

113TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To promote neutrality, simplicity, and fairness in the taxation of digital goods and digital services.

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IN THE SENATE OF THE UNITED STATES

Mr. WYDEN (for himself and Mr. THUNE) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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## **A BILL**

To promote neutrality, simplicity, and fairness in the taxation of digital goods and digital services.

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 “Digital Goods and  
5 Services Tax Fairness Act of 2013”.

6 **SEC. 2. MULTIPLE AND DISCRIMINATORY TAXES PROHIB-**  
7 **ITED.**

8 No State or local jurisdiction shall impose multiple  
9 or discriminatory taxes on the sale or use of a digital good  
10 or a digital service.

1 **SEC. 3. SOURCING LIMITATION.**

2 Subject to section 6(a), taxes on the sale of a digital  
3 good or a digital service may only be imposed by a State  
4 or local jurisdiction whose territorial limits encompass the  
5 customer tax address.

6 **SEC. 4. CUSTOMER TAX ADDRESS.**

7 (a) SELLER OBLIGATION.—

8 (1) IN GENERAL.—Subject to subsection (e)(2),  
9 a seller shall be responsible for obtaining and main-  
10 taining in the ordinary course of business the cus-  
11 tomer tax address with respect to the sale of a dig-  
12 ital good or a digital service, and shall be responsible  
13 for collecting and remitting the correct amount of  
14 tax for the State and local jurisdictions whose terri-  
15 torial limits encompass the customer tax address if  
16 the State has the authority to require such collection  
17 and remittance by the seller.

18 (2) CERTAIN TRANSACTIONS.—When a cus-  
19 tomer tax address is not a business location of the  
20 seller under clause (i) of section 7(2)(A)—

21 (A) if the sale is a separate and discrete  
22 transaction, then a seller shall use reasonable  
23 efforts to obtain a customer tax address, as  
24 such efforts are described in clauses (iii), (iv),  
25 and (v) of section 7(2)(A), before resorting to

1 using a customer tax address as determined by  
2 clause (vi) of such section 7(2)(A); and

3 (B) if the sale is not a separate and dis-  
4 crete transaction, then a seller shall use reason-  
5 able efforts to obtain a customer tax address,  
6 as such efforts are described in clauses (ii),  
7 (iii), (iv), and (v) of section 7(2)(A), before re-  
8 sorting to using a customer tax address as de-  
9 termined by clause (vi) of such section 7(2)(A).

10 (b) RELIANCE ON CUSTOMER-PROVIDED INFORMA-  
11 TION.—A seller that relies in good faith on information  
12 provided by a customer to determine a customer tax ad-  
13 dress shall not be held liable for any additional tax based  
14 on a different determination of that customer tax address  
15 by a State or local jurisdiction or court of competent juris-  
16 diction, except if and until binding notice is given as pro-  
17 vided in subsection (c).

18 (c) ADDRESS CORRECTION.—If a State or local juris-  
19 diction is authorized under State law to administer a tax,  
20 and the jurisdiction determines that the customer tax ad-  
21 dress determined by a seller is not the customer tax ad-  
22 dress that would have been determined under section  
23 7(2)(A) if the seller had the additional information pro-  
24 vided by the State or local jurisdiction, then the jurisdic-  
25 tion may give binding notice to the seller to correct the

1 customer tax address on a prospective basis, effective not  
2 less than 45 days after the date of such notice, if—

3 (1) when the determination is made by a local  
4 jurisdiction, such local jurisdiction obtains the con-  
5 sent of all affected local jurisdictions within the  
6 State before giving such notice of determination; and

7 (2) before the State or local jurisdiction gives  
8 such notice of determination, the customer is given  
9 an opportunity to demonstrate in accordance with  
10 applicable State or local tax administrative proce-  
11 dures that the address used is the customer tax ad-  
12 dress.

13 (d) COORDINATION WITH SOURCING OF MOBILE  
14 TELECOMMUNICATIONS SERVICE.—

15 (1) IN GENERAL.—If—

16 (A) a digital good or a digital service is  
17 sold to a customer by a home service provider  
18 of mobile telecommunications service that is  
19 subject to being sourced under section 117 of  
20 title 4, United States Code, or the charges for  
21 a digital good or a digital service are billed to  
22 the customer by such a home service provider;  
23 and

24 (B) the digital good or digital service is de-  
25 livered, transferred, or provided electronically

1           by means of mobile telecommunications service  
2           that is deemed to be provided by such home  
3           service provider under section 117 of such title,  
4           then the home service provider and, if different, the  
5           seller of the digital good or digital service, may pre-  
6           sume that the customer’s place of primary use for  
7           such mobile telecommunications service is the cus-  
8           tomer tax address described in section 7(2)(B) with  
9           respect to the sale of such digital good or digital  
10          service.

11           (2) DEFINITIONS.—For purposes of this sub-  
12          section, the terms “home service provider”, “mobile  
13          telecommunications service”, and “place of primary  
14          use” have the same meanings as in section 124 of  
15          title 4, United States Code.

16          (e) MULTIPLE LOCATIONS.—

17           (1) IN GENERAL.—If a digital good or a digital  
18          service is sold to a customer and available for use  
19          by the customer in multiple locations simultaneously,  
20          the seller may determine the customer tax addresses  
21          using a reasonable and consistent method based on  
22          the addresses of use as provided by the customer  
23          and determined in agreement with the customer at  
24          the time of sale.

25           (2) DIRECT CUSTOMER PAYMENT.—

1           (A) ESTABLISHMENT OF DIRECT PAYMENT  
2 PROCEDURES.—Each State and local jurisdic-  
3 tion shall provide reasonable procedures that  
4 permit the direct payment by a qualified cus-  
5 tomer, as determined under procedures estab-  
6 lished by the State or local jurisdiction, of taxes  
7 that are on the sale of digital goods and digital  
8 services to multiple locations of the customer  
9 and that would, absent such procedures, be re-  
10 quired or permitted by law to be collected from  
11 the customer by the seller.

12           (B) EFFECT OF CUSTOMER COMPLIANCE  
13 WITH DIRECT PAYMENT PROCEDURES.—When  
14 a qualified customer elects to pay tax directly  
15 under the procedures established under sub-  
16 paragraph (A), the seller shall—

17                   (i) have no obligation to obtain the  
18 multiple customer tax addresses under sub-  
19 section (a); and

20                   (ii) not be liable for such tax, provided  
21 the seller follows the State and local proce-  
22 dures and maintains appropriate docu-  
23 mentation in its books and records.

1 **SEC. 5. TREATMENT OF BUNDLED TRANSACTIONS AND DIG-**  
2 **ITAL CODES.**

3 (a) BUNDLED TRANSACTION.—If a charge for a dis-  
4 tinct and identifiable digital good or a digital service is  
5 aggregated with and not separately stated from one or  
6 more charges for other distinct and identifiable goods or  
7 services, which may include other digital goods or digital  
8 services, and any part of the aggregation is subject to tax-  
9 ation, then the entire aggregation may be subject to tax-  
10 ation, except to the extent that the seller can identify, by  
11 reasonable and verifiable standards, one or more charges  
12 for the nontaxable goods or services from its books and  
13 records kept in the ordinary course of business.

14 (b) DIGITAL CODE.—The tax treatment of the sale  
15 of a digital code shall be the same as the tax treatment  
16 of the sale of the digital good or digital service to which  
17 the digital code relates.

18 (c) RULE OF CONSTRUCTION.—The sale of a digital  
19 code shall be considered the sale transaction for purposes  
20 of this Act.

21 **SEC. 6. NO INFERENCE.**

22 (a) CUSTOMER LIABILITY.—Subject to the prohibi-  
23 tion provided in section 2, nothing in this Act modifies,  
24 impairs, supersedes, or authorizes the modification, im-  
25 pairment, or supersession of any law allowing a State or  
26 local jurisdiction to impose tax on and collect tax directly

1 from a customer based upon use of a digital good or digital  
2 service in such State.

3 (b) NON-TAX MATTERS.—This Act shall not be con-  
4 strued to apply in, or to affect, any non-tax regulatory  
5 matter or other context.

6 (c) STATE TAX MATTERS.—The definitions con-  
7 tained in this Act are intended to be used with respect  
8 to interpreting this Act. Nothing in this Act shall prohibit  
9 a State or local jurisdiction from adopting different no-  
10 menclature to enforce the provisions set forth in this Act.

11 **SEC. 7. DEFINITIONS.**

12 In this Act, the following definitions shall apply:

13 (1) CUSTOMER.—The term “customer” means  
14 a person that purchases a digital good, digital serv-  
15 ice, or digital code.

16 (2) CUSTOMER TAX ADDRESS.—

17 (A) IN GENERAL.—The term “customer  
18 tax address” means—

19 (i) with respect to the sale of a digital  
20 good or digital service that is received by  
21 the customer at a business location of the  
22 seller, such business location;

23 (ii) if clause (i) does not apply and  
24 the primary use location of the digital good



1 or digital service is known by the seller,  
2 such location;

3 (iii) if neither clause (i) nor clause (ii)  
4 applies, and if the location where the dig-  
5 ital good or digital service is received by  
6 the customer, or by a donee of the cus-  
7 tomer that is identified by such customer,  
8 is known to the seller and maintained in  
9 the ordinary course of the seller's business,  
10 such location;

11 (iv) if none of clauses (i) through (iii)  
12 applies, the location indicated by an ad-  
13 dress for the customer that is available  
14 from the business records of the seller that  
15 are maintained in the ordinary course of  
16 the seller's business, when use of the ad-  
17 dress does not constitute bad faith;

18 (v) if none of clauses (i) through (iv)  
19 applies, the location indicated by an ad-  
20 dress for the customer obtained during the  
21 consummation of the sale, including the  
22 address of a customer's payment instru-  
23 ment, when use of this address does not  
24 constitute bad faith; or

1                   (vi) if none of clauses (i) through (v)  
2                   applies, including the circumstance in  
3                   which the seller is without sufficient infor-  
4                   mation to apply such paragraphs, the loca-  
5                   tion from which the digital good was first  
6                   available for transmission by the seller  
7                   (disregarding for these purposes any loca-  
8                   tion that merely provides for the digital  
9                   transfer of the product sold), or from  
10                  which the digital service was provided by  
11                  the seller.

12                  (B) EXCLUSION.—For purposes of this  
13                  paragraph, the term “location” does not include  
14                  the location of a server, machine, or device, in-  
15                  cluding an intermediary server, that is used  
16                  simply for routing or storage.

17                  (3) DELIVERED OR TRANSFERRED ELECTRONI-  
18                  CALLY; PROVIDED ELECTRONICALLY.—The term  
19                  “delivered or transferred electronically” means the  
20                  delivery or transfer by means other than tangible  
21                  storage media, and the term “provided electroni-  
22                  cally” means the provision remotely via electronic  
23                  means.

24                  (4) DIGITAL CODE.—The term “digital code”  
25                  means a code that conveys only the right to obtain

1 a digital good or digital service without making fur-  
2 ther payment.

3 (5) DIGITAL GOOD.—The term “digital good”  
4 means any software or other good that is delivered  
5 or transferred electronically, including sounds, im-  
6 ages, data, facts, or combinations thereof, main-  
7 tained in digital format, where such good is the true  
8 object of the transaction, rather than the activity or  
9 service performed to create such good, and includes,  
10 as an incidental component, charges for the delivery  
11 or transfer of the digital good.

12 (6) DIGITAL SERVICE.—

13 (A) IN GENERAL.—The term “digital serv-  
14 ice” means any service that is provided elec-  
15 tronically, including the provision of remote ac-  
16 cess to or use of a digital good, and includes,  
17 as an incidental component, charges for the  
18 electronic provision of the digital service to the  
19 customer.

20 (B) EXCEPTIONS.—The term “digital serv-  
21 ice” does not include a service that is predomi-  
22 nantly attributable to the direct, contempora-  
23 neous expenditure of live human effort, skill, or  
24 expertise, a telecommunications service, an an-  
25 cillary service, Internet access service, audio or

1 video programming service, or a hotel inter-  
2 mediary service.

3 (C) CLARIFYING DEFINITIONS.—For pur-  
4 poses of subparagraph (B)—

5 (i) the term “ancillary service” means  
6 a service that is associated with or inci-  
7 dental to the provision of telecommuni-  
8 cations services, including, but not limited  
9 to, detailed telecommunications billing, di-  
10 rectory assistance, vertical service, and  
11 voice mail services;

12 (ii) the term “audio or video program-  
13 ming service”—

14 (I) means programming provided  
15 by, or generally considered com-  
16 parable to programming provided by,  
17 a radio or television broadcast station;  
18 and

19 (II) does not include interactive  
20 on-demand services, as defined in  
21 paragraph (12) of section 602 of the  
22 Communications Act of 1934 (47  
23 U.S.C. 522(12)), pay-per-view serv-  
24 ices, or services generally considered  
25 comparable to such services regardless

1 of the technology used to provide such  
2 services;

3 (iii) the term “hotel intermediary  
4 service”—

5 (I) means a service provided by a  
6 person that facilitates the sale, use, or  
7 possession of a hotel room or other  
8 transient accommodation to the gen-  
9 eral public; and

10 (II) does not include the pur-  
11 chase of a digital service by a person  
12 who provides a hotel intermediary  
13 service or by a person who owns, oper-  
14 ates, or manages hotel rooms or other  
15 transient accommodations;

16 (iv) the term “Internet access service”  
17 means a service that enables users to con-  
18 nect to the Internet, as defined in the  
19 Internet Tax Freedom Act (47 U.S.C. 151  
20 note), to access content, information, or  
21 other services offered over the Internet;  
22 and

23 (v) the term “telecommunications  
24 service”—

1 (I) means the electronic trans-  
2 mission, conveyance, or routing of  
3 voice, data, audio, video, or any other  
4 information or signals to a point, or  
5 between or among points;

6 (II) includes such transmission,  
7 conveyance, or routing in which com-  
8 puter processing applications are used  
9 to act on the form, code, or protocol  
10 of the content for purposes of trans-  
11 mission, conveyance, or routing, with-  
12 out regard to whether such service is  
13 referred to as voice over Internet pro-  
14 tocol service; and

15 (III) does not include data proc-  
16 essing and information services that  
17 allow data to be generated, acquired,  
18 stored, processed, or retrieved and de-  
19 livered by an electronic transmission  
20 to a purchaser where such purchaser's  
21 primary purpose for the underlying  
22 transaction is the processed data or  
23 information.

24 (7) DISCRIMINATORY TAX.—The term “dis-  
25 criminatory tax” means any tax imposed by a State

1 or local jurisdiction on digital goods or digital serv-  
2 ices that—

3 (A) is not generally imposed and legally  
4 collectible by such State or local jurisdiction on  
5 transactions involving similar property, goods,  
6 or services accomplished through other means;

7 (B) is not generally imposed and legally  
8 collectible at the same or higher rate by such  
9 State or local jurisdiction on transactions in-  
10 volving similar property, goods, or services ac-  
11 complished through other means;

12 (C) imposes an obligation to collect or pay  
13 the tax on a person, other than the seller, than  
14 the State or local jurisdiction would impose in  
15 the case of transactions involving similar prop-  
16 erty, goods, or services accomplished through  
17 other means;

18 (D) establishes a classification of digital  
19 services or digital goods providers for purposes  
20 of establishing a higher tax rate to be imposed  
21 on such providers than the tax rate generally  
22 applied to providers of similar property, goods,  
23 or services accomplished through other means;  
24 or

1 (E) does not provide a resale and compo-  
2 nent part exemption for the purchase of digital  
3 goods or digital services in a manner consistent  
4 with the State’s resale and component part ex-  
5 emption applicable to the purchase of similar  
6 property, goods, or services accomplished  
7 through other means.

8 (8) MULTIPLE TAX.—

9 (A) IN GENERAL.—The term “multiple  
10 tax” means any tax that is imposed by one  
11 State, one or more of that State’s local jurisdic-  
12 tions, or both on the same or essentially the  
13 same digital goods and digital services that is  
14 also subject to tax imposed by another State,  
15 one or more local jurisdictions in such other  
16 State (whether or not at the same rate or on  
17 the same basis), or both, without a credit for  
18 taxes paid in other jurisdictions.

19 (B) EXCEPTION.—The term “multiple  
20 tax” shall not include a tax imposed by a State  
21 and one or more political subdivisions thereof  
22 on the same digital goods and digital services or  
23 a tax on persons engaged in selling digital  
24 goods and digital services which also may have  
25 been subject to a sales or use tax thereon.



1 (9) PRIMARY USE LOCATION.—

2 (A) IN GENERAL.—The term “primary use  
3 location” means a street address representative  
4 of where the customer’s use of a digital good or  
5 digital service will primarily occur, which shall  
6 be the residential street address or a business  
7 street address of the actual end user of the dig-  
8 ital good or digital service, including, if applica-  
9 ble, the address of a donee of the customer that  
10 is designated by the customer.

11 (B) CUSTOMERS THAT ARE NOT INDIVID-  
12 UALS.—For the purpose of subparagraph (A), if  
13 the customer is not an individual, the primary  
14 use location is determined by the location of the  
15 customer’s employees or equipment (machine or  
16 device) that make use of the digital good or dig-  
17 ital service, but does not include the location of  
18 a person who uses the digital good or digital  
19 service as the purchaser of a separate good or  
20 service from the customer.

21 (10) SALE AND PURCHASE.—The terms “sale”  
22 and “purchase”, and all variations thereof, shall in-  
23 clude the provision, lease, rent, license, and cor-  
24 responding variations thereof.

25 (11) SELLER.—

1 (A) IN GENERAL.—The term “seller”  
2 means a person making sales of digital goods or  
3 digital services.

4 (B) EXCEPTIONS.—A person that provides  
5 billing service or electronic delivery or transport  
6 service on behalf of another unrelated or unaf-  
7 filiated person, with respect to the other per-  
8 son’s sale of a digital good or digital service,  
9 shall not be treated as a seller of that digital  
10 good or digital service.

11 (C) RULE OF CONSTRUCTION.—Nothing in  
12 this paragraph shall preclude the person pro-  
13 viding the billing service or electronic delivery  
14 or transport service from entering into a con-  
15 tract with the seller to assume the tax collection  
16 and remittance responsibilities of the seller.

17 (12) SEPARATE AND DISCRETE TRANS-  
18 ACTION.—The term “separate and discrete trans-  
19 action” means a sale of a digital good, digital code,  
20 or a digital service sold in a single transaction which  
21 does not involve any additional charges or continued  
22 payment in order to maintain possession of the digi-  
23 tal good or access to the digital service.

24 (13) STATE OR LOCAL JURISDICTION.—The  
25 term “State or local jurisdiction” means any of the

1 several States, the District of Columbia, any terri-  
2 tory or possession of the United States, a political  
3 subdivision of any State, territory, or possession, or  
4 any governmental entity or person acting on behalf  
5 of such State, territory, possession, or subdivision  
6 and with the authority to assess, impose, levy, or  
7 collect taxes.

8 (14) TAX.—

9 (A) IN GENERAL.—The term “tax” means  
10 any charge imposed by any State or local jurisdic-  
11 tion for the purpose of generating revenues  
12 for governmental purposes, including any tax,  
13 charge, or fee levied as a fixed charge or meas-  
14 ured by gross amounts charged, regardless of  
15 whether such tax, charge, or fee is imposed on  
16 the seller or the customer and regardless of the  
17 terminology used to describe the tax, charge, or  
18 fee.

19 (B) EXCLUSIONS.—The term “tax” does  
20 not include an ad valorem tax, a tax on or  
21 measured by capital, a tax on or measured by  
22 net income, apportioned gross income, appor-  
23 tioned revenue, apportioned taxable margin, or  
24 apportioned gross receipts, or, a State or local  
25 jurisdiction business and occupation tax im-

1           posed on a broad range of business activity in  
2           a State that enacted a State tax on gross re-  
3           ceipts after January 1, 1932, and before Janu-  
4           ary 1, 1936.

5 **SEC. 8. EFFECTIVE DATE; APPLICATION.**

6           (a) GENERAL RULE.—This Act shall take effect 60  
7           days after the date of enactment of this Act.

8           (b) EXCEPTIONS.—A State or Local jurisdiction shall  
9           have 2 years from the date of enactment of this Act to  
10          modify any State or local tax statute enacted prior to date  
11          of enactment of this Act to conform to the provisions set  
12          forth in sections 4 and 5 of this Act.

13          (c) APPLICATION TO LIABILITIES AND PENDING  
14          CASES.—Nothing in this Act shall affect liability for taxes  
15          accrued and enforced before the effective date of this Act,  
16          or affect ongoing litigation relating to such taxes.

17 **SEC. 9. SAVINGS PROVISION.**

18          If any provision or part of this Act is held to be in-  
19          valid or unenforceable by a court of competent jurisdiction  
20          for any reason, such holding shall not affect the validity  
21          or enforceability of any other provision or part of this Act  
22          unless such holding substantially limits or impairs the es-  
23          sential elements of this Act, in which case this Act shall  
24          be deemed invalid and of no legal effect as of the date

- 1 that the judgment on such holding is final and no longer
- 2 subject to appeal.