

# SENATE BILL No. 433

May 1, 2001, Introduced by Senators EMMONS, BULLARD, GARCIA, PETERS and BYRUM and referred to the Committee on Finance.

A bill 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 departments.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 1. This act shall be known and may be cited as the  
2 "streamlined sales and use tax administration act".

3       Sec. 2. As used in this act:

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

1 (b) "Board" means the board of governance created in section  
2 3.

3 (c) "Certified automated system" means computer software  
4 certified jointly by the states that are signatories to the  
5 agreement to calculate the tax imposed by each jurisdiction on a  
6 transaction, determine the amount of tax to remit to the appro-  
7 priate state, and maintain a record of the transaction.

8 (d) "Certified service provider" means an agent certified  
9 jointly by the states that are signatories to the agreement to  
10 perform all of the seller's sales and use tax functions, other  
11 than the seller's obligation to remit tax on its own purchases.

12 (e) "Department" means the department of treasury.

13 (f) "Person" means an individual, trust, estate, fiduciary,  
14 partnership, limited liability company, limited liability part-  
15 nership, corporation, or any other legal entity.

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

18 (h) "Sales tax" means the tax levied under the general sales  
19 tax act, 1933 PA 167, MCL 205.51 to 205.78.

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

22 (j) "Signatory state" means a state that has entered into  
23 the agreement.

24 (k) "Sourcing" means determining the tax situs of a  
25 transaction.

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

1 (m) "Use tax" means the tax levied under the use tax act,  
2 1937 PA 94, MCL 205.91 to 205.111.

3 Sec. 3. (1) There is created a board of governance consist-  
4 ing of the following members:

5 (a) One member appointed by the majority leader of the  
6 senate.

7 (b) One member appointed by the speaker of the house of  
8 representatives.

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

10 (d) One member appointed by the governor.

11 (2) The board shall represent this state in all multistate  
12 discussions regarding the streamlined sales and use tax  
13 agreement. The board may vote on behalf of this state and repre-  
14 sents the position of this state in all matters relating to the  
15 agreement during multistate discussions before or after adoption  
16 of the agreement.

17 Sec. 4. The department with the approval of the board and  
18 subject to section 5 shall enter into the streamlined sales and  
19 use tax agreement with 1 or more states to simplify and modernize  
20 sales and use tax administration in order to substantially reduce  
21 the burden of tax compliance for all sellers and for all types of  
22 commerce. The department may act jointly with other signatory  
23 states of the agreement to establish standards for certification  
24 of a certified service provider and certified automated system  
25 and to establish performance standards for multistate sellers.  
26 The department may also take other actions reasonably required to  
27 implement the provisions of this act. Other actions authorized

1 by this section include, but are not limited to, the promulgation  
2 of rules and regulations and the joint procurement, with other  
3 member states, of goods and services in furtherance of the coop-  
4 erative agreement. The board or the board's designee is autho-  
5 rized to represent this state before the other states that are  
6 signatories to the agreement. Implementation of any condition of  
7 the agreement in this state, whether adopted before, at, or after  
8 membership of this state in the agreement, must be by the action  
9 of this state.

10       Sec. 5. The department shall not enter into the streamlined  
11 sales and use tax agreement unless the agreement requires each  
12 signatory state to abide by the following requirements:

13       (a) The agreement shall set restrictions to achieve more  
14 uniform state rates through the following:

15       (i) Limiting the number of state rates.

16       (ii) Eliminating caps on the amount of state tax that is due  
17 on a transaction.

18       (iii) Eliminating thresholds on the application of state  
19 tax.

20       (b) The agreement shall establish uniform standards for the  
21 following:

22       (i) The sourcing of transactions to taxing jurisdictions.

23       (ii) The administration of exempt sales.

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

25       (iv) Sales and use tax returns and remittances.

26       (c) The agreement shall require signatory states to develop  
27 and adopt uniform definitions of sales and use tax terms. The

1 definitions shall enable a signatory state to preserve its  
2 ability to make policy choices that are substantially consistent  
3 with the uniform definitions.

4 (d) The agreement shall provide a central electronic regis-  
5 tration system that allows a seller to register to collect and  
6 remit sales and use taxes for all signatory states.

7 (e) The agreement shall provide that registration with the  
8 central registration system and the collection of sales and use  
9 taxes in the signatory states will not be used as a factor in  
10 determining whether the seller has nexus with a state for any  
11 tax.

12 (f) The agreement shall provide for reduction of the burdens  
13 of complying with local sales and use taxes through the  
14 following:

15 (i) Restricting and eliminating variances between each sig-  
16 natory state's tax base and the local tax bases within that  
17 state.

18 (ii) Requiring signatory states to administer any sales and  
19 use taxes levied by local jurisdictions within the state so that  
20 sellers collecting and remitting these taxes will not have to  
21 register or file returns with, remit funds to, or be subject to  
22 independent audits from local taxing jurisdictions.

23 (iii) Restricting the frequency of changes in the local  
24 sales and use tax rates and setting effective dates for the  
25 application of local jurisdictional boundary changes to local  
26 sales and use taxes.

1 (iv) Providing notice of changes in local sales and use tax  
2 rates and of changes in the boundaries of local taxing  
3 jurisdictions.

4 (g) The agreement shall outline any monetary allowances that  
5 are to be provided by the signatory states to sellers or certi-  
6 fied service providers.

7 (h) The agreement shall require each signatory state to cer-  
8 tify compliance with the terms of the agreement before joining  
9 and to maintain compliance under the laws of the member state  
10 with all provisions of the agreement while a member.

11 (i) The agreement shall require each signatory state to  
12 adopt a uniform policy for certified service providers that pro-  
13 tects the privacy of consumers and maintains the confidentiality  
14 of tax information.

15 (j) The agreement shall provide for the appointment of an  
16 advisory council of private sector representatives and an  
17 advisory council of nonmember state representatives to consult  
18 with the signatory states in the administration of the  
19 agreement.

20 Sec. 6. (1) The agreement authorized by this act binds and  
21 inures only to the benefit of this state and the other signatory  
22 states. No person, other than a signatory state, is an intended  
23 beneficiary of the agreement. Any benefit to a person other than  
24 a signatory state is established by the law of this state and the  
25 other signatory states and not by the terms of the agreement.

26 (2) A person does not have any cause of action or defense  
27 under the agreement because of this state's approval of the

1 agreement. A person may not challenge, in any action brought  
2 under any provision of law, any action or inaction by any depart-  
3 ment, agency, or other instrumentality of this state or any  
4 political subdivision of this state on the ground that the action  
5 or inaction is inconsistent with the agreement.

6 (3) A law of this state, or the application of a law, may  
7 not be declared invalid as to any person or circumstance on the  
8 ground that the provision or application is inconsistent with the  
9 agreement.

10 Sec. 7. (1) A person may participate under this act only by  
11 registering in the central registration system provided for by  
12 the agreement.

13 (2) The department shall participate in an online registra-  
14 tion system with other signatory states that allows sellers to  
15 register online.

16 (3) A seller registered under the agreement in this state is  
17 considered registered in each of the signatory states. However,  
18 a seller may choose to register directly with other signatory  
19 states if more information is required in those states.

20 (4) A seller may cancel its registration under the agreement  
21 at any time according to the agreement. However, a seller who  
22 cancels its registration remains liable for remitting taxes col-  
23 lected to the appropriate states.

24 (5) By registering under this section, the seller agrees to  
25 collect and remit sales and use taxes according to the agreement  
26 for taxable sales in all signatory states including states that  
27 adopt the agreement after the seller registers.

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

6           Sec. 8. A seller registered under section 7 shall agree to  
7 1 of the following models for purposes of collecting and remit-  
8 ting sales and use taxes under the agreement:

9           (a) Model 1. A seller that has contracted with a certified  
10 service provider to act as its agent to perform all of the  
11 seller's sales and use tax collection functions other than the  
12 seller's obligation to remit sales or use tax on its own  
13 purchases.

14           (b) Model 2. A seller that has selected a certified auto-  
15 mated system to perform part of the seller's sales and use tax  
16 collection functions, but retains responsibility for remitting  
17 the tax.

18           (c) Model 3. A seller that has sales in at least 5 signa-  
19 tory states, has total annual sales of \$500,000,000.00 or more,  
20 has a proprietary system that calculates the amount of tax due in  
21 each taxing jurisdiction, and has entered into a performance  
22 agreement with the signatory states establishing a tax per-  
23 formance standard for the seller. As used in this subdivision, a  
24 seller includes an affiliated group of sellers using the same  
25 proprietary system.

26           Sec. 9. (1) In computing the amount of tax remitted to this  
27 state, a certified service provider under model 1 and a seller



1 under model 2 may deduct a base rate that applies to taxable  
2 transactions processed through the certified automated system of  
3 the certified service provider under model 1 or of the seller  
4 under model 2, in accordance with the terms of the contract  
5 entered into by the signatory states. A seller who takes the  
6 deduction under this subsection shall not take a deduction under  
7 section 4 of the general sales tax act, 1933 PA 167, MCL 205.54.

8 (2) In computing the amount of tax remitted to this state, a  
9 seller under model 3 may only take the deduction provided for in  
10 section 4 of the general sales tax act, 1933 PA 167, MCL 205.54.

11 (3) In addition to the deduction under subsection (1) or  
12 (2), whichever is applicable, for the period not to exceed 24  
13 months following the voluntary seller's registration under  
14 section 7, a voluntary seller may also deduct a percentage of tax  
15 revenue generated in this state by the voluntary seller in  
16 accordance with the terms of the contract entered into by the  
17 signatory states. As used in this subsection, "voluntary seller"  
18 means a seller that is not required to register to collect the  
19 tax for this state.

20 Sec. 10. (1) A certified service provider is the agent of a  
21 seller, with whom the certified service provider has contracted  
22 for the collection and remittance of sales and use taxes. As the  
23 seller's agent, the certified service provider is liable for  
24 sales and use tax due each signatory state on all sales transac-  
25 tions it processes for the seller except as provided in this  
26 section. A seller that contracts with a certified service  
27 provider is not liable to this state for sales or use tax due on

1 transactions processed by the certified service provider unless  
2 the seller makes a material misrepresentation of the type of  
3 items it sells or committed fraud. In the absence of probable  
4 cause to believe that the seller has committed fraud or made a  
5 material misrepresentation, the seller is not subject to audit on  
6 the transactions processed by the certified service provider. A  
7 seller is subject to audit for transactions not processed by the  
8 certified service provider. The signatory states acting jointly  
9 may perform a system check of the seller and review the seller's  
10 procedures to determine if the certified service provider's  
11 system is functioning properly and the extent to which the  
12 seller's transactions are being processed by the certified serv-  
13 ice provider.

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

20 (3) A seller that has a proprietary system for determining  
21 the amount of tax due on transactions and has signed an agreement  
22 establishing a performance standard for that system is liable for  
23 the failure of the system to meet the performance standard.

24 Sec. 11. The payment, collection, and remittance of the  
25 sales and use tax under this act are subject to the provisions of  
26 the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, and  
27 the use tax act, 1937 PA 94, MCL 205.91 to 205.111. If there is

1 a conflict between those acts and this act, the provisions of  
2 this act prevail.

3       Sec. 12. (1) Except as provided in subsection (3), a certi-  
4 fied service provider shall not retain the personally identi-  
5 fiable information of consumers. A certified service provider's  
6 system shall be designed and tested to assure the privacy of con-  
7 sumers by protecting their anonymity and that personally identi-  
8 fiable information is used only when necessary for administration  
9 of the model 1 process and only if the certified service provider  
10 has given clear and conspicuous notice of its use.

11       (2) A certified service provider shall provide clear and  
12 conspicuous notice of its information practices to consumers,  
13 including, but not limited to, what information it collects, how  
14 it collects the information, how it uses the information, and  
15 whether it discloses the information to signatory states.

16       (3) A certified service provider's retention of personally  
17 identifiable information is limited to exemption claims because  
18 of a consumer's status or intended use of the goods or services  
19 purchased, to investigations of fraud, and to the extent neces-  
20 sary to ensure the reliability of the certified service  
21 provider's technology.

22       (4) A certified service provider shall provide the necessary  
23 technical, physical, and administrative safeguards to protect  
24 personally identifiable information from unauthorized access and  
25 disclosure.

1 (5) This privacy policy is subject to enforcement by  
2 signatory states' attorneys general or other appropriate  
3 authorities.

4 (6) If personally identifiable information is retained for  
5 limited purposes by or on behalf of the signatory states, in the  
6 absence of exigent circumstances, individuals shall be provided  
7 with reasonable notification of that retention and afforded rea-  
8 sonable access to their own data, with a right to correct inaccu-  
9 rately recorded data.

10 (7) If anyone other than a signatory state seeks to discover  
11 personally identifiable information, then, in the absence of exi-  
12 gent circumstances, a reasonable and timely effort shall be made  
13 to notify the individual of the request.

14 (8) The agreement does not enlarge or limit the signatory  
15 states' authority to do any of the following:

16 (a) Conduct audits or other review as provided under this  
17 agreement and state law.

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

21 (c) Prevent, consistent with state law, disclosures of con-  
22 fidential taxpayer information.

23 (d) Prevent, consistent with federal law, disclosures or  
24 misuse of federal return information obtained under a disclosure  
25 agreement with the internal revenue service.

26 (e) Collect, disclose, disseminate, or otherwise use  
27 anonymous data for governmental purposes.

1 (9) As used in this section, "personally identifiable  
2 information" means information that identifies a specific  
3 person.

4 Sec. 13. (1) A person who registers as a seller under sec-  
5 tion 7 is not liable for any uncollected or nonremitted sales or  
6 use tax on transactions with purchasers in this state before the  
7 date of registration if the seller was not licensed under the  
8 sales or use tax act in this state in the 12-month period preced-  
9 ing the date this state entered into the agreement. The seller  
10 is also not responsible for any penalty or interest that may be  
11 due on those transactions.

12 (2) Subsection (1) does not apply to the following:

13 (a) Any tax liability of the registered seller for transac-  
14 tions that are subject to sales or use tax in this state in which  
15 the registered seller is the purchaser.

16 (b) Any sales or use taxes already paid or remitted to this  
17 state.

18 (c) Any transactions for which the seller received notice of  
19 the commencement of an audit and the audit is not finally  
20 resolved, including related administrative or judicial  
21 processes.

22 (3) Subsection (1) applies to the seller absent the seller's  
23 fraud or intentional misrepresentation of a material fact if the  
24 seller continues to be registered under section 7 and continues  
25 collection and remittance of applicable sales and use taxes in  
26 this state for at least 36 months. The statute of limitations

1 applicable to assessing a tax liability is tolled during this  
2 36-month period.