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2^D SESSION

S. 1825

To authorize collection of certain State and local taxes with respect to the sale, delivery, and use of tangible personal property.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3 (legislative day, JANUARY 25), 1994

Mr. BUMPERS (for himself, Mr. COCHRAN, Mr. CONRAD, Mr. DORGAN, Mr. HEFLIN, Mr. BOREN, and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To authorize collection of certain State and local taxes with respect to the sale, delivery, and use of tangible personal property.

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 “Tax Fairness for Main
5 Street Business Act of 1994”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) sales by out-of-State firms already are sub-
9 ject to State and local sales taxes, but State and

1 local governments are unable to compel out-of-State
2 firms to collect and remit such taxes,

3 (2) small businesses, which are compelled to
4 collect State and local sales taxes, are subject to un-
5 fair competition when out-of-State firms cannot be
6 compelled to collect and remit such taxes on their
7 sales to residents of the State,

8 (3) State and local governments provide a num-
9 ber of resources to out-of-State firms including gov-
10 ernment services relating to mail delivery, commu-
11 nications, bank and court systems, and disposal of
12 tons of catalogs,

13 (4) the inability of State and local governments
14 to require out-of-State firms to collect and remit
15 sales taxes deprives State and local governments of
16 needed revenue and forces such State and local gov-
17 ernments to raise taxes on taxpayers, including
18 small businesses, in such State,

19 (5) the Supreme Court ruled in *Quill v. North*
20 *Dakota*, 112 U.S. 1904 (1992) that the due process
21 clause of the Constitution does not prohibit a State
22 government from imposing personal jurisdiction and
23 tax obligations on out-of-State firms that purpose-
24 fully solicit sales from residents therein, and that
25 the Congress has the power to authorize State gov-

1 ernments to require out-of-State firms to collect
2 State and local sales taxes, and

3 (6) as a matter of federalism, the Federal Gov-
4 ernment has a duty to assist State and local govern-
5 ments in collecting sales taxes on sales from out-of-
6 State firms.

7 **SEC. 3. AUTHORITY FOR COLLECTION OF SALES TAX.**

8 (a) IN GENERAL.—A State is authorized to require
9 a person who is subject to the personal jurisdiction of the
10 State to collect and remit a State sales tax, a local sales
11 tax, or both, with respect to tangible personal property
12 if—

13 (1) the destination of the tangible personal
14 property is in the State,

15 (2) during the 1-year period ending on Septem-
16 ber 30 of the calendar year preceding the calendar
17 year in which the taxable event occurs, the person
18 has gross receipts from sales of such tangible per-
19 sonal property—

20 (A) in the United States exceeding
21 \$3,000,000, or

22 (B) in the State exceeding \$100,000, and

23 (3) the State, on behalf of its local jurisdictions,
24 collects and administers all local sales taxes imposed
25 pursuant to this Act.

1 (b) STATES MUST COLLECT LOCAL SALES TAXES.—
2 A State in which both State and local sales taxes are im-
3 posed may not require State sales taxes to be collected
4 and remitted under subsection (a) unless the State also
5 requires the local sales taxes to be collected and remitted
6 under subsection (a).

7 (c) AGGREGATION RULES.—All persons that would
8 be treated as a single employer under section 52 (a) or
9 (b) of the Internal Revenue Code of 1986 shall be treated
10 as one person for purposes of subsection (a).

11 (d) DESTINATION.—For purposes of subsection (a),
12 the destination of tangible personal property is the State
13 or local jurisdiction which is the final location to which
14 the seller ships or delivers the property, or to which the
15 seller causes the property to be shipped or delivered, re-
16 gardless of the means of shipment or delivery or the loca-
17 tion of the buyer.

18 **SEC. 4. TREATMENT OF LOCAL SALES TAXES.**

19 (a) UNIFORM LOCAL SALES TAXES.—

20 (1) IN GENERAL.—Sales taxes imposed by local
21 jurisdictions of a State shall be deemed to be uni-
22 form for purposes of this Act and shall be collected
23 under this Act in the same manner as State sales
24 taxes if—

1 (A) such local sales taxes are imposed at
2 the same rate and on identical transactions in
3 all geographic areas in the State, and

4 (B) such local sales taxes imposed on sales
5 by out-of-State persons are collected and ad-
6 ministered by the State.

7 (2) APPLICATION TO BORDER JURISDICTION
8 TAX RATES.—A State shall not be treated as failing
9 to meet the requirements of paragraph (1)(A) if,
10 with respect to a local jurisdiction which borders on
11 another State, such State or local jurisdiction—

12 (A) either reduces or increases the local
13 sales tax in order to achieve a rate of tax equal
14 to that imposed by the bordering State on iden-
15 tical transactions, or

16 (B) exempts from the tax transactions
17 which are exempt from tax in the bordering
18 State.

19 (b) NONUNIFORM LOCAL SALES TAXES.—

20 (1) IN GENERAL.—Nonuniform local sales taxes
21 required to be collected pursuant to this Act shall be
22 collected under one of the options provided under
23 paragraph (2).

24 (2) ELECTION.—For purposes of paragraph
25 (1), any person required under authority of this Act

1 to collect nonuniform local sales taxes shall elect to
2 collect either—

3 (A) all nonuniform local sales taxes appli-
4 cable to transactions in the State, or

5 (B) a fee (at the rate determined under
6 paragraph (3)) which shall be in lieu of the
7 nonuniform local sales taxes described in sub-
8 paragraph (A).

9 Such election shall require the person to use the
10 method elected for all transactions in the State while
11 the election is in effect.

12 (3) RATE OF IN-LIEU FEE.—For purposes of
13 paragraph (2)(B), the rate of the in-lieu fee for any
14 calendar year shall be an amount equal to the prod-
15 uct of—

16 (A) the amount determined by dividing
17 total nonuniform local sales tax revenues col-
18 lected in the State for the most recently com-
19 pleted State fiscal year for which data is avail-
20 able by total State sales tax revenues for the
21 same year, and

22 (B) the State sales tax rate.

23 Such amount shall be rounded to the nearest 0.25
24 percent.

1 (4) NONUNIFORM LOCAL SALES TAXES.—For
2 purposes of this Act, nonuniform local sales taxes
3 are local sales taxes which do not meet the require-
4 ments of subsection (a).

5 (c) DISTRIBUTION OF LOCAL SALES TAXES.—

6 (1) IN GENERAL.—A State shall distribute to
7 local jurisdictions a portion of the amounts collected
8 pursuant to this Act determined on the basis of—

9 (A) in the case of uniform local sales taxes,
10 the proportion which each local jurisdiction re-
11 ceives of uniform local sales taxes not collected
12 pursuant to this Act,

13 (B) in the case of in-lieu fees, as described
14 in subsection (b)(2)(B), the proportion which
15 each local jurisdiction's nonuniform local sales
16 tax receipts bears to the total nonuniform local
17 sales tax receipts in the State, and

18 (C) in the case of any nonuniform local
19 sales tax collected pursuant to this Act, the geo-
20 graphical location of the transaction on which
21 the tax was imposed.

22 The amounts determined under subparagraphs (A)
23 and (B) shall be calculated on the basis of data for
24 the most recently completed State fiscal year for
25 which the data is available.

1 (2) TIMING.—Amounts described in paragraph
2 (1) (B) or (C) shall be distributed by a State to its
3 local jurisdictions in accordance with State time-
4 tables for distributing local sales taxes, but not less
5 frequently than every calendar quarter. Amounts de-
6 scribed in paragraph (1)(A) shall be distributed by
7 a State as provided under State law.

8 (3) TRANSITION RULE.—If, upon the effective
9 date of this Act, a State has a State law in effect
10 providing a method for distributing local sales taxes
11 other than the method under this subsection, then
12 this subsection shall not apply to that State until the
13 91st day following the adjournment sine die of that
14 State’s next regular legislative session which con-
15 venes after the effective date of this Act (or such
16 earlier date as State law may provide). Local sales
17 taxes collected pursuant to this Act prior to the ap-
18 plication of this subsection shall be distributed as
19 provided by State law.

20 **SEC. 5. RETURN AND REMITTANCE REQUIREMENTS.**

21 (a) IN GENERAL.—A State may not require any per-
22 son subject to this Act—

23 (1) to file a return reporting the amount of any
24 tax collected or required to be collected under this
25 Act, or to remit the receipts of such tax, more fre-

1 quently than once with respect to sales in a calendar
2 quarter, or

3 (2) to file the initial such return, or to make
4 the initial such remittance, before the 90th day after
5 the person's first taxable transaction under this Act.

6 (b) LOCAL TAXES.—The provisions of subsection (a)
7 shall also apply to any person required by a State acting
8 under authority of this Act to collect a local sales tax or
9 in-lieu fee.

10 **SEC. 6. NONDISCRIMINATION AND EXEMPTIONS.**

11 A State shall not have power under this Act to re-
12 quire any person not located in the State or local jurisdic-
13 tion to collect and remit a State or local sales tax if a
14 person located in the State or local jurisdiction would have
15 been exempt from or otherwise not subject to such State
16 or local sales tax under similar circumstances.

17 **SEC. 7. APPLICATION OF STATE LAW.**

18 (a) PERSONS REQUIRED TO COLLECT STATE OR
19 LOCAL SALES TAX.—Any person required by section 3 to
20 collect a State or local sales tax shall be subject to the
21 laws of such State relating to such sales tax to the extent
22 that such laws are consistent with the limitations con-
23 tained in this Act.

1 (b) LIMITATIONS.—Except as provided in subsection
2 (a), nothing in this Act shall be construed to permit a
3 State—

4 (1) to license or regulate any person,

5 (2) to require any person to qualify to transact
6 intrastate business, or

7 (3) to subject any person to State taxes not re-
8 lated to the sales of tangible personal property.

9 (c) PREEMPTION.—Except as otherwise provided in
10 this Act, this Act shall not be construed to preempt or
11 limit any power exercised or to be exercised by a State
12 or local jurisdiction under the law of such State or local
13 jurisdiction or under any other Federal law.

14 **SEC. 8. TOLL-FREE INFORMATION SERVICE.**

15 A State shall not have power under this Act to re-
16 quire any person to collect a State or local sales tax on
17 any sale unless, at the time of such sale, such State has
18 a toll-free telephone service available to provide such per-
19 son information relating to collection of such State or local
20 sales tax. Such information shall include, at a minimum,
21 all applicable tax rates, return and remittance addresses
22 and deadlines, and penalty and interest information. As
23 part of the service, the State shall also provide all nec-
24 essary forms and instructions at no cost to any person
25 using the service. The State shall prominently display the

1 toll-free telephone number on all correspondence with any
2 person using the service. This service may be provided
3 jointly with other States.

4 **SEC. 9. DEFINITIONS.**

5 For the purposes of this Act—

6 (1) the term “compensating use tax” means a
7 tax imposed on or incident to the use, storage, con-
8 sumption, distribution, or other use within a State
9 or local jurisdiction or other area of a State, of tan-
10 gible personal property;

11 (2) the term “local sales tax” means a sales tax
12 imposed in a local jurisdiction or area of a State and
13 includes, but is not limited to—

14 (A) a sales tax or in-lieu fee imposed in a
15 local jurisdiction or area of a State by the State
16 on behalf of such jurisdiction or area, and

17 (B) a sales tax imposed by a local jurisdic-
18 tion or other State-authorized entity pursuant
19 to the authority of State law, local law, or both;

20 (3) the term “person” means an individual, a
21 trust, estate, partnership, society, association, com-
22 pany or corporation, including a limited liability
23 company, whether or not acting in a fiduciary or
24 representative capacity, and any combination of the
25 foregoing;

1 (4) the term “sales tax” means a tax, including
2 a compensating use tax, that is—

3 (A) imposed on or incident to the sale,
4 purchase, storage, consumption, distribution, or
5 other use of tangible personal property as may
6 be defined or specified under the laws imposing
7 such tax, and

8 (B) measured by the amount of the sales
9 price, cost, charge or other value of or for such
10 property; and

11 (5) the term “State” means any of the several
12 States of the United States, the District of Colum-
13 bia, the Commonwealth of Puerto Rico, and any ter-
14 ritory or possession of the United States.

15 **SEC. 10. EFFECTIVE DATE.**

16 This Act shall take effect 180 days after the date of
17 the enactment of this Act. In no event shall this Act apply
18 to any sale occurring before such effective date.

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