<u>ONLINE SALES SIMPLIFICATION ACT: SECTION-BY-SECTION</u>

Sec.1: Short Title: The Online Sales Simplification Act of 2015

Sec. 2: Limitation on Collecting Tax on Remote Sales

(a) A state may tax a remote sale only if it is the Origin state of the sale <u>and</u> party to the Distribution Agreement (*i.e.*, the clearinghouse that nets out the $).

(b) Tax is applied at the Origin Rate (including local rate).

(c) Privacy Protection – No personally identifiable information is reported to the clearinghouse. Just the amount of the sale, destination state and (zip code). Exception is made for sharing, <u>in the course of an audit only</u>, "compliant taxpayer certificates" established in sec. 4.

(d) Sellers may be audited only by their home state taxing authority.

(e) Prevents Double Taxation – States may not impose use tax on a purchaser who paid sales tax at the origin rate at the time of purchase. Exempts aircraft, vehicles, vessels and business purchases. These are all cases in which states currently collect today, either when the vehicle is registered or because businesses pay their use tax. As a general rule, where states are successfully collecting today, the bill preserves the status quo.

Sec. 3: Distribution Agreement (*i.e.*, Clearinghouse)

(a) Each State Governor appoints 4 representatives to a commission. At least one must represent remote sellers, the other three represent interests of government, consumers and non-remote sellers in the state. Commission produces a distribution agreement with the following terms:

1) Each Origin State determines how much money its sellers collected on remote sales to customers outside the state.
2) Each Origin State uses the state, zip code data from sellers to determine the proportion of tax collected on remote sales to each other state (*e.g.*, 10% came from sales to MA, 15% to MD etc.).
3) Each Origin State forwards each Destination State its proportional share (determined in (2)) of the sales tax that the Origin State collected during the period via the proven clearinghouse method used in the Fuel Tax context.
4) States that do not join the Distribution Agreement cannot tax remote sales or receive distributions from the clearinghouse.
5) A method for sellers in No-Sales-Tax states (NOMADs) to report sales to the Clearinghouse (as required by sec. 4 to prevent tax havens), for the Clearinghouse to make that info. available to the destination state and for customers, upon request, to access information reported regarding their purchases.
6) A method for determining the state with the lowest combined generally applicable state and average local rate. That rate becomes the "collection rate" applied by NOMAD sellers pursuant to sec. 4 to prevent tax havens. HI is excluded from the

calculation because its distance does not make it a realistic candidate for tax haven status.

7) A method for determining a list of common exemptions to be applied by NOMAD sellers under sec. 4.
8) A Uniform Compliant Purchaser Certificate to be used for sales for resale, direct pay permits, use based exemptions or charities. This uniform certificate indicates the seller should not collect sales tax at the Origin Rate because the purchaser tendering it is a "compliant purchaser" who can be trusted to pay whatever use tax may or may not be due directly to that purchaser's state. Each state sets its own rules governing issuance of the certificate to its home state customers which allows states to police them. (*e.g.*, Customers who use them must use them for all remote purchases, report regularly to the state, etc.) An Origin State that obtains data on certificate use, in the course of an audit, is also permitted to share it with the State that issued the certificate.
9) A single audit of a NOMAD seller. This authority applies ONLY to NOMAD states and ONLY IF the NOMAD state is not party to the agreement (otherwise it would audit its own sellers), and it formally declines a reasonable request for it to perform an audit that includes an offer to reimburse the NOMAD state for the associated audit costs.
10) Origin States in the agreement get to keep tax collected by their remote sellers on sales to customers in non-member states.
11) States in the Distribution Agreement must conform their laws to conform to the agreement and any Constitutional requirements. (*e.g.*, With regard to upon whom the sales tax burden technically falls. Some states place it on the seller others on the customer.)
12) Clearinghouse Privacy Protection – Note: Generally, the Clearinghouse holds no Personally Identifiable Information except from NOMAD sellers who choose to report instead of collecting the flat tax pursuant to section 4. Nevertheless, the bill provides for protections including access controls, a written data security plan, protections against unauthorized access to personal information, designated employees to coordinate privacy safeguards and no disclosure of personal information except upon a purchaser's own request, or as necessary for a NOMAD seller to report a sale to the customer's state, as required by law or for use by a Clearinghouse contractor.
13) Except as provided in paragraphs 5-12 the Distribution Agreement may not contain any provisions not pertaining to the distribution of sales tax by states party to the agreement.

(b) Commission has 90 days to produce the agreement. After that, states cannot collect tax on remote sales at all (*e.g.*, via aggressive affiliate nexus laws) until an agreement becomes effective.

(c) The agreement does not become effective until (1) approved by a [majority] of states AND (2) [GAO/AAG of the Tax Division] certifies the agreement complies with the terms of the bill, the House Judiciary & Senate Finance Committees are informed of the certification, AND 60 days elapse since the notification in which Congress does NOT pass a joint resolution of disapproval.

Sec. 4: NOMAD States and Foreign Sellers

(a) Sellers based in NOMAD states have a choice. They can either report the sale, via the Clearinghouse, to the customer's state (data limited to name, address and amount of sale only) OR collect at a flat "collection rate" subject to the common exemptions determined pursuant to sections 3(a)(6) and 3(a)(7).

(b) Clarifies that NOMAD states may participate in the Distribution Agreement (and thereby recover tax collected by remote sellers on sales to customers in NOMAD states).

(c) Sellers in Foreign States are treated like sellers in NOMAD states so long as that foreign state enforces similar collection obligations on U.S. sellers selling to customers in that foreign state. (*i.e.*, collect at the flat rate or report.)

(d) This section takes effect 90 days after the Distribution Agreement becomes effective. This gives NOMAD sellers time to put the necessary infrastructure in place to comply.

Sec. 5: Definitions – Most are straightforward, key terms are summarized below.

(2) <u>Destination State</u> – where product or service is delivered or received, if none, any address the seller obtains from the buyer during the transaction, if none, the Origin of the sales.

(4) <u>Origin State</u> – State where seller had the greatest average number of employees employed in the preceding calendar year. If the seller is new, the calculation is based on the expected number and location of employees. The average is used to smooth out seasonal fluctuations common in the retail industry. Also, to prevent gaming, related entities are considered treated as a single unit using standard language from the Internal Revenue Code.

(5) <u>Origin Locality</u> – Defined by same calculation as Origin State, but within the Origin State at the local level.

(6) <u>Origin Rate</u> – The sales tax rate that would apply if the remote sale were made in person at the seller's Origin State and Locality.

(7)<u>Physical Presence</u> –

(A)(i) Owning or leasing real property or (ii) tangible personal property (excluding computer software because it is licensed meaning the creator retains interest and would otherwise be present wherever the software is used) and excluding inventory unless it is valued at greater than $100,000 and held for more than 30 consecutive days; (iii) having one or more employees or contractors in the state engaged in selling product (excludes general solicitation campaigns, trade show/convention participation); (iv) having employees present in State providing on-site design, installation or repair for the remote seller.

(B) Excludes affiliate arrangements.

(C) Excludes employee presence in state for fewer than 15 days (paragraph A notwithstanding).

(D) Excludes white glove delivery and placement services made by common carrier and general advertising (as opposed to soliciting a particular customer), a distinction recognized in current law.

(9) Remote Sale – A sale made to a purchaser in a State in which the seller has no "physical presence."

Sec. 6: Dispute Resolution

(a) Disputes regarding the threshold question of whether a seller is a remote seller or which state is the remote sellers' home state are heard in federal court. If that is not at issue, cases must go to state court consistent with the state sovereignty principle.

(b) Disputes regarding remote sellers in NOMAD states are in federal court since the source of their collect or report obligation is federal rather than state law.