

By Senator Carlton

24-966-01

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2 Statutes, is repealed.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.

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

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

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

22 (f) "Sales tax" means the tax levied under chapter
23 212.

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

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

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

29 (2)(a) The department shall enter into the Streamlined
30 Sales and Use Tax Agreement with one or more states to
31 simplify and modernize sales and use tax administration in

1 order to substantially reduce the burden of tax compliance for
2 all sellers and for all types of commerce. In furtherance of
3 the agreement, the department shall act jointly with other
4 states that are members of the agreement to establish
5 standards for certification of a certified service provider
6 and certified automated system and establish performance
7 standards for multistate sellers.

8 (b) The department shall take other actions reasonably
9 required to administer this section. Other actions authorized
10 by this section include, but are not limited to, the adoption
11 of rules and the joint procurement, with other member states,
12 of goods and services in furtherance of the cooperative
13 agreement.

14 (c) The department may represent this state before the
15 other states that are signatories to the agreement.

16 (3) The department may not enter into the Streamlined
17 Sales and Use Tax Agreement unless the agreement requires each
18 state to abide by the following requirements:

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

21 (b) The agreement must establish uniform standards
22 for:

23 1. The sourcing of transactions to taxing
24 jurisdictions.

25 2. The administration of exempt sales.

26 3. Sales and use tax returns and remittances.

27 (c) The agreement must provide a central electronic
28 registration system that allows a seller to register to
29 collect and remit sales and use taxes for all signatory
30 states.

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1 (d) The agreement must provide that registration with
2 the central registration system and the collection of sales
3 and use taxes in the signatory state will not be used as a
4 factor in determining whether the seller has nexus with a
5 state for any tax.

6 (e) The agreement must provide for reduction of the
7 burdens of complying with local sales and use taxes through:

8 1. Restricting variances between the state and local
9 tax bases.

10 2. Requiring states to administer any sales and use
11 taxes levied by local jurisdictions within the state so that
12 sellers who collect and remit these taxes will not have to
13 register or file returns with, remit funds to, or be subject
14 to independent audits from local taxing jurisdictions.

15 3. Restricting the frequency of changes in the local
16 sales and use tax rates and setting effective dates for the
17 application of local jurisdictional boundary changes to local
18 sales and use taxes.

19 4. Providing notice of changes in local sales and use
20 tax rates and of local changes in the boundaries of local
21 taxing jurisdictions.

22 (f) The agreement must outline any monetary allowances
23 that are to be provided by the states to sellers or certified
24 service providers. The agreement must allow for a joint study
25 by the public and private sectors, which must be completed by
26 July 1, 2002, of the compliance cost to sellers and certified
27 service providers of collecting sales and use taxes for state
28 and local governments under various levels of complexity.

29 (g) The agreement must require each state to certify
30 compliance with the terms of the agreement before joining and
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1 to maintain compliance, under the laws of the member state,
2 with all provisions of the agreement while a member.

3 (h) The agreement must require each state to adopt a
4 uniform policy for certified service providers which protects
5 the privacy of consumers and maintains the confidentiality of
6 tax information.

7 (i) The agreement must provide for the appointment of
8 an advisory council or private-sector representatives and an
9 advisory council of nonmember state representatives to consult
10 within the administration of the agreement.

11 (4) For the purposes of reviewing or amending the
12 agreement to embody the simplification requirements as set
13 forth in subsection (3), this state shall enter into
14 multistate discussions. For purposes of such discussions, this
15 state shall be represented by no more than four delegates.

16 (5) No provision of the agreement authorized by this
17 section in whole or in part invalidates or amends any
18 provision of the laws of this state. Adoption of the agreement
19 by this state does not amend or modify any law of the state.
20 Implementation of any condition of the agreement in this
21 state, whether adopted before, at, or after membership of this
22 state in the agreement, must be by the action of the state.

23 (6) The agreement authorized by this section is an
24 accord among individual cooperating sovereigns in furtherance
25 of their governmental functions. The agreement provides a
26 mechanism among the member states to establish and maintain a
27 cooperative, simplified system for the application and
28 administration of sales and use taxes under the duly adopted
29 law of each member state.

30 (7)(a) The agreement authorized by this act binds and
31 inures only to the benefit of this state and the other member

1 states. No person, other than a member state, is an intended
2 beneficiary of the agreement. Any benefit to a person other
3 than a state is established by the laws of this state and of
4 other member states and not by the terms of the agreement.

5 (b) Consistent with paragraph (a), no person has any
6 cause of action or defense under the agreement or by virtue of
7 this state's approval of the agreement. No person may
8 challenge, in any action brought under any provision of law,
9 any action or inaction by any department, agency, or other
10 instrumentality of this state, or of any political subdivision
11 of this state, on the ground that the action or inaction is
12 inconsistent with the agreement.

13 (c) No law of this state, or the application thereof,
14 may be declared invalid as to any person or circumstance on
15 the ground that the provision or application is inconsistent
16 with the agreement.

17 (8)(a) A certified service provider is the agent of a
18 seller with whom the certified service provider has contracted
19 for the collection and remittance of sales and use taxes. As
20 the seller's agent, the certified service provider is liable
21 for sales and use tax due each member state on all sales
22 transactions it processes for the seller except as set out in
23 this subsection.

24 (b) A seller that contracts with a certified service
25 provider is not liable to the state for sales or use tax due
26 on transactions processed by the certified service provider
27 unless the seller has misrepresented the type of items it
28 sells or has committed fraud. In the absence of probable cause
29 to believe that the seller has committed fraud or made a
30 material misrepresentation, the seller is not subject to audit
31 on the transactions processed by the certified service

1 provider. A seller is subject to audit for transactions that
2 have not been processed by the certified service provider. The
3 member states acting jointly may perform a system check of the
4 seller and review the seller's procedures to determine if the
5 certified service provider's system is functioning properly
6 and to determine the extent to which the seller's transactions
7 are being processed by the certified service provider.

8 (c) A person that provides a certified automated
9 system is responsible for the proper functioning of that
10 system and is liable to the state for underpayments of tax
11 attributable to errors in the functioning of the certified
12 automated system. A seller that uses a certified automated
13 system remains responsible and is liable to the state for
14 reporting and remitting tax.

15 (d) A seller that has a proprietary system for
16 determining the amount of tax due on transactions and has
17 signed an agreement establishing a performance standards for
18 that system is liable for the failure of the system to meet
19 the performance standard.

20 (9) Disclosure of information necessary under this
21 section must be pursuant to a written agreement between the
22 executive director of the department and the certified service
23 provider. The certified service provider is bound by the same
24 requirements of confidentiality as the department. Breach of
25 confidentiality is a misdemeanor of the first degree,
26 punishable as provided in s. 775.082 or s. 775.083.

27 (10) On or before January 1 annually, the department
28 shall provide recommendations to the President of the Senate,
29 the Senate Minority Leader, the Speaker of the House of
30 Representatives, and the Minority Leader of the House of
31 Representatives for provisions to be adopted for inclusion

1 within the system which are necessary to bring it into
2 compliance with the Streamlined Sales and Use Tax Agreement.

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

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7 SENATE SUMMARY

8 Repeals s. 213.27(9), F.S., which authorizes the
9 Department of Revenue to contract with certain vendors to
10 develop and implement a voluntary system for sales and
11 use tax collection and administration. Creates the
12 Simplified Sales and Use Tax Administration Act. Defines
13 terms. Authorizes the department's participation in the
14 Streamlined Sales and Use Tax Agreement. Provides that
15 each state that is a party to the agreement must abide by
16 certain requirements in order for the department to enter
17 into the agreement. Ensures that when this state complies
18 with the agreement, the agreement cannot be used to
19 challenge existing state law. Provides for the collection
20 and remittance of the sales and use tax under the
21 agreement. Provides for the maintenance of
22 confidentiality of certain information. Provides a
23 penalty. Requires the department to make annual
24 recommendations to the Legislature concerning provisions
25 that need to be adopted in order to bring this state's
26 system into compliance with the Streamlined Sales and Use
27 Tax Agreement.
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