

Act No. 122
Public Acts of 2001
Approved by the Governor
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**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2001**

Introduced by Reprs. Allen, Howell, Gilbert, Koetje, Vear, DeVuyst and Mortimer

ENROLLED HOUSE BILL No. 5080

AN ACT 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:

- Sec. 1. (1) This act shall be known and may be cited as the “equitable sales and use tax administration act”.
(2) This act shall at no time create or implement a new tax on interstate electronic commerce.

Sec. 2. As used in this act:

- (a) “Agreement” means the streamlined sales and use tax agreement.
(b) “Board” means the board of governance created in section 5 or the board’s designee.
(c) “Certified automated system” means computer 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.
(d) “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 and use tax functions, other than the seller’s obligation to remit tax on its own purchases.
(e) “Department” means the department of treasury.
(f) “Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.
(g) “Purchaser” means a person to whom a sale of tangible personal property is made or to whom a service is furnished.
(h) “Sales tax” means the tax levied under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78.
(i) “Seller” means any person who sells, leases, or rents tangible personal property or services to another person.
(j) “Signatory state” means a state that has entered into the agreement.
(k) “Sourcing” means determining the tax situs of a transaction.
(l) “State” means any state of the United States or the District of Columbia.
(m) “Use tax” means the tax levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111.

Sec. 3. This act is not intended to generate revenue that is not currently due under the sales and use tax acts but is intended to provide for simplification of the method of collecting the sales and use taxes that is currently authorized to be collected under those acts. Nothing in this act shall be construed to expand the tax base of the sales tax or use tax or to eliminate exemptions, but rather, this act simplifies and modernizes the sales tax and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. It is the intent of the legislature that all revenues collected as a result of the implementation of this act will be distributed in the same manner as provided for revenues collected under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78.

Sec. 4. The payment, collection, and remittance of the sales and use taxes under this act are subject to the provisions of the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, and the use tax act, 1937 PA 94, MCL 205.91 to 205.111.

Sec. 5. (1) There is created a board of governance consisting of the following members:

(a) The majority leader of the senate or his or her designee who is a member or former member of the senate or an employee of the senate or the senate fiscal agency.

(b) The speaker of the house of representatives or his or her designee who is a member or former member of the house of representatives or an employee of the house of representatives or the house fiscal agency.

(c) The minority leader of the senate or his or her designee who is a member or former member of the senate or an employee of the senate or the senate fiscal agency.

(d) The minority leader of the house of representatives or his or her designee who is a member or former member of the house of representatives or an employee of the house of representatives or the house fiscal agency.

(e) The state treasurer or his or her designee.

(f) One member appointed by the state treasurer.

(g) The governor or his or her designee.

(h) One member appointed by the governor.

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

(3) The board shall report quarterly to the committees responsible for reviewing tax issues in the senate and the house of representatives on the board's progress in negotiating the agreement and recommend what state statutes are required to be amended to be substantially in compliance with the agreement.

(4) A business advisory council is created to advise and make recommendations to the board. The council shall consist of 6 members appointed as follows:

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

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

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

Sec. 6. (1) The department shall not enter into the agreement until legislation substantially complying with the requirements of the agreement is enacted into law and the legislature, through resolution, will express support for the agreement reached by the board of governance.

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

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

(i) Limiting the number of state rates.

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

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

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

(i) The sourcing of transactions to taxing jurisdictions.

(ii) The administration of exempt sales.

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

(iv) Sales and use tax returns and remittances.

(c) The agreement shall require signatory states to develop and adopt uniform definitions of sales and use tax terms. The definitions shall enable a signatory state to preserve its ability to make policy choices that are substantially consistent with the uniform definitions.

(d) The agreement shall provide a central electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.

(e) The agreement shall 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.

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

(i) Restricting and eliminating variances between each signatory state's tax base and the local tax bases within that state.

(ii) Requiring signatory 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.

(iii) 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.

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

(g) The agreement shall outline any monetary allowances that are to be provided by the signatory states to sellers or certified service providers.

(h) The agreement shall require each signatory state to certify compliance with the terms of the agreement before joining and to maintain compliance under the laws of the member state with all provisions of the agreement while a member.

(i) The agreement shall require each signatory state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.

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

Sec. 7. The department with the approval of the board and subject to section 6 shall enter into the streamlined sales and use tax agreement with 1 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. The department may act jointly with other signatory states of the agreement to establish standards for certification of a certified service provider and certified automated system and to establish performance standards for multistate sellers. The department may also take other actions reasonably required to implement the provisions of this act. Other actions authorized by this section include, but are not limited to, the promulgation of rules and regulations and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement. Implementation of any condition of the agreement in this state, regardless of when implemented, must be by the action of this state.

Sec. 8. (1) Any provision of the agreement or any application of a provision of the agreement to any person or circumstance that is inconsistent with any law of this state shall not have effect.

(2) Nothing in this act shall be construed to amend or modify any law of this state or to limit the authority of the Michigan legislature. The agreement authorized by this act binds and inures only to the benefit of this state and the other signatory states. No person, other than a signatory state, is an intended beneficiary of the agreement. Any benefit to a person other than a signatory state is established by the law of this state and the other signatory states and not by the terms of the agreement.

(3) Nothing in this act shall be construed to limit the authority of the courts in this state. A person has all the rights and remedies provided for in 1941 PA 122, MCL 205.1 to 205.31. A person does not have any cause of action or defense under the agreement because of this state's approval of the agreement or on the ground that the department's action or inaction is inconsistent with the agreement.

(4) 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.

(5) No provision of the agreement authorized by this act in whole or in part invalidates or amends 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.

Sec. 9. (1) A person may participate under this act only by registering in the central registration system provided for by the agreement.

(2) The department shall participate in an online registration system with other signatory states that allows sellers to register online.

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

(4) A seller may cancel its registration under the agreement at any time according to the agreement. However, a seller who cancels its registration remains liable for remitting taxes collected to the appropriate states.

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

(6) Registration of a person under the agreement and collection of sales and use taxes by that person in signatory states does not provide nexus with any signatory state and shall not be used as a factor in determining nexus with a signatory state for any tax purpose.

Sec. 10. A seller registered under section 9 shall agree to 1 of the following models for purposes of collecting and remitting sales and use taxes under the agreement:

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

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

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

Sec. 11. (1) In computing the amount of tax remitted to this state, a certified service provider under model 1 in section 10(a) and a seller under model 2 in section 10(b) may deduct a base rate that applies to taxable transactions processed through the certified automated system of the certified service provider under model 1 or of the seller under model 2, in accordance with the terms of the contract entered into by the signatory states. A model 2 seller under section 10(b) who takes the deduction under this subsection, or a seller who contracted with a certified service provider to act as its agent under model 1 in section 10(a), shall not take a deduction under section 4 of the general sales tax act, 1933 PA 167, MCL 205.54, or section 4f of the use tax act, 1937 PA 94, MCL 205.94f.

(2) In computing the amount of tax remitted to this state, a seller under model 3 in section 10(c) may only take the deduction provided for in section 4 of the general sales tax act, 1933 PA 167, MCL 205.54, or section 4f of the use tax act, 1937 PA 94, MCL 205.94f.

(3) In addition to the deduction under subsection (1) or (2), whichever is applicable, for the period not to exceed 24 months following the voluntary seller's registration under section 9, a voluntary seller may also deduct a percentage of tax revenue generated in this state by the voluntary seller in accordance with the terms of the contract entered into by the signatory states. As used in this subsection, "voluntary seller" means a seller that is not required to register to collect the tax for this state.

Sec. 12. (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 signatory state on all sales transactions it processes for the seller except as provided in this section. A seller that contracts with a certified service provider is not liable to this state for sales or use tax due on transactions processed by the certified service provider unless the seller makes a material misrepresentation of 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 signatory 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 that provides a certified automated system is responsible for the proper functioning of that system and is liable to this state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to this state for reporting and remitting tax.

(3) A seller that 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.

Sec. 13. (1) Except as provided in subsection (3), a certified service provider shall not retain or disclose the personally identifiable information of consumers. A certified service provider's system shall be designed and tested to assure the privacy of consumers by protecting their anonymity.

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

(3) A certified service provider's retention or disclosure to signatory states of personally identifiable information is limited to exemption claims because of a consumer's status or intended use of the goods or services purchased, to investigations of fraud, and to the extent necessary to ensure the reliability of the certified service provider's technology.

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

(5) This privacy policy is subject to enforcement by signatory states' attorneys general or other appropriate authorities.

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

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

(a) Conduct audits or other review pursuant to section 12 as provided under this agreement and state law.

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

(c) Prevent, consistent with state law, disclosures of confidential taxpayer information.

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

(e) Collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.

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

Sec. 14. (1) A person who registers as a seller under section 9 is not liable for any uncollected or nonremitted sales or use tax on transactions with purchasers in this state before the date of registration if the seller was not licensed under the sales or use tax act in this state in the 12-month period preceding the date this state entered into the agreement. The seller is also not responsible for any penalty or interest that may be due on those transactions.

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

(a) Any tax liability of the registered seller for transactions that are subject to sales or use tax in this state in which the registered seller is the purchaser.

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

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

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

Sec. 15. (1) The department, acting jointly with the signatory states, may certify a person as a certified service provider if the person meets all of the following requirements:

(a) The person uses a certified automated system.

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

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

(d) The person agrees to file returns on behalf of the sellers for whom it collects tax.

(e) The person agrees to protect the privacy of tax information it obtains.

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

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

(a) It identifies the applicable state and local sales and use tax rate for a transaction based on the uniform sourcing provision established under the agreement.

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

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

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

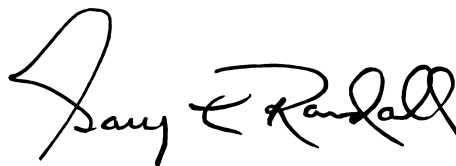
(e) It can meet any other requirement set by the signatory states.

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

Sec. 16. The committees responsible for reviewing tax issues in the senate and the house of representatives shall review the revenue reports produced by the senate and house fiscal agencies and consider methods to return to the taxpayers revenues from enhanced use tax compliance as a result of this act.

Sec. 17. This act is repealed effective December 31, 2002.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives.



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Secretary of the Senate.

Approved

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Governor.