

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED 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 up to four members, consisting of the tax commissioner or designee and up
22 to three members, at least two of whom must be members of the legislative assembly, to be
23 appointed by the chairman of the legislative council.

1 **SECTION 3. Tax commissioner may enter agreement.** Upon prior approval of the
2 agreement by the legislative assembly, the tax commissioner may enter into the streamlined
3 sales and use tax agreement with one or more states to simplify and modernize sales and use
4 tax administration in order to substantially reduce the burden of tax compliance for all sellers
5 and for all types of commerce. In furtherance of the agreement, the tax commissioner may act
6 jointly with other states that are members of the agreement to establish standards for
7 certification of a certified service provider and certified automated system and establish
8 performance standards for multistate sellers.

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

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

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

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

- 23 1. Simplified state rate. The agreement must set restrictions to limit over time the
24 number of state rates.
- 25 2. Uniform standards. The agreement must establish uniform standards for the
26 following:
 - 27 a. The sourcing of transactions to taxing jurisdictions.
 - 28 b. The administration of exempt sales.
 - 29 c. Sales and use tax returns and remittances.

- 1 3. Central registration. The agreement must provide a central, electronic registration
2 system that allows a seller to register to collect and remit sales and use taxes for
3 all signatory states.
- 4 4. No nexus attribution. The agreement must provide that registration with the central
5 registration system and the collection of sales and use taxes in the signatory states
6 will not be used as a factor in determining whether the seller has nexus with a
7 state for any tax.
- 8 5. Local sales and use taxes. The agreement must provide for reduction of the
9 burdens of complying with local sales and use taxes through the following:
 - 10 a. Restricting variances between the state and local tax bases.
 - 11 b. Requiring states to administer any sales and use taxes levied by local
12 jurisdictions within the state so that sellers collecting and remitting these
13 taxes will not have to register or file returns with, remit funds to, or be subject
14 to independent audits from local taxing jurisdictions.
 - 15 c. Restricting the frequency of changes in the local sales and use tax rates and
16 setting effective dates for the application of local jurisdictional boundary
17 changes to local sales and use taxes.
 - 18 d. Providing notice of changes in local sales and use tax rates and of changes in
19 the boundaries of local taxing jurisdictions.
- 20 6. Monetary allowances. The agreement must outline any monetary allowances that
21 are to be provided by the states to sellers or certified service providers. The
22 agreement must allow for a joint public and private sector study of the compliance
23 cost on sellers and certified service providers to collect sales and use taxes for
24 state and local governments under various levels of complexity, to be completed
25 by July 1, 2002.
- 26 7. State compliance. The agreement must require each state to certify compliance
27 with the terms of the agreement prior to joining and to maintain compliance, under
28 the laws of the member state, with all provisions of the agreement while a member.
- 29 8. Consumer privacy. The agreement must require each state to adopt a uniform
30 policy for certified service providers which protects the privacy of consumers and
31 maintains the confidentiality of tax information.

1 9. Advisory councils. The agreement must provide for the appointment of an
2 advisory council of private sector representatives and an advisory council of
3 nonmember state representatives to consult with in the administration of the
4 agreement.

5 **SECTION 6. Cooperating sovereigns.** The agreement authorized by this Act is an
6 accord among individual cooperating sovereigns in furtherance of their governmental functions.
7 The agreement provides a mechanism among the member states to establish and maintain a
8 cooperative, simplified system for the application and administration of sales and use taxes
9 under the duly adopted law of each member state.

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

11 1. The agreement authorized by this Act binds and inures only to the benefit of this
12 state and the other member states. A person, other than a member state, is not an
13 intended beneficiary of the agreement. Any benefit to a person other than a state
14 is established by the law of this state and the other member states and not by the
15 terms of the agreement.

16 2. Consistent with subsection 1, a person does not have any cause of action or
17 defense under the agreement or by virtue of this state's approval of the agreement.
18 A person may not challenge, in any action brought under any provision of law, any
19 action or inaction by any department, agency, or other instrumentality of this state,
20 or any political subdivision of this state on the ground that the action or inaction is
21 inconsistent with the agreement.

22 3. A law of this state, or the application of a law, may not be declared invalid as to
23 any person or circumstance on the ground that the provision or application is
24 inconsistent with the agreement.

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

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

- 1 A seller who contracts with a certified service provider is not liable to the
2 state for sales or use tax due on transactions processed by the certified service
3 provider unless the seller misrepresented the type of items it sells or committed
4 fraud. In the absence of probable cause to believe that the seller has committed
5 fraud or made a material misrepresentation, the seller is not subject to audit on the
6 transactions processed by the certified service provider. A seller is subject to audit
7 for transactions not processed by the certified service provider. The member
8 states acting jointly may perform a system check of the seller and review the
9 seller's procedures to determine if the certified service provider's system is
10 functioning properly and the extent to which the seller's transactions are being
11 processed by the certified service provider.
- 12 2. A person who provides a certified automated system is responsible for the proper
13 functioning of that system and is liable to the state for underpayments of tax
14 attributable to errors in the functioning of the certified automated system. A seller
15 who uses a certified automated system remains responsible and is liable to the
16 state for reporting and remitting tax.
- 17 3. A seller who has a proprietary system for determining the amount of tax due on
18 transactions and has signed an agreement establishing a performance standard
19 for that system is liable for the failure of the system to meet the performance
20 standard.