

AN ACT

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District of
Columbia
Official Code*

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To authorize the participation of the District of Columbia in a national effort to develop a system of simplified sales and use taxes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Simplified Sales and Use Tax Participation Act of 2002".

New Part G,
Subchapter I,
Chapter 3,
Title 1

New
§ 1-301.121

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Agreement" means the Streamlined Sales and Use Tax Agreement as amended and adopted on January 27, 2001.

(2) "Certified Automated System" means 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" means an agent certified jointly by the states that are signatories to the Agreement to perform all of the seller's sales tax functions.

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

(5) "Sales Tax" means the tax levied under Chapter 20 of Title 47 of the District of Columbia Official Code.

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

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

(8) "Use Tax" means the tax levied under Chapter 22 of Title 47 of the District of Columbia Official Code.

Sec. 3. Authority to participate in multistate negotiations.

New
§ 1-301.122

(a) For the purposes of reviewing or amending the Agreement embodying the simplification requirements as contained in section 7, the District of Columbia shall enter into multistate discussions. For purposes of the discussions, the District of Columbia shall be

represented by 4 delegates.

(b) The Mayor shall appoint one delegate to serve at the pleasure of the Mayor.

(c) The Chairman of the Council shall appoint one delegate to serve at the pleasure of the Chairman of the Council.

(d) The Chief Financial Officer of the District of Columbia ("Chief Financial Officer") shall appoint one delegate to serve at the pleasure of the Chief Financial Officer.

(e) The Council on State Taxation shall appoint one tax counsel to serve as a delegate of the District of Columbia. The Council on State Taxation shall notify the Mayor and the Chairman of the Council of the appointment by registered mail.

New
§ 1-301.123

Sec. 4. Authority to enter into agreement.

(a) The Chief Financial Officer may enter into the Agreement with one or more states 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 Chief Financial Officer may act jointly with other states 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.

(b) The Chief Financial Officer may take other actions reasonably required to implement the provisions set forth in this act. Other actions authorized by this section include the adoption of rules and regulations and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

(c) The Chief Financial Officer, or his or her designee, may represent the District of Columbia before the other states that are signatories to the Agreement.

New
§ 1-301.124

Sec. 5. Relationship to District of Columbia law.

No provision of the Agreement shall, in whole or part, invalidate or amend any provision of the law of the District of Columbia. Adoption of the Agreement by the District of Columbia shall not amend or modify any law of the District of Columbia. Implementation of any condition of the Agreement in the District of Columbia, whether adopted before, at, or after membership of the District of Columbia in the Agreement, shall be by the action of the Council.

Sec. 6. Agreement requirements.

The Chief Financial Officer shall not enter into the Streamlined Sales and Use Tax Agreement unless the Agreement addresses the following issues:

(1) The Agreement shall set restrictions to limit over time the number of state rates.

(2) The Agreement shall establish uniform standards for the sourcing of transactions to taxing jurisdictions; the administration of exempt sales; and sales and use tax returns and remittances.

New
§ 1-301.125

(3) The Agreement shall 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) The Agreement shall 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) The Agreement shall 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; and

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

(6) The Agreement shall outline any monetary allowances that are to be provided by the states to sellers or Certified Service Providers. The Agreement shall 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) The Agreement shall 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) The Agreement shall 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) The Agreement shall provide for the appointment of an advisory council of private sector representatives and an advisory council of non-member state representatives to consult with in the administration of the Agreement.

Sec. 7. Cooperating sovereigns.

The Agreement is an accord among individual 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.

New
§ 1-301.126

Sec. 8. Limited binding and beneficial effect.

New
§ 1-301.127

(a) The Agreement shall bind and inure only to the benefit of the District of Columbia 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 shall be established by the law of the District of Columbia and the other member states and not by the terms of the Agreement.

(b) Consistent with subsection (a) of this section, no person shall have any cause of action or defense under the Agreement or by virtue of the District of Columbia's approval of the Agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the District of Columbia, or any political subdivision of the District of Columbia, on the ground that the action or inaction is inconsistent with the Agreement.

(c) No law of the District of Columbia, or the application thereof, shall be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement.

Sec. 9. Seller and third party liability.

New
§ 1-301.128

(a) A Certified Service Provider shall be 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 shall be liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set forth in this section. A seller that contracts with a Certified Service Provider shall not be liable to the state for sales or 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 shall not be subject to audit on the transactions processed by the Certified Service Provider. A seller shall be 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.

(b) A person that provides a Certified Automated System shall be responsible for the proper functioning of that system and shall be 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 shall be liable to the state for reporting and remitting tax.

(c) 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 shall be liable for the failure of the system to meet the performance standard.

Sec. 10. Fiscal impact statement.

The Council adopts the fiscal impact statement contained in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 11. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia