STREAMLINED SALES AND USE TAX ADMINISTRATION ACT

Act 174 of 2004

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; and to prescribe certain powers and duties of state officials and state departments.

History: 2004, Act 174, Eff. July 1, 2004

The People of the State of Michigan enact:

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205.801 Short title.

Sec. 1.

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

History: 2004, Act 174, Eff. July 1, 2004

205.803 Definitions.

Sec. 3.

As used in this act:

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

(b) "Board" means the governing board under the agreement.

(c) "Certified automated system" means computer software certified under 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 under 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) "General sales tax act" means 1933 PA 167, MCL 205.51 to 205.78.

(g) "Member state" means a state that has entered into the agreement.

(h) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

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

(j) "Sales tax" means the tax levied under the general sales tax act.

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

(l) "Sourcing" means determining the tax situs of a transaction.

(m) "State" means any state of the United States or the District of Columbia.

(n) "Use tax" means the tax levied under the use tax act.

(o) "Use tax act" means 1937 PA 94, MCL 205.91 to 205.111.

(p) "Voluntary seller" means a seller who does not have a requirement to obtain a license or register to collect the sales or use tax for this state.

History: 2004, Act 174, Eff. July 1, 2004

205.805 Purpose of act.

Sec. 5.

This act simplifies 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.

History: 2004, Act 174, Eff. July 1, 2004

205.807 Payment, collection, and remittance of sales and use taxes; provisions.

Sec. 7.

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 and the use tax act.

History: 2004, Act 174, Eff. July 1, 2004

205.809 Streamlined sales and use tax agreement; powers and duties of state treasurer and department; rules.

Sec. 9.

The state treasurer on behalf of this state may enter into the streamlined sales and use tax agreement with 1 or more states. The state treasurer or his or her designee may also certify and recertify this state's compliance with the agreement and take any other action reasonably necessary to participate or continue to participate under the agreement. The department may take actions reasonably required to implement the provisions of this act including, but not limited to, the promulgation of rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and regulations, and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

History: 2004, Act 174, Eff. July 1, 2004

205.811 Controlling effect; parties to agreement; construction of act.

Sec. 11.

(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 does not have effect.

(2) The agreement authorized by this act binds and inures only to the benefit of this state and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than this state is established by the law of this state and the other member states and not by the terms of the agreement.

(3) Nothing in the agreement shall be construed to limit the authority of the courts in this state. A person has all the rights, remedies, and obligations provided for in 1941 PA 122, MCL

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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.

History: 2004, Act 174, Eff. July 1, 2004

205.813 Appointment of members to board; terms; membership; representation by state delegation; voting; report; administration of taxes by department; participation by state delegation.

Sec. 13.

(1) A state delegation of 4 representatives from this state shall be appointed to the board on July 1, 2004 according to the following:

(a) A member or former member of the senate or an employee of the senate or the senate fiscal agency appointed jointly by the majority and minority leaders of the senate for a term of 2-1/2 years.

(b) A member or former member of the house of representatives or an employee of the house of representatives or the house fiscal agency appointed jointly by the speaker and minority leader of the house of representatives for a term of 1-1/2 years.

(c) The state treasurer or his or her designee for a term of 2-1/2 years.

(d) The governor or his or her designee for a term of 1-1/2 years.

(2) At the end of each initial appointment, a member shall be appointed every 2 years for a 2-year term as follows:

(a) A member or former member of the senate or an employee of the senate or the senate fiscal agency appointed jointly by the majority and minority leaders of the senate.

(b) A member or former member of the house of representatives or an employee of the house of representatives or the house fiscal agency appointed jointly by the speaker and minority leader of the house of representatives.

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

(d) The governor or his or her designee.

(3) The state delegation may represent this state in all meetings of the board. The state delegation shall vote on behalf of this state and represent the position of this state in all of the following coming before the board:

(a) Certify a person as a certified service provider.

(b) Certify a software program as a certified automated system.

(c) Establish 1 or more sales or use tax performance standards for multistate sellers that meet eligibility criteria set by the board and that have developed a proprietary system to determine the amount of sales and use tax due on transactions.

(d) Participate in the issue resolution process.

(e) Participate in determining the compliance of petitioning states.

(f) Any other actions necessary and proper to fulfill the purposes of the agreement.

(4) The state delegation shall report quarterly in writing to the committees responsible for reviewing tax issues in the senate and the house of representatives on the board's activities and

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shall recommend what state statutes are required to be amended to be substantially in compliance with the agreement. The report shall be posted on the department's website.

(5) The taxes imposed under the sales tax act and the use tax act shall be administered by the department under the provisions of those acts, 1941 PA 122, MCL 205.1 to 205.31, and this act.

(6) The state delegation may also participate as a member of the streamlined sales and use tax implementing states in all matters.

History: 2004, Act 174, Eff. July 1, 2004

205.815 Withdrawal from membership.

Sec. 15.

(1) If the state treasurer or the state legislature by resolution determines that it is in the best interest of this state, this state may withdraw from membership in the agreement. This state may withdraw from membership by submitting a notice of intent to withdraw to the governing board, the chief executive of each member state's tax agency, and the committees responsible for reviewing tax issues in the senate and the house of representatives and by posting the notice of intent on this state's website. The withdrawal will be effective on the first day of the calendar quarter that begins not less than 60 days after notice is given.

(2) This state will remain liable for its share of any financial or contractual obligations incurred by the governing board before the effective date of withdrawal. The appropriate share of those obligations shall be determined by this state and the board in good faith based on the benefits received and burdens incurred by both.

History: 2004, Act 174, Eff. July 1, 2004

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205.817 Finding of noncompliance; sanctions; expulsion.

Sec. 17.

(1) If this state is found to be out of substantial compliance with the agreement, this state may be subject to sanctions, including expulsion from membership in the agreement by a 3/4 vote of the entire board not including this state.

(2) If this state is expelled from membership in the agreement or sanctioned in any manner, this state will remain liable for its share of any financial or contractual obligations incurred by the board before the effective date of expulsion. The appropriate share of those obligations shall be determined by this state and the governing board in good faith based on the benefits received and burdens incurred by both.

History: 2004, Act 174, Eff. July 1, 2004

205.819 Registration.

Sec. 19.

(1) A person may participate under the agreement 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 member states that allows sellers to register online. There is no registration fee or written signature required of a seller for registration under the agreement.

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

(4) A seller may cancel its registration under the agreement at any time according to the agreement. A seller who cancels its registration remains liable for remitting taxes collected to this state.

(5) By registering under the agreement, the seller agrees to be subject to the general sales tax act and use tax act and to collect and remit sales and use taxes for all taxable sales into this state.

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

(7) A seller may use an agent to register for the seller under the agreement in this state.

(8) Withdrawal or revocation of this state does not relieve a seller of its responsibility to remit taxes collected on behalf of this state.

(9) A seller or certified service provider is not liable for having charged and collected an incorrect amount of sales or use tax resulting from their reliance on erroneous data provided in the taxability matrix provided for under section 31 or by the department on tax rates.

History: 2004, Act 174, Eff. July 1, 2004

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205.821 Models; selection for purposes of collecting and remitting sales and use taxes.

Sec. 21.

A seller registered under the agreement may select 1 of the following models for purposes of collecting and remitting sales and use taxes under the agreement:

(a) Model 1. The seller uses a certified service provider to act as the seller's 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. The seller uses a certified automated system to perform part of the seller's sales and use tax collection functions, but the seller retains responsibility for remitting the tax.

(c) Model 3. The seller has sales in at least 5 member 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 member states establishing a tax performance standard for the seller. For purposes of Model 3, "seller" includes an affiliated group of sellers using the same proprietary system.

(d) Model 4. Any other system approved by the department.

History: 2004, Act 174, Eff. July 1, 2004

205.823 Computation of tax remitted.

Sec. 23.

(1) In computing the amount of tax remitted to this state, a certified service provider under Model 1 described in section 21 may take a deduction from the revenue collected under Model 1 in this state as determined by the contract between the board and that certified service provider. The deduction under this section may be based on 1 or more of the following:

(a) A base rate applicable to taxable transactions processed by the certified service provider for this state.

(b) For a voluntary seller, a percentage of tax revenue generated for this state by that voluntary seller for a period not to exceed 24 months after the voluntary seller registered under the agreement.

(2) In computing the amount of tax remitted to this state, a seller who has selected Model 2 as described in section 21 may take a deduction in addition to the deductions taken under section 4 of the general sales tax act or section 4f of the use tax act for a period not to exceed 24 months after the seller registered under the agreement equal to 1 or more of the following:

(a) For all sellers, a base rate established by the board after the base rate is established for certified service providers under subsection (1).

(b) For a voluntary seller, a percentage of tax revenue generated for this state by that voluntary seller.

(3) In computing the amount of tax remitted to this state, a seller who has selected Model 3 as described in section 21 or a seller who has not selected any model described in section 21 may take the deductions under section 4 of the general sales tax act or section 4f of the use tax act. In addition, a voluntary seller who selected Model 3 or a voluntary seller who has not selected any model described in section 21 may take a deduction for a period not to exceed 24 months after the seller registered under the agreement equal to a percentage, determined by the board, of tax revenue generated for this state by that voluntary seller.

History: 2004, Act 174, Eff. July 1, 2004

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205.825 Certified service provider as seller's agent.

Sec. 25.

(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 to this state on all sales transactions it processes for the seller unless the seller made a material misrepresentation or committed fraud.

(2) A seller that uses a certified automated system is responsible and is liable to this state for reporting and remitting tax.

(3) A certified service provider or a seller that uses a certified automated system is not liable for sales tax and use tax if it relied on the department's determination that the software program submitted to the board for certification as a certified automated system under the agreement accurately reflected the taxability of the product categories included in the software program. Relief from liability under this section does not apply if a certified service provider or a seller that uses a certified automated system has incorrectly classified an item or transaction into a product category of the certified automated system.

(4) A certified service provider is considered a seller and is eligible for relief from liability for sales tax as provided in section 12(9) of the general sales tax act, 1933 PA 167, MCL 205.62.

(5) If the department determines that an item or transaction is incorrectly classified as to its taxability by a certified service provider or by a seller that uses a certified automated system, the department shall notify that certified service provider or seller of the incorrect classification. The certified service provider or seller shall revise the classification within 10 days after receipt of notice from the department. If the classification is not changed within 10 days of notice from the department, the certified service provider or seller that uses a certified automated system is liable for the failure to collect the correct amount of sales or use tax due and owing to this state.

History: 2004, Act 174, Eff. July 1, 2004 ;-- Am. 2008, Act 437, Imd. Eff. Jan. 9, 2009 ;-- Am. 2009, Act 138, Imd. Eff. Nov. 4, 2009

205.827 Personal identifiable information.

Sec. 27.

(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, how long it retains the information, and whether it discloses the information to member states.

(3) A certified service provider's retention or disclosure to member states of personally identifiable information is limited to that required to ensure the validity of exemptions claimed because of a consumer's status or intended use of the goods or services purchased.

(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 the attorney general.

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

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

(a) Conduct audits or other reviews as provided under the agreement or this state's law.

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

(c) Prevent, consistent with this state's 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) The department shall publish on the department's website this state's policy relating to the collection, use, and retention of personally identifiable information obtained from a certified service provider under subsection (3).

(9) The department shall destroy personally identifiable information obtained from a certified service provider when the information is no longer required for purposes under subsection (3).

(10) If a person other than a member state or person authorized by a member state's law or the agreement seeks to discover personally identifiable information about an individual from this state, the department shall make a reasonable and timely effort to notify that individual of the request.

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

History: 2004, Act 174, Eff. July 1, 2004

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205.829 Liability of registered seller; exceptions.

Sec. 29.

(1) A seller registered under the agreement 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 or registered under the general sales tax act or the use tax act in this state in the 12-month period preceding the effective date of this state's participation in the agreement. The seller is also not responsible for any penalty or interest that may be due on those transactions. This subsection applies only if the seller is registered in this state within 12 months of the effective date of this state's participation in the agreement.

(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 or to taxes collected by the seller.

(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 only if the seller continues to be registered under the agreement 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.

History: 2004, Act 174, Eff. July 1, 2004

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205.831 Notification of change in rate or tax base.

Sec. 31.

(1) The department shall publish on the state website a notification to sellers registered under the agreement of a change in rate or tax base within 5 business days of receiving notice of the public act number assigned by the secretary of state to the act that changes that tax rate or base or of an amendment to sales and use tax rules or regulations. Whenever possible, a rate or tax base change should occur on the first day of a calendar quarter.

(2) Failure of a seller to receive notice under subsection (1), however, does not relieve the seller of its obligation to collect the sales or use tax.

(3) The department shall complete a taxability matrix as provided for under section 328 of the agreement, maintain it in a database in a downloadable format approved by the board, and provide notice of changes in the matrix.

History: 2004, Act 174, Eff. July 1, 2004

205.833 Business advisory group.

Sec. 33.

The state delegation shall appoint a business advisory group of not more than 8 members to consult with the delegation on streamlined sales and use tax matters as requested by the delegation.

History: 2004, Act 174, Eff. July 1, 2004