

**SECOND ENGROSSMENT
with House Amendments**

Fifty-seventh
Legislative Assembly
of North Dakota

REENGROSSED 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 provisions contained in section 5 of this Act, the state shall enter into
20 multistate discussions. For purposes of such discussions, the state must be represented by the
21 tax commissioner or designee and two members of the house of representatives and one
22 member of the senate, to be appointed by the chairman of the legislative council.

23 **SECTION 3. Tax commissioner may enter agreement.** Upon prior approval of the
24 agreement by the legislative assembly, the tax commissioner may enter into the streamlined

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

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

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

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

18 **SECTION 5. Agreement requirements.** The streamlined sales and use tax
19 agreement must include provisions relating to a simplified state rate; uniform standards for
20 sourcing of transactions, exempt sales, and returns and remittances; central registration for
21 sellers; monetary allowances for certified service providers and sellers implementing new
22 technological models; consumer privacy; and state administration of local sales and use taxes.

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

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

29 1. The agreement authorized by this Act binds and inures only to the benefit of this
30 state and the other member states. A person, other than a member state, is not an
31 intended beneficiary of the agreement. Any benefit to a person other than a state

- 1 is established by the law of this state and the other member states and not by the
2 terms of the agreement.
- 3 2. Consistent with subsection 1, a person does not have any cause of action or
4 defense under the agreement or by virtue of this state's approval of the agreement.
5 A person may not challenge, in any action brought under any provision of law, any
6 action or inaction by any department, agency, or other instrumentality of this state,
7 or any political subdivision of this state on the ground that the action or inaction is
8 inconsistent with the agreement.
- 9 3. A law of this state, or the application of a law, may not be declared invalid as to
10 any person or circumstance on the ground that the provision or application is
11 inconsistent with the agreement.

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

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

18 A seller who contracts with a certified service provider is not liable to the
19 state for sales or use tax due on transactions processed by the certified service
20 provider unless the seller misrepresented the type of items it sells or committed
21 fraud. In the absence of probable cause to believe that the seller has committed
22 fraud or made a material misrepresentation, the seller is not subject to audit on the
23 transactions processed by the certified service provider. A seller is subject to audit
24 for transactions not processed by the certified service provider. The member
25 states acting jointly may perform a system check of the seller and review the
26 seller's procedures to determine if the certified service provider's system is
27 functioning properly and the extent to which the seller's transactions are being
28 processed by the certified service provider.

- 29 2. A person who provides a certified automated system is responsible for the proper
30 functioning of that system and is liable to the state for underpayments of tax
31 attributable to errors in the functioning of the certified automated system. A seller

- 1 who uses a certified automated system remains responsible and is liable to the
2 state for reporting and remitting tax.
- 3 3. A seller who has a proprietary system for determining the amount of tax due on
4 transactions and has signed an agreement establishing a performance standard
5 for that system is liable for the failure of the system to meet the performance
6 standard.