

**SUBSTITUTE FOR
SENATE BILL NO. 433**

A bill to provide for a streamlined system of sales and use tax collection; to prescribe the requirements necessary for this state to adopt a multistate agreement; to provide for a board with certain powers and duties; to provide for the registration of sellers who select a model of collection and remittance; to forgive liability of collection of sales and use taxes on past transactions for certain sellers; to assure privacy of buyers; to prescribe certain powers and duties of state departments; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "streamlined sales and use tax administration act".

3 Sec. 2. As used in this act:

4 (a) "Agreement" means the streamlined sales and use tax
5 agreement.

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1 (b) "Board" means the board of governance created in section
2 3 or the board's designee.

3 (c) "Certified automated system" means computer software
4 certified jointly by the states that are signatories to the
5 agreement to calculate the tax imposed by each jurisdiction on a
6 transaction, determine the amount of tax to remit to the appro-
7 priate state, and maintain a record of the transaction.

8 (d) "Certified service provider" means an agent certified
9 jointly by the states that are signatories to the agreement to
10 perform all of the seller's sales and use tax functions, other
11 than the seller's obligation to remit tax on its own purchases.

12 (e) "Department" means the department of treasury.

13 (f) "Person" means an individual, trust, estate, fiduciary,
14 partnership, limited liability company, limited liability part-
15 nership, corporation, or any other legal entity.

16 (g) "Purchaser" means a person to whom a sale of tangible
17 personal property is made or to whom a service is furnished.

18 (h) "Sales tax" means the tax levied under the general sales
19 tax act, 1933 PA 167, MCL 205.51 to 205.78.

20 (i) "Seller" means any person who sells, leases, or rents
21 tangible personal property or services to another person.

22 (j) "Signatory state" means a state that has entered into
23 the agreement.

24 (k) "Sourcing" means determining the tax situs of a
25 transaction.

26 (l) "State" means any state of the United States or the
27 District of Columbia.

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1 (m) "Use tax" means the tax levied under the use tax act,
2 1937 PA 94, MCL 205.91 to 205.111.

3 Sec. 3. (1) There is created a board of governance consist-
4 ing of the following members:

5 (a) One member appointed by the majority leader of the
6 senate.

7 (b) One member appointed by the speaker of the house of
8 representatives.

9 (c) The state treasurer or his or her designee.

10 (d) One member appointed by the governor.

11 (2) The board may represent this state in all meetings that
12 are limited to only those states that are also authorized by
13 statute to enter into a streamlined sales and use tax agreement.
14 The board shall vote on behalf of this state and represents the
15 position of this state in all matters relating to the adoption of
16 the agreement or amendment of the agreement.

17 (3) The board shall recommend to the committees responsible
18 for reviewing tax issues in the senate and the house of represen-
19 tatives each year what state statutes are required to be amended
20 to be substantially in compliance with the agreement.

21 (4) A business advisory council is created to advise and
22 make recommendations to the board [REDACTED].

23 The council shall consist of 6 members appointed as follows:

24 (a) The governor shall appoint 2 members who are retail
25 sellers domiciled in this state.

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1 (b) The governor shall appoint 2 members who are large
2 national retail sellers domiciled outside of this state but who
3 are licensed to do business in this state.

4 (c) After the members are appointed under subdivisions (a) and
5 (b), those members shall elect 1 retail seller domiciled in this
6 state and 1 manufacturer domiciled in this state.

7 Sec. 4. The department with the approval of the board and
8 subject to section 5 shall enter into the streamlined sales and
9 use tax agreement with 1 or more states to simplify and modernize
10 sales and use tax administration in order to substantially reduce
11 the burden of tax compliance for all sellers and for all types of
12 commerce. The department may act jointly with other signatory
13 states of the agreement to establish standards for certification
14 of a certified service provider and certified automated system
15 and to establish performance standards for multistate sellers.
16 The department may also take other actions reasonably required to
17 implement the provisions of this act. Other actions authorized
18 by this section include, but are not limited to, the promulgation
19 of rules and regulations and the joint procurement, with other
20 member states, of goods and services in furtherance of the coop-
21 erative agreement. Implementation of any condition of the agree-
22 ment in this state, regardless of when implemented, must be by
23 the action of this state.

24 Sec. 5. (1) The department shall not enter into the agree-
25 ment until legislation substantially complying with the require-
26 ments of the agreement is enacted into law.

27 (2) The department shall not enter into the agreement unless
the agreement requires each signatory state to abide by the
following requirements:

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1 (a) The agreement shall set restrictions to achieve more
2 uniform state rates through the following:

3 (i) Limiting the number of state rates.

4 (ii) Eliminating caps on the amount of state tax that is due
5 on a transaction.

6 (iii) Eliminating thresholds on the application of state
7 tax.

8 (b) The agreement shall establish uniform standards for the
9 following:

10 (i) The sourcing of transactions to taxing jurisdictions.

11 (ii) The administration of exempt sales.

12 (iii) The allowances a seller can take for bad debts.

13 (iv) Sales and use tax returns and remittances.

14 (c) The agreement shall require signatory states to develop
15 and adopt uniform definitions of sales and use tax terms. The
16 definitions shall enable a signatory state to preserve its abil-
17 ity to make policy choices that are substantially consistent with
18 the uniform definitions.

19 (d) The agreement shall provide a central electronic regis-
20 tration system that allows a seller to register to collect and
21 remit sales and use taxes for all signatory states.

22 (e) The agreement shall provide that registration with the
23 central registration system and the collection of sales and use
24 taxes in the signatory states will not be used as a factor in
25 determining whether the seller has nexus with a state for any
26 tax.

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1 (f) The agreement shall provide for reduction of the burdens
2 of complying with local sales and use taxes through the
3 following:

4 (i) Restricting and eliminating variances between each sig-
5 natory state's tax base and the local tax bases within that
6 state.

7 (ii) Requiring signatory states to administer any sales and
8 use taxes levied by local jurisdictions within the state so that
9 sellers collecting and remitting these taxes will not have to
10 register or file returns with, remit funds to, or be subject to
11 independent audits from local taxing jurisdictions.

12 (iii) Restricting the frequency of changes in the local
13 sales and use tax rates and setting effective dates for the
14 application of local jurisdictional boundary changes to local
15 sales and use taxes.

16 (iv) Providing notice of changes in local sales and use tax
17 rates and of changes in the boundaries of local taxing
18 jurisdictions.

19 (g) The agreement shall outline any monetary allowances that
20 are to be provided by the signatory states to sellers or certi-
21 fied service providers.

22 (h) The agreement shall require each signatory state to cer-
23 tify compliance with the terms of the agreement before joining
24 and to maintain compliance under the laws of the member state
25 with all provisions of the agreement while a member.

26 (i) The agreement shall require each signatory state to
27 adopt a uniform policy for certified service providers that

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1 protects the privacy of consumers and maintains the
2 confidentiality of tax information.

3 (j) The agreement shall provide for the appointment of an
4 advisory council of private sector representatives and an
5 advisory council of nonmember state representatives to consult
6 with the signatory states in the administration of the
7 agreement.

8 Sec. 6. (1) The agreement authorized by this act binds and
9 inures only to the benefit of this state and the other signatory
10 states. No person, other than a signatory state, is an intended
11 beneficiary of the agreement. Any benefit to a person other than
12 a signatory state is established by the law of this state and the
13 other signatory states and not by the terms of the agreement.

14 (2) A person does not have any cause of action or defense
15 under the agreement because of this state's approval of the
16 agreement. A person may not challenge, in any action brought
17 under any provision of law, any action or inaction by any depart-
18 ment, agency, or other instrumentality of this state or any
19 political subdivision of this state on the ground that the action
20 or inaction is inconsistent with the agreement. However, a
21 seller registered under the agreement has all the rights and rem-
22 edies provided for in 1941 PA 122, MCL 205.1 to 205.31.

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

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1 (4) No provision of the agreement authorized by this act in
2 whole or in part invalidates or amends any provision of the law
3 of this state. Adoption of the agreement by this state does not
4 amend or modify any law of this state.

5 Sec. 7. (1) A person may participate under this act only by
6 registering in the central registration system provided for by
7 the agreement.

8 (2) The department shall participate in an online registra-
9 tion system with other signatory states that allows sellers to
10 register online.

11 (3) A seller registered under the agreement in this state is
12 considered registered in each of the signatory states. A seller
13 registered under the agreement in any other signatory state is
14 considered registered in this state. A seller may also choose to
15 register directly with other signatory states.

16 (4) A seller may cancel its registration under the agreement
17 at any time according to the agreement. However, a seller who
18 cancels its registration remains liable for remitting taxes col-
19 lected to the appropriate states.

20 (5) By registering under this section, the seller agrees to
21 collect and remit sales and use taxes according to the agreement
22 for taxable sales in all signatory states including states that
23 adopt the agreement after the seller registers.

24 (6) Registration of a person under the agreement and collec-
25 tion of sales and use taxes by that person in signatory states
26 does not provide nexus with any signatory state and shall not be

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1 used as a factor in determining nexus with a signatory state for
2 any tax purpose.

3 Sec. 8. A seller registered under section 7 shall agree to
4 1 of the following models for purposes of collecting and remit-
5 ting sales and use taxes under the agreement:

6 (a) Model 1. A seller that has contracted with a certified
7 service provider to act as its agent to perform all of the
8 seller's sales and use tax collection functions other than the
9 seller's obligation to remit sales or use tax on its own
10 purchases.

11 (b) Model 2. A seller that has selected a certified auto-
12 mated system to perform part of the seller's sales and use tax
13 collection functions, but retains responsibility for remitting
14 the tax.

15 (c) Model 3. A seller that has sales in at least 5 signa-
16 tory states, has total annual sales of \$500,000,000.00 or more,
17 has a proprietary system that calculates the amount of tax due in
18 each taxing jurisdiction, and has entered into a performance
19 agreement with the signatory states establishing a tax per-
20 formance standard for the seller. As used in this subdivision, a
21 seller includes an affiliated group of sellers using the same
22 proprietary system.

23 Sec. 9. (1) In computing the amount of tax remitted to this
24 state, a certified service provider under model 1 and a seller
25 under model 2 may deduct a base rate that applies to taxable
26 transactions processed through the certified automated system of
27 the certified service provider under model 1 or of the seller

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1 under model 2, in accordance with the terms of the contract
2 entered into by the signatory states. A seller who takes the
3 deduction under this subsection shall not take a deduction under
4 section 4 of the general sales tax act, 1933 PA 167, MCL 205.54,
5 or section 4f of the use tax act, 1937 PA 94, MCL 205.94f.

6 (2) In computing the amount of tax remitted to this state, a
7 seller under model 3 may only take the deduction provided for in
8 section 4 of the general sales tax act, 1933 PA 167, MCL 205.54,
9 or section 4f of the use tax act, 1937 PA 94, MCL 205.94f.

10 (3) In addition to the deduction under subsection (1) or
11 (2), whichever is applicable, for the period not to exceed 24
12 months following the voluntary seller's registration under
13 section 7, a voluntary seller may also deduct a percentage of tax
14 revenue generated in this state by the voluntary seller in
15 accordance with the terms of the contract entered into by the
16 signatory states. As used in this subsection, "voluntary seller"
17 means a seller that is not required to register to collect the
18 tax for this state.

19 Sec. 10. (1) A certified service provider is the agent of a
20 seller, with whom the certified service provider has contracted
21 for the collection and remittance of sales and use taxes. As the
22 seller's agent, the certified service provider is liable for
23 sales and use tax due each signatory state on all sales transac-
24 tions it processes for the seller except as provided in this
25 section. A seller that contracts with a certified service pro-
26 vider is not liable to this state for sales or use tax due on
27 transactions processed by the certified service provider unless

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1 the seller makes a material misrepresentation of the type of
2 items it sells or committed fraud. In the absence of probable
3 cause to believe that the seller has committed fraud or made a
4 material misrepresentation, the seller is not subject to audit on
5 the transactions processed by the certified service provider. A
6 seller is subject to audit for transactions not processed by the
7 certified service provider. The signatory states acting jointly
8 may perform a system check of the seller and review the seller's
9 procedures to determine if the certified service provider's
10 system is functioning properly and the extent to which the
11 seller's transactions are being processed by the certified serv-
12 ice provider.

13 (2) A person that provides a certified automated system is
14 responsible for the proper functioning of that system and is
15 liable to this state for underpayments of tax attributable to
16 errors in the functioning of the certified automated system. A
17 seller that uses a certified automated system remains responsible
18 and is liable to this state for reporting and remitting tax.

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

23 Sec. 11. (1) Except as provided in subsection (3), a certi-
24 fied service provider shall not retain or disclose the personally
25 identifiable information of consumers. A certified service
26 provider's system shall be designed and tested to assure the
27 privacy of consumers by protecting their anonymity.

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1 (2) A certified service provider shall provide clear and
2 conspicuous notice of its information practices to consumers,
3 including, but not limited to, what information it collects, how
4 it collects the information, how it uses the information, and
5 whether it discloses the information to signatory states.

6 (3) A certified service provider's retention or disclosure
7 to signatory states of personally identifiable information is
8 limited to exemption claims because of a consumer's status or
9 intended use of the goods or services purchased, to investiga-
10 tions of fraud, and to the extent necessary to ensure the reli-
11 ability of the certified service provider's technology.

12 (4) A certified service provider shall provide the necessary
13 technical, physical, and administrative safeguards to protect
14 personally identifiable information from unauthorized access and
15 disclosure.

16 (5) This privacy policy is subject to enforcement by signa-
17 tory states' attorneys general or other appropriate authorities.

18 (6) If personally identifiable information is retained for
19 the purpose of subsection (3), in the absence of exigent circum-
20 stances, a person shall be provided with reasonable notification
21 of that retention and afforded reasonable access to their own
22 data, with a right to correct inaccurately recorded data.

23 (7) The agreement does not enlarge or limit a signatory
24 state's authority to do any of the following:

25 (a) Conduct audits or other review as provided under this
26 agreement and state law.

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1 (b) Provide records pursuant to a signatory state's freedom
2 of information act, disclosure laws with governmental agencies,
3 or other regulations.

4 (c) Prevent, consistent with state law, disclosures of con-
5 fidential taxpayer information.

6 (d) Prevent, consistent with federal law, disclosures or
7 misuse of federal return information obtained under a disclosure
8 agreement with the internal revenue service.

9 (e) Collect, disclose, disseminate, or otherwise use any-
10 mous data for governmental purposes.

11 (8) As used in this section, "personally identifiable
12 information" means information that identifies a specific
13 person.

14 Sec. 12. (1) A person who registers as a seller under sec-
15 tion 7 is not liable for any uncollected or nonremitted sales or
16 use tax on transactions with purchasers in this state before the
17 date of registration if the seller was not licensed under the
18 sales or use tax act in this state in the 12-month period preced-
19 ing the date this state entered into the agreement. The seller
20 is also not responsible for any penalty or interest that may be
21 due on those transactions.

22 (2) Subsection (1) does not apply to the following:

23 (a) Any tax liability of the registered seller for transac-
24 tions that are subject to sales or use tax in this state in which
25 the registered seller is the purchaser.

26 (b) Any sales or use taxes already paid or remitted to this
27 state.

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1 (c) Any transactions for which the seller received notice of
2 the commencement of an audit and the audit is not finally
3 resolved, including related administrative or judicial
4 processes.

5 (3) Subsection (1) applies to the seller absent the seller's
6 fraud or intentional misrepresentation of a material fact if the
7 seller continues to be registered under section 7 and continues
8 collection and remittance of applicable sales and use taxes in
9 this state for at least 36 months. The statute of limitations
10 applicable to assessing a tax liability is tolled during this
11 36-month period.

12 Sec. 13. (1) The department, acting jointly with the signa-
13 tory states, may certify a person as a certified service provider
14 if the person meets all of the following requirements:

15 (a) The person uses a certified automated system.

16 (b) The person integrates its certified automated system
17 with the system of a seller for whom the person collects tax so
18 that the tax due on a sale is determined at the time of the
19 sale.

20 (c) The person agrees to remit the taxes it collects at the
21 time and in the manner specified by the signatory states.

22 (d) The person agrees to file returns on behalf of the sell-
23 ers for whom it collects tax.

24 (e) The person agrees to protect the privacy of tax informa-
25 tion it obtains.

26 (f) The person enters into a contract with the signatory
27 states and agrees to comply with the terms of the contract.

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1 (2) The department, acting jointly with the signatory
2 states, may certify a software program as a certified automated
3 system if the signatory states determine that the program meets
4 all of the following requirements:

5 (a) It identifies the applicable state and local sales and
6 use tax rate for a transaction based on the uniform sourcing pro-
7 vision established under the agreement.

8 (b) It identifies whether or not an item is exempt from
9 tax.

10 (c) It identifies the amount of tax to be remitted for each
11 taxpayer for a reporting period.

12 (d) It can generate reports and returns as required by the
13 signatory states.

14 (e) It can meet any other requirement set by the signatory
15 states.

16 (3) The department, acting jointly with the signatory
17 states, may establish 1 or more sales tax performance standards
18 for multistate sellers that meet the eligibility criteria set by
19 the signatory states and that have developed a proprietary system
20 to determine the amount of sales and use tax due on
21 transactions.

22 Sec. 14. The payment, collection, and remittance of the
23 sales and use tax under this act are subject to the provisions of
24 the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, and
25 the use tax act, 1937 PA 94, MCL 205.91 to 205.111.

26 Sec. 15. Nothing in this act shall be construed to expand
27 the tax base of the sales tax or use tax or to eliminate

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1 exemptions, but rather, this act simplifies and modernizes the
2 sales tax and use tax administration in order to substantially
3 reduce the burden of tax compliance for all sellers and for all
4 types of commerce.

5 Sec. 16. This act is repealed effective December 31, 2002.