

Senate Bill 315

Sponsored by Senator GORDLY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Directs Department of Revenue to enter into multistate agreement to streamline administration of sales and use taxes imposed by other states.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to multistate tax agreement; and prescribing an effective date.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Title. Sections 1 to 9 of this 2005 Act shall be known and may be cited as the**
5 **Uniform Sales and Use Tax Administration Act.**

6 **SECTION 2. Definitions. As used in sections 1 to 9 of this 2005 Act:**

7 (1) **"Agreement"** means the Streamlined Sales and Use Tax Agreement authorized by
8 sections 1 to 9 of this 2005 Act.

9 (2) **"Certified automated system"** means software certified jointly by the states that are
10 signatories to the agreement to calculate the tax imposed by each jurisdiction on a trans-
11 action, determine the amount of tax to remit to the appropriate state and maintain a record
12 of the transaction.

13 (3) **"Certified service provider"** means an agent certified jointly by the states that are
14 signatories to the agreement to perform all of the seller's sales tax functions.

15 (4) **"Person"** means an individual, trust, estate, fiduciary, partnership, limited liability
16 company, limited liability partnership, corporation or any other legal entity.

17 (5) **"Sales tax"** means a tax imposed on retailers and calculated as a percentage of the
18 gross receipts from the sale of tangible personal property sold at retail.

19 (6) **"Seller"** means any person making sales, leases or rentals of personal property or
20 services.

21 (7) **"State"** means any state of the United States and the District of Columbia.

22 (8) **"Use tax"** means a tax imposed on the storage, use or other consumption of tangible
23 personal property purchased from any retailer and calculated as a percentage of the pur-
24 chase price of the property.

25 **SECTION 3. Findings and declarations. The Legislative Assembly finds and declares that**
26 **entering into the Streamlined Sales and Use Tax Agreement with one or more states to**
27 **simplify and modernize sales and use tax administration will substantially reduce the burden**
28 **of tax compliance for all sellers and for all types of commerce.**

29 **SECTION 4. Authority to enter agreement. (1) The Department of Revenue is authorized**
30 **and directed to enter into the Streamlined Sales and Use Tax Agreement with one or more**
31 **states to simplify and modernize sales and use tax administration in order to substantially**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

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

6 (2) The department is further authorized to take other actions reasonably required to
7 implement the provisions set forth in sections 1 to 9 of this 2005 Act. Other actions author-
8 ized by this section include, but are not limited to, the adoption of rules and the joint pro-
9 curement, with other signatory states, of goods and services in furtherance of the
10 agreement.

11 (3) The department or the designee of the department is authorized to represent this
12 state before the other signatory states.

13 **SECTION 5. Relationship to state law.** No provision of the Streamlined Sales and Use Tax
14 Agreement authorized by sections 1 to 9 of this 2005 Act in whole or part invalidates or
15 amends any provision of the law of this state. Adoption of the agreement by this state does
16 not amend or modify any law of this state. Implementation of any condition of the agree-
17 ment in this state, whether adopted before, at the time of or after membership of this state
18 in the agreement, must be by the action of this state.

19 **SECTION 6. Agreement requirements.** The Department of Revenue may not enter into
20 the Streamlined Sales and Use Tax Agreement unless the agreement requires each signatory
21 state to abide by all of the following requirements:

22 (1) The agreement must set restrictions to achieve more uniform state sales and use tax
23 rates through the following:

24 (a) Limiting the number of state sales and use tax rates;

25 (b) Eliminating maximums on the amount of state sales or use tax that is due on a
26 transaction; and

27 (c) Eliminating thresholds on the application of state sales or use tax.

28 (2) The agreement must establish uniform standards for:

29 (a) The sourcing of transactions to taxing jurisdictions;

30 (b) The administration of exempt sales;

31 (c) The allowances a seller can take for bad debts; and

32 (d) Sales and use tax returns and remittances.

33 (3) The agreement must require signatory states to develop and adopt uniform definitions
34 of sales and use tax terms. The definitions must enable a signatory state to preserve its
35 ability to make policy choices not inconsistent with the uniform definitions.

36 (4) The agreement must provide a central, electronic registration system that allows a
37 seller to register to collect and remit sales and use taxes for all signatory states.

38 (5) The agreement must provide that registration with the central, electronic registration
39 system and the collection of sales and use taxes in the signatory states will not be used as
40 a factor in determining whether the seller has nexus with a state for any tax.

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

43 (a) Eliminating variances between state and local tax bases;

44 (b) Requiring signatory states to administer any sales and use taxes levied by local ju-
45 risdictions within the signatory state so that sellers collecting and remitting these taxes will

1 not have to register or file returns with, remit funds to or be subject to independent audits
2 from local taxing jurisdictions;

3 (c) Restricting the frequency of changes in the local sales and use tax rates and setting
4 effective dates for the application of local jurisdictional boundary changes to local sales and
5 use taxes; and

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

8 (7) The agreement must outline any monetary allowances that are to be provided by the
9 signatory states to sellers or certified service providers.

10 (8) The agreement must require each signatory state to certify compliance with the
11 terms of the agreement prior to joining and to maintain compliance, under the laws of the
12 signatory state, with all provisions of the agreement while a signatory.

13 (9) The agreement must require each signatory state to adopt a uniform policy for cer-
14 tified service providers that protects the privacy of consumers and maintains the
15 confidentiality of tax information.

16 (10) The agreement must provide for the appointment of an advisory council of private
17 sector representatives and an advisory council of nonsignatory state representatives with
18 whom to consult in the administration of the agreement.

19 **SECTION 7. Cooperating states.** The Streamlined Sales and Use Tax Agreement author-
20 ized by sections 1 to 9 of this 2005 Act is to be an accord among individual states in
21 furtherance of their governmental functions. The agreement shall provide a mechanism
22 among the signatory states to establish and maintain a cooperative, simplified system for the
23 application and administration of sales and use taxes under the laws of each signatory state.

24 **SECTION 8. Effect of agreement.** (1) The Streamlined Sales and Use Tax Agreement au-
25 thorized by sections 1 to 9 of this 2005 Act binds and inures only to the benefit of this state
26 and the other signatory states. No person, other than a signatory state, is an intended ben-
27 efitary of the agreement. Any benefit to a person other than a signatory state is established
28 by the law of this state and the other signatory states and not by the terms of the agree-
29 ment.

30 (2) A person may not have any cause of action or defense under the agreement or by
31 virtue of the approval by this state of the agreement. A person may not challenge, in any
32 action brought under any provision of law, any action or inaction by any department, agency
33 or other instrumentality of this state, or any political subdivision of this state, on the ground
34 that the action or inaction is inconsistent with the agreement.

35 (3) No law of this state, or the application thereof, may be declared invalid as to any
36 person or circumstance on the ground that the law or application is inconsistent with the
37 agreement.

38 **SECTION 9. Seller and third-party liability.** (1) A certified service provider is the agent
39 of a seller, with whom the certified service provider has contracted, for the collection and
40 remittance of sales and use taxes pursuant to the Streamlined Sales and Use Tax Agreement
41 authorized by sections 1 to 9 of this 2005 Act. As the seller's agent, the certified service
42 provider is liable for sales and use taxes due each signatory state on all sales transactions
43 the certified service provider processes for the seller except as set out in this section.

44 (2)(a) A seller that contracts with a certified service provider is not liable to this state
45 for sales or use tax due on transactions processed by the certified service provider unless

1 the seller misrepresented the types of items the seller sells or committed fraud. In the ab-
2 sence of probable cause to believe that the seller has committed fraud or made a material
3 misrepresentation, the seller is not subject to audit on transactions processed by a certified
4 service provider. A seller is subject to audit for transactions not processed by a certified
5 service provider.

6 (b) Signatory states acting jointly may perform a system check of the seller and review
7 the seller's procedures to determine if a certified service provider's certified automated
8 system is functioning properly and the extent to which the seller's transactions are being
9 processed by the certified service provider.

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

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

18 SECTION 10. The section captions used in this 2005 Act are provided only for the con-
19 venience of the reader and do not become part of the statutory law of this state or express
20 any legislative intent in the enactment of this 2005 Act.

21 SECTION 11. This 2005 Act takes effect on the 91st day after the date on which the
22 regular session of the Seventy-third Legislative Assembly adjourns sine die.
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