

(b) REQUIREMENTS FOR PHYSICAL PRESENCE.—

(1) IN GENERAL.—For purposes of subsection (a), a person has a physical presence in a State only if such person's business activities in the State include any of the following during the calendar year—

(A) maintaining its commercial or legal domicile in the State;

~~(AB) owns, holds~~owning, holding a leasehold interest in, or ~~maintains~~maintaining real property such as ~~an~~office, retail store, warehouse, distribution center, manufacturing operation, or assembly facility in the State;

~~(BC) leases or owns~~leasing or owning tangible personal property (other than computer software) of more than de minimis value in the State;

~~(CD) has~~having 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, provide on-site design, installation, or repair services~~ on behalf of the ~~person~~remote seller;

~~(DE) has~~having one or more employees ~~or, exclusive agents or exclusive~~ independent contractors present in the State who ~~provide on-site design, installation, or repair services on behalf of the remote seller~~engage in activities that substantially assist the person to establish or maintain a market in the State; or

~~(EF) maintains an office~~regularly employing in the State ~~at which it regularly employs~~ three or more employees for any purpose.

(2) DE MINIMIS PHYSICAL PRESENCE.—For purposes of this section, the term “physical presence” shall not include—

(A) entering into an agreement under which a person, for a commission or other consideration, directly or indirectly refers potential purchasers to a person outside the State, whether by an Internet-based link or platform, Internet Web site or otherwise;

(B) any presence in a State, as described in section 2(b)(1), for less than 15 days in a taxable year (or a greater number of days if provided by State law);

(C) ~~delivery and~~ product placement, setup, or other services offered in connection with delivery of products by an interstate or in-State ~~common~~ carrier or other service provider; ~~and~~

(D) Internet advertising services provided by in-State residents which are not exclusively directed towards, or do not solicit exclusively, in-State customers;

(E) ownership by a person outside the State of an interest in a limited liability company or similar entity organized or with a physical presence in the State;

(F) the furnishing of information to customers or affiliates in such State, or the coverage of events or other gathering of information in such State by such person, or his representative, which information is used or disseminated from a point outside the State; or

(G) business activities directly relating to such person's potential or actual purchase of goods or services within the State if the final decision to purchase is made outside the State.

(c) PROTECTION OF NON-SELLERS.—A State may not impose or assess a sales ~~or~~ use ~~tax collection obligation, or~~ or similar tax on a person or impose an obligation to collect or report any information with respect thereto, ~~on a person or assess a sales, use or similar tax on any person other than~~ unless such person is either a purchaser or a seller having a physical presence in the State.

### SEC. 3. DISPUTE RESOLUTION.

The district courts of the United States shall have original jurisdiction over civil actions to enforce the provisions of this Act, including authority to issue declaratory judgments pursuant to section 2201 of title 28, United States Code, and, notwithstanding the provisions of section 1341 of such title, injunctive relief, as necessary to carry out any provision of this Act.

### SEC. 4. DEFINITIONS AND EFFECTIVE DATE.

(a) DEFINITIONS.—For purposes of this Act:

(1) MARKETPLACE PROVIDER.—The term “marketplace provider” includes any person, other than a seller, who facilitates a sale. For purposes of this subsection, a person facilitates a sale when the person both—

(A) lists or advertises ~~tangible personal property and services~~ products for sale in any forum, including a catalog or Internet Web site; and

(B) either directly or indirectly through agreements or arrangements with third parties, collects gross receipts from the customer and transmits those receipts to the marketplace seller, whether or not such person deducts any fees or other amounts from ~~the transmission of~~ those receipts prior to transferring them to the marketplace seller.

(2) MARKETPLACE SELLER.—The term “marketplace seller” means a person that has any sales facilitated by a marketplace provider.

(3) PERSON.—The term “person” has the meaning given such term by section 1 of title 1, United States Code. Each corporation that is a member of a group of affiliated corporations, whether unitary or not, is itself a separate person.

(4) PRODUCT.—The term “product” includes any good or service, tangible or intangible.

~~(3)~~ (5) REFERRER.—The term “referrer” shall mean every person who—

(A) contracts or otherwise agrees with a seller to list multiple ~~items of tangible personal property and services~~products for sale and the sales prices thereof in any forum, including a catalog or Internet Web site;

(B) receives a fee, commission, or other consideration from a seller for the listing;

(C) transfers, via telephone, Internet link, or otherwise, a customer to the seller or the seller's Web site to complete a purchase; and

(D) does not collect receipts from the customer for the transaction.

**(46) PERSON REGULATE.**—The term “person” ~~has the meaning given such term by section 1 of title 1 of the United States Code. Each corporation that is a member of a group of affiliated corporations, whether unitary or not, is itself a separate “person”;~~regulate” means to impose a standard or requirement on the production, manufacture or post-sale disposal of any product sold or offered for sale in interstate commerce as a condition of sale in a State when—

(A) such production or manufacture occurs in another State;

(B) such requirement is in addition to the requirements applicable to such production or manufacture pursuant to Federal law and the laws of the State and locality in which such production or manufacture occurs;

(C) such imposition is not otherwise expressly permitted by Federal law; and

(D) such requirement is enforced by a State's executive branch or its agents or contractors.

**(57) SELLER.**—The term “seller” does not include—

(A) any marketplace provider (except with respect to the sale through the marketplace of products owned by the marketplace provider);

(B) any referrer;

(C) any carrier, in which the seller does not have an ownership interest, providing transportation or delivery services with respect to tangible personal property; and

(D) any credit card issuer, transaction or billing processor, or other financial intermediary.

**(68) SIMILAR TAX.**—The term “similar tax” means a tax that is imposed with respect to the sale or use of a product ~~or service~~, regardless of whether the tax is imposed on the person making the sale or the purchaser, with the right or obligation of the person making the sale to obtain reimbursement for the amount of the tax from the purchaser at the time of the transaction.

**(79) STATE.**—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 and includes ~~the State government or any~~ political subdivision entity responsible for tax collection and audits thereof.

**(10) TAX.**—The term “tax” means to—

(A) impose an obligation on a person for—

(i) the collection of a sales, use, or similar tax; or

(ii) the reporting of any information with respect thereto;

(B) assess a sales, use or similar tax on a person;

(C) treat a person as doing business in a State for purposes of such a tax; or

(D) impose on a business or its non-resident owners, directly or indirectly through mechanisms such as combined reporting or consolidated returns, a net income tax or any other business activity tax measured by the amount of, or economic results of, business or related activity conducted in or derived from sources in the State.

(b) EFFECTIVE DATE.—This Act shall apply with respect to calendar quarters beginning on or after January 1, ~~2017~~2018.

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