

CHAPTER 431

AN ACT authorizing members of the Executive and Legislative Branches of State government to enter into multistate discussions of an agreement to simplify and modernize sales and use tax administration in order to substantially reduce the burden of sales and use tax compliance for all sellers and all types of commerce, supplementing P.L.1966, c.30 (C.54:32B-1 et seq.).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.54:32B-44 Short title.

1. This act shall be known and may be cited as the "Uniform Sales and Use Tax Administration Act."

C.54:32B-45 Definitions relative to "Uniform Sales and Tax Administration Act.

2. As used in this Act:

"Agreement" means the Streamlined Sales and Use Tax Agreement;

"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;

"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;

"Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity;

"Sales and use tax" means the tax imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.);

"Seller" means a person making sales, leases, or rentals of personal property or services; and

"State" means a state of the United States and the District of Columbia.

C.54:32B-46 Legislative findings.

3. The Legislature finds that this State should enter into an 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.

C.54:32B-47 Entry into multistate discussions.

4. For the purposes of reviewing, amending, or reviewing and amending the Agreement embodying the simplification requirements in section 7 of this act, the State shall enter into multistate discussions. For purposes of such discussions, the State shall be represented by the following four delegates or their designees: the State Treasurer, the Director of the Division of Taxation in the Department of the Treasury, a member of the Senate, as determined by the Senate President, and a member of the General Assembly, as determined by the Speaker of the General Assembly.

C.54:32B-48 Entry into Streamlined Sales and Use Tax Agreement authorized.

5. The State Treasurer is authorized and directed to 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 State Treasurer is authorized to 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 State Treasurer is further authorized to take other actions reasonably required to implement the provisions set forth in this act. Other actions authorized by this section include, but are not limited to, the adoption of rules and regulations and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

The State Treasurer or the State Treasurer's designee is authorized to represent this State before the other states that are signatories to the Agreement.

C.54:32B-49 Existing law unaffected.

6. No provision of the Agreement authorized by this act in whole or part shall invalidate or amend any provision of the law of this State. Adoption of the Agreement by this State shall not

be deemed to 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, shall be by the action of this State.

C.54:32B-50 Requirements for entry into agreement.

7. The State Treasurer shall not enter into the Streamlined Sales and Use Tax Agreement unless the Agreement requires each state to abide by the following requirements:

a. Uniform State Rate. The Agreement shall set restrictions to achieve more uniform state rates through the following:

(1) Limiting the number of state rates.

(2) Limiting the application of maximums on the amount of state tax that is due on a transaction.

(3) Limiting the application of thresholds on the application of state tax.

b. Uniform Standards. The Agreement shall establish uniform standards for the following:

(1) The sourcing of transactions to taxing jurisdictions.

(2) The administration of exempt sales.

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

(4) Sales and use tax returns and remittances.

c. Uniform Definitions. The Agreement shall require states to develop and adopt uniform definitions of sales and use tax terms. The definitions shall enable a state to preserve its ability to make policy choices not inconsistent with the uniform definitions.

d. Central Registration. 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. No Nexus Attribution. 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. Local Sales and Use Taxes. The Agreement shall provide for reduction of the burdens of complying with local sales and use taxes through the following:

(1) Restricting and eliminating variances between the state and local tax bases.

(2) Requiring 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.

(3) 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.

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

g. Monetary Allowances. The Agreement shall outline any monetary allowances that are to be provided by the states to sellers or certified service providers.

h. State Compliance. The Agreement shall require each state to certify compliance with the terms of the Agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the Agreement while a member.

i. Consumer Privacy. The Agreement shall require each state to adopt a uniform policy for Certified Service Providers that protects the privacy of consumers and maintains the confidentiality of tax information.

j. Advisory Councils. The Agreement shall provide for the appointment of an advisory council of private sector representatives and an advisory council of non-member state representatives to consult with in the administration of the Agreement.

C.54:32B-51 Purpose of Agreement.

8. 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.

C.54:32B-52 Agreement binds, inures to benefit of member states.

9. a. 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 a state shall be established by the law of this State and the other member states and not by the terms of the Agreement.

b. Consistent with subsection a. of this section, no person shall have any cause of action or defense under the Agreement or by virtue of this State's approval of the Agreement. No person shall 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.

c. No law of this State, or the application thereof, shall be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement.

C.54:32B-53 Certified service provider serves as agent of a seller.

10. a. 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 shall be liable for sales and use tax due each member state on all sales transactions it processes for the seller except as otherwise provided in this section.

A seller that contracts with a certified service provider shall not be 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 shall not be subject to audit on the transactions processed by the certified service provider. A seller shall be 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.

b. A person that provides a certified automated system shall be responsible for the proper functioning of that system and shall be liable to the 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 shall be liable to the state for reporting and remitting tax.

c. 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 shall be liable for the failure of the system to meet the performance standard.

11. This act shall take effect immediately.

Approved January 8, 2002.