

FORTY-SIXTH LEGISLATURE
FIRST SPECIAL SESSION

November 1, 2003

HOUSE FLOOR AMENDMENT number _____ to HOUSE BILL 20, as amended

Amendment sponsored by Representative Joseph Cervantes

1. Strike the House Taxation and Revenue Committee amendment.
2. On page 1, line 11, strike the period and insert: ";
PROVIDING FOR PARTICIPATION IN NEGOTIATIONS ON THE STREAMLINED SALES
TAX AGREEMENT; DECLARING AN EMERGENCY. ".
3. On page 1, between lines 13 and 14, insert the following new
sections:

"Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 9 of
this act may be cited as the "Streamlined Sales and Use Tax
Administration Act".

Section 2. [NEW MATERIAL] LEGISLATIVE FINDINGS.--The legislature
finds that a simplified sales tax and use tax system that treats
transactions in a competitively neutral manner will strengthen and
preserve sales taxes and use taxes as vital revenue sources for this
state and its local governments and will help preserve the fiscal
sovereignty of this state. The legislature also finds that such a
system will substantially reduce the administrative burdens of
collection for sellers. While states have the sovereign right to set
their own tax policies, states should cooperatively develop a
streamlined sales tax and use tax system that is simplified, uniform
and fair.

Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the
Streamlined Sales and Use Tax Administration Act:

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A. "agreement" means the streamlined sales and use tax agreement;

B. "certified automated system" means software certified jointly by member states to:

(1) calculate the tax imposed by each jurisdiction on a transaction;

(2) determine the amount of tax to remit to the appropriate state; and

(3) maintain a record of the transaction;

C. "certified service provider" means an agent that performs all of the sales tax functions of a seller and that is certified jointly by member states to perform all of the sales tax functions of the seller;

D. "member state" means a state of the United States that enters into the agreement with another state and the District of Columbia if it enters into the agreement with another state;

E. "person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation and any other legal entity;

F. "sales tax" means the gross receipts tax levied pursuant to the Gross Receipts and Compensating Tax Act;

G. "seller" means a person making sales, leases and rentals of personal property and services; and

H. "use tax" means the compensating tax levied pursuant to the Gross Receipts and Compensating Tax Act.

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Section 4. [NEW MATERIAL] AUTHORITY TO ENTER AGREEMENT. --

A. The secretary of taxation and revenue shall enter into the agreement with one or more member states to simplify and modernize sales tax and use tax administration and to reduce the burden of tax compliance for sellers.

B. The secretary of taxation and revenue is authorized to:

(1) act jointly with member states to establish standards for certification of a certified automated system and establish performance standards for multistate sellers pursuant to the agreement;

(2) take actions reasonably required to implement the provisions of the Streamlined Sales and Use Tax Administration Act; and

(3) adopt rules with member states pursuant to the agreement.

C. The secretary of taxation and revenue or the secretary's designee is authorized to represent this state before member states.

Section 5. [NEW MATERIAL] RELATIONSHIP TO STATE LAW. -- A provision of the agreement does not invalidate or amend any provision of state law. Implementation of a condition of the agreement shall be adopted by the legislature.

Section 6. [NEW MATERIAL] AGREEMENT REQUIREMENTS. -- The secretary of taxation and revenue shall not enter into the agreement unless the agreement:

A. sets restrictions to achieve more uniform state rates by limiting:

(1) the number of member state rates;

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(2) the application of maximums on the amount of member state taxes due on transactions; and

(3) the application of thresholds on the application of member state taxes;

B. establishes uniform standards for:

(1) sourcing transactions to taxing jurisdictions;

(2) administering exempt sales; and

(3) providing allowances that a seller can receive for bad debts;

C. requires member states to develop and adopt uniform definitions of sales tax and use tax terms that enable the member states to make policy choices consistent with the definitions;

D. provides for a certified automated system that allows a seller to register to collect and remit sales taxes and use taxes for each member state;

E. provides that registration with the certified automated system and the collection of a sales tax and a use tax in a member state will not be used to determine if the seller has a nexus with a member state for tax purposes;

F. provides for reduction of the burden of complying with local sales taxes and use taxes by:

(1) restricting variances between the member state and local tax bases;

(2) requiring each member state to administer the sales tax and use tax levied by a local jurisdiction within the member state

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so that a seller collecting and remitting the taxes will not be required to register or file a return with, remit funds to or be subject to an independent audit from a local taxing jurisdiction;

(3) restricting change in each local sales tax rate and use tax rate and setting an effective date for a change in the boundaries of a local taxing jurisdiction; and

(4) providing notice of a change in each local sales tax rate and use tax rate and of a change in the boundaries of a local taxing jurisdiction;

G. outlines monetary allowances provided by member states to sellers and certified service providers;

H. requires each state to certify compliance with the terms of the agreement before becoming a member state and to maintain compliance with provisions of the agreement pursuant to the law of the member state while a member state;

I. requires each member state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information; and

J. provides for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

Section 7. [NEW MATERIAL] MEMBER STATES.--The agreement is an accord among member states in furtherance of their governmental functions. The agreement permits each member state to establish and maintain a cooperative, uniform, simplified system to apply sales taxes and use taxes pursuant to the law of the member state.

Section 8. [NEW MATERIAL] LIMITED BINDING AND BENEFICIAL

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EFFECT. --

A. The agreement binds and benefits only this state and other member states. Only a member state is an intended beneficiary of the agreement. A benefit to a person other than a member state is established by the law of this state and member states and not by the terms of the agreement.

B. A person shall not:

(1) have a cause of action or a defense pursuant to the agreement; and

(2) challenge an action or inaction of a department, agency, political subdivision or instrumentality of this state on the grounds that the action or inaction is not consistent with the agreement.

C. A law of this state or the application of the law is valid despite the inconsistency of the law or its application with the agreement.

Section 9. [NEW MATERIAL] LIABILITY. --

A. A certified service provider is liable for sales taxes and use taxes due from each member state on each sales transaction that it processes for the seller except as otherwise provided by this section. A seller that contracts with the certified service provider is not liable to this state for sales tax or use tax due on a transaction processed by the certified service provider unless the seller misrepresents the type of item it sells or commits fraud. In the absence of probable cause that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on transactions processed by the certified service provider. A seller is subject to audit for a transaction not processed by the certified service provider. Member states acting jointly may:

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(1) audit data pertaining to the seller that is stored in the certified automated system; and

(2) review procedures of the seller to determine if the certified automated system functions properly and the extent to which the transactions of the seller are processed by this certified service provider.

B. A certified service provider is responsible for the proper functioning of a certified automated system and is liable to this state for underpayments of tax attributable to system errors. A seller that uses a certified automated system is liable to this state for reporting and remitting tax.

C. A seller that has a proprietary system for determining the amount of tax due on a transaction and has agreed to establish a performance standard for the system is liable for failure of the system to meet the standard. "

4. Renumber succeeding sections accordingly.

5. Strike pages 16 through 18 in their entirety and on page 19, strike lines 1 through 3.

6. On page 19, line 14, strike the underscored language.

7. On page 19, lines 15 and 16, remove the brackets and line-through.

8. On page 19, lines 17 through 24, strike the underscored language.

9. On page 19, line 25, remove the brackets and line-through and strike the underscored language.

10. On page 20, line 1, strike the underscored language.

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11. On page 20, line 3, remove the brackets and line through "C." and strike the underscored "D."

12. On page 20, line 12, strike the underscored "E." and insert in lieu thereof "D."

13. On page 20, line 19, strike the underscored "F." and insert thereof "E."

14. On page 22, line 14, strike the underscored "G." and insert in lieu thereof "F."

15. On page 25, between lines 9 and 10, insert the following new section:

"Section 15. Section 7-1-70 NMSA 1978 (being Laws 1965, Chapter 248, Section 71, as amended) is amended to read:

"7-1-70. CIVIL PENALTY FOR BAD CHECKS.--If any payment required to be made by provision of the Tax Administration Act is attempted to be made by check that is not paid upon presentment, such dishonor is presumptive of negligence. The penalty shall never be less than [~~ten dollars (\$10.00)~~] twenty-five dollars (\$25.00). This penalty is in addition to any other penalty imposed by law."

16. Renumber succeeding sections accordingly.

17. On page 25, line 24, after the closing bracket insert:

"All nontaxable transaction certificates of the appropriate series executed by buyers or lessees should be in the possession of the seller or lessor for nontaxable transactions at the time the return is due for receipts from the transactions. If the seller or lessor is not in possession of the required nontaxable transaction certificates on a date not later than thirty days prior to the date of a formal hearing on a protest that requires the documents to establish the taxpayer's

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entitlement to any deduction under protest, the deductions claimed by the seller or lessor that require delivery of these nontaxable transaction certificates shall be disallowed. "

18. On page 34, line 8, after "of" insert "Sections 10 through 17".

19. On page 34, between lines 8 and 9, insert the following new section:

"Section 19. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately. "

Joseph Cervantes

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____