

SENATE BILL NO. 2455

Introduced by

Senators Cook, Nething

(Approved by the Delayed Bills Committee)

1 A BILL for an Act to adopt a Simplified Sales and Use Tax Administration Act.

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

3 **SECTION 1. Definitions.** As used in this Act:

- 4 1. "Agreement" means the streamlined sales and use tax agreement.
- 5 2. "Certified automated system" means software certified jointly by the states that are
- 6 signatories to the agreement to calculate the tax imposed by each jurisdiction on a
- 7 transaction, determine the amount of tax to remit to the appropriate state, and
- 8 maintain a record of the transaction.
- 9 3. "Certified service provider" means an agent certified jointly by the states that are
- 10 signatories to the agreement to perform all of the seller's sales tax functions.
- 11 4. "Person" means an individual, trust, estate, fiduciary, partnership, limited liability
- 12 company, limited liability partnership, corporation, or any other legal entity.
- 13 5. "Sales tax" means the tax levied under chapter 57-39.2.
- 14 6. "Seller" means any person making sales, leases, or rentals of personal property or
- 15 services.
- 16 7. "State" means any state of the United States and the District of Columbia.
- 17 8. "Use tax" means the tax levied under chapter 57-40.2.

18 **SECTION 2. Participation in multistate discussions.** For reviewing or amending the

19 agreement embodying the simplification requirements as contained in section 5 of this Act, the

20 state shall enter into multistate discussions. For purposes of such discussions, the state must

21 be represented by two members of the senate and two members of the house of

22 representatives, appointed by the chairman of the legislative council.

23 **SECTION 3. Tax commissioner to enter agreement.** The tax commissioner shall

24 enter into the streamlined sales and use tax agreement with one or more states to simplify and

modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the tax commissioner may act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers.

The tax commissioner may take other actions reasonably required to implement this Act. Other actions authorized by this section include the adoption of rules and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

The tax commissioner or the tax commissioner's designee is authorized to represent this state before the other states that are signatories to the agreement.

SECTION 4. Relationship to state law. A provision of the agreement authorized by this Act does not invalidate or amend, in whole or in part, any provision of the law of this state. Adoption of the agreement by this state does not amend or modify any law of this state. Implementation of any condition of the agreement in this state, whether adopted before, at, or after membership of this state in the agreement, must be by the action of this state.

SECTION 5. Agreement requirements. The tax commissioner may not enter into the streamlined sales and use tax agreement unless the agreement requires each state to abide by the following requirements:

1. Simplified state rate. The agreement must set restrictions to limit over time the number of state rates.
2. Uniform standards. The agreement must establish uniform standards for the following:
 - a. The sourcing of transactions to taxing jurisdictions.
 - b. The administration of exempt sales.
 - c. Sales and use tax returns and remittances.
3. Central registration. The agreement must provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.
4. No nexus attribution. The agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states

will not be used as a factor in determining whether the seller has nexus with a state for any tax.

5. Local sales and use taxes. The agreement must provide for reduction of the burdens of complying with local sales and use taxes through the following:
 - a. Restricting variances between the state and local tax bases.
 - b. Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions.
 - c. Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes.
 - d. Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.
6. Monetary allowances. The agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers. The agreement must allow for a joint public and private sector study of the compliance cost on sellers and certified service providers to collect sales and use taxes for state and local governments under various levels of complexity, to be completed by July 1, 2002.
7. State compliance. The agreement must require each state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member.
8. Consumer privacy. The agreement must require each state to adopt a uniform policy for certified service providers which protects the privacy of consumers and maintains the confidentiality of tax information.
9. Advisory councils. The agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

SECTION 6. Cooperating sovereigns. The agreement authorized by this Act is an accord among individual cooperating sovereigns in furtherance of their governmental functions.

1 The agreement provides a mechanism among the member states to establish and maintain a
2 cooperative, simplified system for the application and administration of sales and use taxes
3 under the duly adopted law of each member state.

4 **SECTION 7. Limited binding and beneficial effect.**

- 5 1. The agreement authorized by this Act binds and inures only to the benefit of this
6 state and the other member states. A person, other than a member state, is not an
7 intended beneficiary of the agreement. Any benefit to a person other than a state
8 is established by the law of this state and the other member states and not by the
9 terms of the agreement.
- 10 2. Consistent with subsection 1, a person does not have any cause of action or
11 defense under the agreement or by virtue of this state's approval of the agreement.
12 A person may not challenge, in any action brought under any provision of law, any
13 action or inaction by any department, agency, or other instrumentality of this state,
14 or any political subdivision of this state on the ground that the action or inaction is
15 inconsistent with the agreement.
- 16 3. A law of this state, or the application of a law, may not be declared invalid as to any
17 person or circumstance on the ground that the provision or application is
18 inconsistent with the agreement.

19 **SECTION 8. Seller and third-party liability.**

- 20 1. A certified service provider is the agent of a seller, with whom the certified service
21 provider has contracted, for the collection and remittance of sales and use taxes.
22 As the seller's agent, the certified service provider is liable for sales and use tax
23 due each member state on all sales transactions it processes for the seller except
24 as set out in this section.

25 A seller who contracts with a certified service provider is not liable to the
26 state for sales or use tax due on transactions processed by the certified service
27 provider unless the seller misrepresented the type of items it sells or committed
28 fraud. In the absence of probable cause to believe that the seller has committed
29 fraud or made a material misrepresentation, the seller is not subject to audit on the
30 transactions processed by the certified service provider. A seller is subject to audit
31 for transactions not processed by the certified service provider. The member

1 states acting jointly may perform a system check of the seller and review the
2 seller's procedures to determine if the certified service provider's system is
3 functioning properly and the extent to which the seller's transactions are being
4 processed by the certified service provider.

5 2. A person who provides a certified automated system is responsible for the proper
6 functioning of that system and is liable to the state for underpayments of tax
7 attributable to errors in the functioning of the certified automated system. A seller
8 who uses a certified automated system remains responsible and is liable to the
9 state for reporting and remitting tax.

10 3. A seller who has a proprietary system for determining the amount of tax due on
11 transactions and has signed an agreement establishing a performance standard for
12 that system is liable for the failure of the system to meet the performance standard.