

By the Committee on Finance and Taxation; and Senator Carlton

314-1823-01

1 A bill to be entitled
2 An act relating to sales and use tax
3 administration; repealing s. 213.27(9), F.S.,
4 which authorizes the Department of Revenue to
5 contract with certain vendors to develop and
6 implement a voluntary system for sales and use
7 tax collection and administration; creating s.
8 213.256, F.S., the Simplified Sales and Use Tax
9 Administration Act; defining terms; authorizing
10 the department's participation in the
11 Streamlined Sales and Use Tax Agreement;
12 providing that each state that is a party to
13 the agreement must abide by certain
14 requirements in order for the department to
15 enter into the agreement; ensuring that when
16 this state complies with the agreement, the
17 agreement cannot be used to challenge existing
18 state laws and statutes; providing for the
19 collection and remittance of the sales and use
20 tax under the agreement; providing for
21 maintenance of confidentiality of certain
22 information; providing a penalty; requiring the
23 department to make annual recommendations to
24 the Legislature concerning provisions that need
25 to be adopted in order to bring this state's
26 system into compliance with the Streamlined
27 Sales and Use Tax Agreement; providing an
28 effective date.

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30 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Subsection (9) of section 213.27, Florida
2 Statutes, is repealed.

3 Section 2. Section 213.256, Florida Statutes, is
4 created to read:

5 213.256 Simplified Sales and Use Tax Administration
6 Act.--

7 (1) As used in this section, the term:

8 (a) "Department" means the Department of Revenue.

9 (b) "Agreement" means the Streamlined Sales and Use
10 Tax Agreement as amended and adopted on January 27, 2001, by
11 the Executive Committee of the National Conference of State
12 Legislatures.

13 (c) "Certified automated system" means software
14 certified jointly by the states that are signatories to the
15 agreement to calculate the tax imposed by each jurisdiction on
16 a transaction, determine the amount of tax to remit to the
17 appropriate state, and maintain a record of the transaction.

18 (d) "Certified service provider" means an agent
19 certified jointly by the states that are signatories to the
20 agreement to perform all of the seller's sales tax functions.

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

24 (f) "Sales tax" means the tax levied under chapter
25 212.

26 (g) "Seller" means any person making sales, leases, or
27 rentals of personal property or services.

28 (h) "State" means any state of the United States and
29 the District of Columbia.

30 (i) "Use tax" means the tax levied under chapter 212.

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1 (2)(a) The executive director of the department shall
2 enter into the Streamlined Sales and Use Tax Agreement with
3 one or more states to simplify and modernize sales and use tax
4 administration in order to substantially reduce the burden of
5 tax compliance for all sellers and for all types of commerce.
6 In furtherance of the agreement, the executive director of the
7 department or his or her designee shall act jointly with other
8 states that are members of the agreement to establish
9 standards for certification of a certified service provider
10 and certified automated system and establish performance
11 standards for multistate sellers.

12 (b) The executive director of the department or his or
13 her designee shall take other actions reasonably required to
14 administer this section. Other actions authorized by this
15 section include, but are not limited to, the adoption of rules
16 and the joint procurement, with other member states, of goods
17 and services in furtherance of the cooperative agreement.

18 (c) The executive director of the department or his or
19 her designee may represent this state before the other states
20 that are signatories to the agreement.

21 (3) The executive director of the department may not
22 enter into the Streamlined Sales and Use Tax Agreement unless
23 the agreement requires each state to abide by the following
24 requirements:

25 (a) The agreement must set restrictions to limit, over
26 time, the number of state tax rates.

27 (b) The agreement must establish uniform standards
28 for:

29 1. The sourcing of transactions to taxing
30 jurisdictions.

31 2. The administration of exempt sales.

1 3. Sales and use tax returns and remittances.
2 (c) The agreement must provide a central electronic
3 registration system that allows a seller to register to
4 collect and remit sales and use taxes for all signatory
5 states.
6 (d) The agreement must provide that registration with
7 the central registration system and the collection of sales
8 and use taxes in the signatory state will not be used as a
9 factor in determining whether the seller has nexus with a
10 state for any tax.
11 (e) The agreement must provide for reduction of the
12 burdens of complying with local sales and use taxes through:
13 1. Restricting variances between the state and local
14 tax bases.
15 2. Requiring states to administer any sales and use
16 taxes levied by local jurisdictions within the state so that
17 sellers who collect and remit these taxes will not have to
18 register or file returns with, remit funds to, or be subject
19 to independent audits from local taxing jurisdictions.
20 3. Restricting the frequency of changes in the local
21 sales and use tax rates and setting effective dates for the
22 application of local jurisdictional boundary changes to local
23 sales and use taxes.
24 4. Providing notice of changes in local sales and use
25 tax rates and of local changes in the boundaries of local
26 taxing jurisdictions.
27 (f) The agreement must outline any monetary allowances
28 that are to be provided by the states to sellers or certified
29 service providers. The agreement must allow for a joint study
30 by the public and private sectors, which must be completed by
31 July 1, 2002, of the compliance cost to sellers and certified

1 service providers of collecting sales and use taxes for state
2 and local governments under various levels of complexity.

3 (g) The agreement must require each state to certify
4 compliance with the terms of the agreement before joining and
5 to maintain compliance, under the laws of the member state,
6 with all provisions of the agreement while a member.

7 (h) The agreement must require each state to adopt a
8 uniform policy for certified service providers which protects
9 the privacy of consumers and maintains the confidentiality of
10 tax information.

11 (i) The agreement must provide for the appointment of
12 an advisory council of private-sector representatives and an
13 advisory council of nonmember state representatives to consult
14 within the administration of the agreement.

15 (4) For the purposes of reviewing or amending the
16 agreement to embody the simplification requirements as set
17 forth in subsection (3), this state shall enter into
18 multistate discussions. For purposes of such discussions, this
19 state shall be represented by three delegates, one appointed
20 by the President of the Senate, one appointed by the Speaker
21 of the House of Representatives, and the executive director of
22 the department or his or her designee.

23 (5) No provision of the agreement authorized by this
24 section in whole or in part invalidates or amends any
25 provision of the laws of this state. Adoption of the agreement
26 by this state does not amend or modify any law of the state.
27 Implementation of any condition of the agreement in this
28 state, whether adopted before, at, or after membership of this
29 state in the agreement, must be by the action of the state.

30 (6) The agreement authorized by this section is an
31 accord among individual cooperating sovereigns in furtherance

1 of their governmental functions. The agreement provides a
2 mechanism among the member states to establish and maintain a
3 cooperative, simplified system for the application and
4 administration of sales and use taxes under the duly adopted
5 law of each member state.

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

12 (b) Consistent with paragraph (a), no person has any
13 cause of action or defense under the agreement or by virtue of
14 this state's approval of the agreement. No person may
15 challenge, in any action brought under any provision of law,
16 any action or inaction by any department, agency, or other
17 instrumentality of this state, or of any political subdivision
18 of this state, on the ground that the action or inaction is
19 inconsistent with the agreement.

20 (c) No law of this state, or the application thereof,
21 may be declared invalid as to any person or circumstance on
22 the ground that the provision or application is inconsistent
23 with the agreement.

24 (8)(a) A certified service provider is the agent of a
25 seller with whom the certified service provider has contracted
26 for the collection and remittance of sales and use taxes. As
27 the seller's agent, the certified service provider is liable
28 for sales and use tax due each member state on all sales
29 transactions it processes for the seller except as set out in
30 this subsection.

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1 (b) A seller that contracts with a certified service
2 provider is not liable to the state for sales or use tax due
3 on transactions processed by the certified service provider
4 unless the seller has misrepresented the type of items it
5 sells or has committed fraud. In the absence of probable cause
6 to believe that the seller has committed fraud or made a
7 material misrepresentation, the seller is not subject to audit
8 on the transactions processed by the certified service
9 provider. A seller is subject to audit for transactions that
10 have not been processed by the certified service provider. The
11 member states acting jointly may perform a system check of the
12 seller and review the seller's procedures to determine if the
13 certified service provider's system is functioning properly
14 and to determine the extent to which the seller's transactions
15 are being processed by the certified service provider.

16 (c) A person that provides a certified automated
17 system is responsible for the proper functioning of that
18 system and is liable to the state for underpayments of tax
19 attributable to errors in the functioning of the certified
20 automated system. A seller that uses a certified automated
21 system remains responsible and is liable to the state for
22 reporting and remitting tax.

23 (d) A seller that has a proprietary system for
24 determining the amount of tax due on transactions and has
25 signed an agreement establishing a performance standards for
26 that system is liable for the failure of the system to meet
27 the performance standard.

28 (9) Disclosure of information necessary under this
29 section must be pursuant to a written agreement between the
30 executive director of the department or his or her designee
31 and the certified service provider. The certified service

1 provider is bound by the same requirements of confidentiality
2 as the department. Breach of confidentiality is a misdemeanor
3 of the first degree, punishable as provided in s. 775.082 or
4 s. 775.083.

5 (10) On or before January 1 annually, the department
6 shall provide recommendations to the President of the Senate,
7 the Senate Minority Leader, the Speaker of the House of
8 Representatives, and the Minority Leader of the House of
9 Representatives for provisions to be adopted for inclusion
10 within the system which are necessary to bring it into
11 compliance with the Streamlined Sales and Use Tax Agreement.

12 Section 3. This act shall take effect upon becoming a
13 law.

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15 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
16 COMMITTEE SUBSTITUTE FOR
17 SB 1638

18 Clarifies that the "Agreement" means the Streamlined Sales and
19 Use Tax Agreement as amended and adopted on January 27, 2001,
20 by the Executive Committee of the National Conference of State
Legislatures.

21 Clarifies that the executive director of the Department of
22 Revenue or his or her designee may represent the State of
Florida under the "Streamlined Sales and Use Tax Agreement".

23 Changes from four to three the number of delegates
24 representing Florida at the multi-state discussions and
25 provides for the appointment of the delegates: one shall be
26 appointed by the Senate President; one shall be appointed by
27 the Speaker of the House of Representatives; and one shall be
28 the executive director of the Department of Revenue or his or
29 her designee.
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