

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

SENATE BILL NO. 2455
(Senators Cook, Nething)
(Approved by the Delayed Bills Committee)

AN ACT to adopt a Simplified Sales and Use Tax Administration Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

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

SECTION 2. Participation in multistate discussions. For reviewing or amending the agreement embodying the provisions contained in section 5 of this Act, the state shall enter into multistate discussions. For purposes of such discussions, the state must be represented by two members of the house of representatives and two members of the senate, to be appointed by the chairman of the legislative council. The tax commissioner shall designate a member of the tax commissioner's staff to accompany and advise the members appointed under this section with regard to reviewing or amending the agreement.

SECTION 3. Tax commissioner may enter agreement. Upon prior approval of the agreement by the legislative assembly, the tax commissioner may 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 streamlined sales and use tax agreement must include provisions relating to a simplified state rate; uniform standards for sourcing of transactions, exempt sales, and returns and remittances; central registration for sellers; monetary allowances for certified service providers and sellers implementing new technological models; consumer privacy; and state administration of local sales and use taxes.

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

SECTION 7. Limited binding and beneficial effect.

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

SECTION 8. Seller and third-party liability.

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

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

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

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2455.

Senate Vote: Yeas 47 Nays 0 Absent 2

House Vote: Yeas 64 Nays 28 Absent 6

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,

at _____ o'clock _____ M.

Secretary of State