

115TH CONGRESS  
2D SESSION

# S. 3725

To prohibit States from retroactively imposing a sales tax collection duty on a remote seller, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

DECEMBER 6, 2018

Mrs. SHAHEEN (for herself, Mr. WYDEN, Ms. HASSAN, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To prohibit States from retroactively imposing a sales tax collection duty on a remote seller, and for other purposes.

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 Simplicity  
5 and Small Business Relief Act of 2018”.

6 **SEC. 2. BAN ON RETROACTIVE TAXATION OF INTERNET**  
7 **COMMERCE.**

8 A State may not impose a sales tax collection duty  
9 on a remote seller for any sale that occurred prior to June  
10 21, 2018.

1 **SEC. 3. ORDERLY PHASE-IN OF COMPLIANCE OBLIGATIONS.**

2 A State may impose a sales tax collection duty on  
3 a remote seller only for a sale that occurs after January  
4 1, 2020.

5 **SEC. 4. SMALL BUSINESS REMOTE SELLER EXEMPTION.**

6 In the case of a sale made by a small business remote  
7 seller, no State may impose a sales tax collection duty on  
8 any person other than the purchaser if the sale is made  
9 on or after June 21, 2018, and before the date that is  
10 30 days after the date on which the States develop and  
11 Congress approves an interstate compact, applicable to the  
12 State and sale, governing the imposition of tax collection  
13 duties on remote sellers.

14 **SEC. 5. SENSE OF CONGRESS.**

15 It is the sense of Congress that the States should de-  
16 velop an interstate compact for the collection of sales tax  
17 by remote sellers that identifies a clearly defined minimum  
18 substantial nexus between the remote seller and the taxing  
19 State, that simplifies registration, collection, remittance,  
20 auditing, and other compliance processes to the greatest  
21 extent possible in order to avoid undue burdens on inter-  
22 state commerce, and that, due to such simplification,  
23 eliminates the need for the continuation of the small busi-  
24 ness remote seller exemption under section 4.

25 **SEC. 6. DEFINITIONS.**

26 In this Act:

1           (1) REMOTE SELLER.—The term “remote sell-  
2           er” means a person without a physical presence in  
3           the State who makes a sale in the State.

4           (2) PHYSICAL PRESENCE.—

5           (A) IN GENERAL.—Except as provided in  
6           subparagraph (B), the term “physical presence”  
7           means, with respect to a person, that a person’s  
8           business activities in the State include any of  
9           the following during such person’s taxable year:

10           (i) Being an individual physically in  
11           the State, or assigning one or more em-  
12           ployees to be in the State.

13           (ii) Using the services of an agent (ex-  
14           cluding an employee) to establish or main-  
15           tain a market in the State, if such agent  
16           does not perform business services in the  
17           State for any other person during such  
18           taxable year.

19           (iii) The leasing or owning of tangible  
20           personal property (other than digital or al-  
21           phanumeric data) or of real property in the  
22           State.

23           (B) EXCEPTION.—A person does not have  
24           physical presence in a State if the person’s  
25           physical presence in the State under subpara-

1 graph (A) was for less than 15 days in a tax-  
 2 able year (or a greater number of days if pro-  
 3 vided by State law), or if the person’s physical  
 4 presence in the State was solely for the purpose  
 5 of conducting limited or transient business ac-  
 6 tivity.

7 (3) SALES TAX COLLECTION DUTY.—The term  
 8 “sales tax collection duty” means—

9 (A) an obligation imposed on a person, in-  
 10 cluding a person other than the actual seller,  
 11 to—

12 (i) pay or collect a sales, use, or simi-  
 13 lar tax upon the sale of a good or service;  
 14 or

15 (ii) report any information with re-  
 16 spect to such sale of a good or service; or

17 (B) the assessment of a sales, use, or simi-  
 18 lar tax on a person.

19 (4) SMALL BUSINESS REMOTE SELLER.—The  
 20 term “small business remote seller” means a remote  
 21 seller with gross annual receipts in the United  
 22 States during the preceding calendar year in an  
 23 amount that is not more than \$10,000,000.