

115TH CONGRESS
1ST SESSION

H. R. 2887

To regulate certain State impositions on interstate commerce.

IN THE HOUSE OF REPRESENTATIVES

JUNE 12, 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

A BILL

To regulate certain State impositions on interstate commerce.

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 “No Regulation Without
5 Representation Act of 2017”.

6 **SEC. 2. MINIMUM JURISDICTIONAL STANDARDS FOR STATE**
7 **AND LOCAL TAXATION AND REGULATION OF**
8 **ITEMS IN INTERSTATE COMMERCE.**

9 (a) IN GENERAL.—To the extent otherwise permis-
10 sible under Federal law, a State may tax or regulate a
11 person’s activity in interstate commerce only when such

1 person is physically present in the State during the period
2 in which the tax or regulation is imposed.

3 (b) REQUIREMENTS FOR PHYSICAL PRESENCE.—

4 (1) IN GENERAL.—For purposes of subsection

5 (a), a person has a physical presence in a State only
6 if such person's business activities in the State in-
7 clude any of the following during the calendar
8 year—

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

11 (B) owning, holding a leasehold interest in,
12 or maintaining real property such as an office,
13 retail store, warehouse, distribution center,
14 manufacturing operation, or assembly facility in
15 the State;

16 (C) leasing or owning tangible personal
17 property (other than computer software) of
18 more than de minimis value in the State;

19 (D) having one or more employees, agents,
20 or independent contractors present in the State
21 who provide on-site design, installation, or re-
22 pair services on behalf of the remote seller;

23 (E) having one or more employees, exclu-
24 sive agents or exclusive independent contractors
25 present in the State who engage in activities

1 that substantially assist the person to establish
2 or maintain a market in the State; or

3 (F) regularly employing in the State three
4 or more employees for any purpose.

5 (2) DE MINIMIS PHYSICAL PRESENCE.—For
6 purposes of this section, the term “physical pres-
7 ence” shall not include—

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

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

18 (C) product placement, setup, or other
19 services offered in connection with delivery of
20 products by an interstate or in-State carrier or
21 other service provider;

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

1 (E) ownership by a person outside the
 2 State of an interest in a limited liability com-
 3 pany or similar entity organized or with a phys-
 4 ical presence in the State;

5 (F) the furnishing of information to cus-
 6 tomers or affiliates in such State, or the cov-
 7 erage of events or other gathering of informa-
 8 tion in such State by such person, or his rep-
 9 resentative, which information is used or dis-
 10 seminated from a point outside the State; or

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

15 (c) PROTECTION OF NON-SELLERS.—A State may
 16 not impose or assess a sales, use, or similar tax on a per-
 17 son or impose an obligation to collect or report any infor-
 18 mation with respect thereto, unless such person is either
 19 a purchaser or a seller having a physical presence in the
 20 State.

21 **SEC. 3. DISPUTE RESOLUTION.**

22 The district courts of the United States shall have
 23 original jurisdiction over civil actions to enforce the provi-
 24 sions of this Act, including authority to issue declaratory
 25 judgments pursuant to section 2201 of title 28, United

1 States Code, and, notwithstanding the provisions of sec-
2 tion 1341 of such title, injunctive relief, as necessary to
3 carry out any provision of this Act.

4 **SEC. 4. DEFINITIONS AND EFFECTIVE DATE.**

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

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

11 (A) lists or advertises products for sale in
12 any forum, including a catalog or Internet Web
13 site; and

14 (B) either directly or indirectly through
15 agreements or arrangements with third parties,
16 collects gross receipts from the customer and
17 transmits those receipts to the marketplace sell-
18 er, whether or not such person deducts any fees
19 or other amounts from those receipts prior to
20 transferring them to the marketplace seller.

21 (2) MARKETPLACE SELLER.—The term “mar-
22 ketplace seller” means a person that has any sales
23 facilitated by a marketplace provider.

24 (3) PERSON.—The term “person” has the
25 meaning given such term by section 1 of title 1,

1 United States Code. Each corporation that is a
2 member of a group of affiliated corporations, wheth-
3 er unitary or not, is itself a separate person.

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

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

8 (A) contracts or otherwise agrees with a
9 seller to list multiple products for sale and the
10 sales prices thereof in any forum, including a
11 catalog or Internet Web site;

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

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

17 (D) does not collect receipts from the cus-
18 tomer for the transaction.

19 (6) REGULATE.—The term “regulate” means to
20 impose a standard or requirement on the production,
21 manufacture or post-sale disposal of any product
22 sold or offered for sale in interstate commerce as a
23 condition of sale in a State when—

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

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

6 (C) such imposition is not otherwise ex-
7 pressly permitted by Federal law; and

8 (D) such requirement is enforced by a
9 State's executive branch or its agents or con-
10 tractors.

11 (7) SELLER.—The term “seller” does not in-
12 clude—

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

16 (B) any referrer;

17 (C) any carrier, in which the seller does
18 not have an ownership interest, providing trans-
19 portation or delivery services with respect to
20 tangible personal property; and

21 (D) any credit card issuer, transaction or
22 billing processor, or other financial inter-
23 mediary.

24 (8) SIMILAR TAX.—The term “similar tax”
25 means a tax that is imposed with respect to the sale

1 or use of a product, regardless of whether the tax
2 is imposed on the person making the sale or the pur-
3 chaser, with the right or obligation of the person
4 making the sale to obtain reimbursement for the
5 amount of the tax from the purchaser at the time
6 of the transaction.

7 (9) STATE.—The term “State” means the sev-
8 eral States, the District of Columbia, the Common-
9 wealth of Puerto Rico, Guam, American Samoa, the
10 United States Virgin Islands, the Commonwealth of
11 the Northern Mariana Islands, and any other terri-
12 tory or possession of the United States and includes
13 any political subdivision thereof.

14 (10) TAX.—The term “tax” means to—

15 (A) impose an obligation on a person for—

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

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

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

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

24 (D) impose on a business or its non-resi-
25 dent owners, directly or indirectly through

1 mechanisms such as combined reporting or con-
2 solidated returns, a net income tax or any other
3 business activity tax measured by the amount
4 of, or economic results of, business or related
5 activity conducted in or derived from sources in
6 the State.

7 (b) EFFECTIVE DATE.—This Act shall apply with re-
8 spect to calendar quarters beginning on or after January
9 1, 2018.

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