

FIRST REGULAR SESSION

SENATE BILL NO. 620

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR GIBBONS.

Read 1st time March 1, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

2039S.011

AN ACT

To amend chapter 144, RSMo, by adding thereto nine new sections relating to sales and use taxes.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 144, RSMo, is amended by adding thereto nine new sections, to be known as sections 144.1100, 144.1103, 144.1106, 144.1109, 144.1112, 144.1115, 144.1118, 144.1121 and 144.1124, to read as follows:

144.1100. 1. Sections 144.1100 to 144.1124 shall be known and cited as the "Simplified Sales and Use Tax Administration Act".

2. For purposes of sections 144.1100 to 144.1124, the following words and phrases shall mean:

- (1) "Agreement", the Streamlined Sales and Use Tax Agreement;**
- (2) "Certified automated system", software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction;**
- (3) "Certified service provider", an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions;**
- (4) "Director", the director of the department of revenue;**
- (5) "Person", an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation or any other legal entity;**
- (6) "Sales and use tax", the tax levied pursuant to this chapter; and**
- (7) "Seller", any person making sales, leases or rentals of personal property or services.**

144.1103. The general assembly finds that a simplified sales and use tax system

will reduce and over time eliminate the burden and cost for all vendors to collect this state's sales and use tax. The general assembly further finds that this state should participate in multistate discussions to review and amend the terms of the agreement to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

144.1106. 1. For the purposes of reviewing and amending the agreement embodying the simplification requirements as contained in section 144.1109, the state of Missouri shall enter into multistate discussions. For purposes of such discussions, the state of Missouri shall be represented by no more than four delegates.

2. The delegates shall be appointed for terms of four years as follows: one delegate shall be appointed by the governor, one delegate shall be appointed by the speaker of the house of representatives, one delegate shall be appointed by the president pro tem of the senate and one delegate shall be the director of the department of revenue. The delegates shall receive no compensation for their service as delegates, but shall be reimbursed by the department of revenue for the reasonable and necessary expenses incurred in their service.

144.1109. The director is authorized and directed to enter into the Streamlined Sales and Use Tax Agreement with one or more states or the District of Columbia to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the director is authorized to act jointly with other states or the District of Columbia that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers. The director is further authorized to take other actions reasonably required to implement the provisions set forth in sections 144.1100 to 144.1124. Other actions authorized by this section include, but are not limited to, the adoption of rules and regulations and the joint procurement, with other member states or the District of Columbia, of goods and services in furtherance of the cooperative agreement. The director or the director's designee is authorized to represent the state of Missouri before the other states or the District of Columbia that are signatories to the agreement.

144.1112. No provision of the agreement authorized by sections 144.1100 to 144.1124, in whole or in part, invalidates or amends any provision of the laws of this state. Adoption of the agreement by the state of Missouri does not amend or modify any law of this state. Implementation of any condition of the agreement in this state, whether adopted before, at or after membership of this state in the agreement, must be by the action of this state.

144.1115. The director shall not enter into the Streamlined Sales and Use Tax Agreement unless the agreement requires each state to abide by the following requirements:

(1) Simplified state rate. The agreement must set restrictions to limit over time the number of state rates;

(2) Uniform standards. The agreement must establish uniform standards for the following:

(a) The sourcing of transactions to taxing jurisdictions;

(b) The administration of exempt sales;

(c) Sales and use tax returns and remittances;

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

(4) No nexus attribution. The agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax;

(5) Local sales and use taxes. The agreement must provide for reduction of the burdens of complying with local sales and use taxes through the following:

(a) Restricting variances between the state and local tax bases;

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

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

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

(6) Monetary allowances. The agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers. The agreement must allow for a joint public and private sector study of the compliance cost on sellers and certified service providers to collect sales and use taxes for state and local governments under various levels of complexity to be completed by July 1, 2002;

(7) State compliance. The agreement must require each state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement

while a member;

(8) Consumer privacy. The agreement must require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information;

(9) Advisory councils. The agreement must provide for the appointment of an advisory council of private sector representation and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

144.1118. The agreement authorized by sections 144.1100 to 144.1124 is an accord among individuals cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

144.1121. 1. The agreement authorized by sections 144.1100 to 144.1124 binds and inures only to the benefit of the state of Missouri and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of this state and the other member states and not by the terms of the agreement.

2. Consistent with subsection 1 of this section, no person shall have any cause of action or defense under the agreement or by virtue of this state's approval of the agreement. No person may challenge, in any action brought under any provisions of law, any action or inaction by any department, agency or other instrumentality of this state, or any political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.

3. No law of this state, or the application thereof, may be declared invalid as to any person or circumstances on the ground that the provision or application is inconsistent with the agreement.

144.1124. 1. A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section. A seller that contracts with a certified service provider is not liable to the state for sales and use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for

transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

2. A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

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

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