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

SECTION 1. SHORT TITLE.
This Act may be cited as the “Marketplace and Internet Tax Fairness Act”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
TITLE I—MARKETPLACE 
FAIRNESS

SEC. 101. 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 pur-
suant to the provisions of the Streamlined Sales and Use 
Tax Agreement, but only if any changes to the Stream-
lined 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 102(h), a State may exercise authority 
under this title beginning 180 days after the State pub-
ishes notice of the State’s intent to exercise the authority 
under this title.

(b) Alternative.—A State that is not a Member 
State under the Streamlined Sales and Use Tax Agree-
ment 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 102(h), such authority shall com-
mence beginning no earlier than the first day of the cal-
endar quarter that is at least 6 months after the date that
the State—

(1) enacts legislation to exercise the authority
granted by this title—

   (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 title shall not apply; and

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

   (A) Provide, with respect to all remote
sales sourced to the State—

       (i) a single entity within the State re-
sponsible for all State and local sales and
use tax administration, return processing,
and audits;
(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 title. 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 jurisdic-
tions within the State with respect to prod-
ucts and services to which paragraph (1)(B)
does not apply.

(C) Source all remote sales in compliance
with the sourcing definition set forth in section
103(7).
(D)(i) Make publicly available 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) Provide 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 any rate changes and any changes to the products and services specified under paragraph (1)(B), as described in subparagraph (H); and

(iii) Establish certification procedures for persons to be approved as certified software providers, with any software provided by such providers to be capable of calculating and filing sales and use taxes in all States qualified under this title.

(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 misleading 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 any rate change or any change to the products and services specified under paragraph (1)(B) 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 title 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 2 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 1 or more ownership relationships and such relationships were designed with a principal purpose of avoiding the application of these rules.

SEC. 102. LIMITATIONS.

(a) IN GENERAL.—Nothing in this title 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 title 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 title 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 title shall be construed as permitting 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 interstate commerce.

(e) No New Taxes.—Nothing in this title 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 provisions of this title shall apply only to remote sales and shall not apply to intrastate sales or intrastate sourcing rules. States granted authority under section 101(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 title shall be construed as altering in any manner or preempting the Mobile Telecommunications Sourcing Act (4 U.S.C. 116–126).

(h) **Limitation on Initial Collection of Sales and Use Taxes From Remote Sales.**—A State may not begin to exercise the authority under this title—

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. 103. Definitions and Special Rules.**

In this title:

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 compliance pursuant to section 101(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 title.

(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 101(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 instructions 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 customer’s payment instrument if no other address is available. If an address is unknown and a billing address 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 section 101(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 Commonwealth 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 Education 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. 104. SEVERABILITY.

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

SEC. 105. PREEMPTION.

Except as otherwise provided in this title, this title 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.

**TITLE II—INTERNET TAX FREEDOM ACT**

**SEC. 201. EXTENSION OF INTERNET TAX FREEDOM ACT.**

(a) In General.—Section 1101(a) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking “November 1, 2014” and inserting “November 1, 2024”.

(b) Grandfathering of States That Tax Internet Access.—Section 1104(a)(2)(A) of such Act is amended by striking “November 1, 2014” and inserting “November 1, 2024”.


S 2609 PCS
To restore States' sovereign rights to enforce State and local sales and use tax laws, and for other purposes.

A BILL

S. 2609

113TH CONGRESS

Calendar No. 467