

HOUSE BILL No. 5504

February 10, 2004, Introduced by Reps. Condino, Byrum, Wenke, Tobocman, O'Neil, Farrah, Howell, Minore, Accavitti, Newell, Palsrok, Emmons, Koetje, Meyer, Brown, Sak, Gleason, Zelenko, Bieda, Caul, Hager and Shulman and referred to the Committee on Tax Policy.

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 officials and 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. 3. As used in this act:

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

1 (b) "Board" means the governing board under the agreement.

2 (c) "Certified automated system" means computer software
3 certified under the agreement to calculate the tax imposed by
4 each jurisdiction on a transaction, determine the amount of tax
5 to remit to the appropriate state, and maintain a record of the
6 transaction.

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

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

12 (f) "General sales tax act" means 1933 PA 167, MCL 205.51 to
13 205.78.

14 (g) "Member state" means a state that has entered into the
15 agreement.

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

19 (i) "Purchaser" means a person to whom a sale of tangible
20 personal property is made or to whom a service is furnished.

21 (j) "Sales tax" means the tax levied under the general sales
22 tax act.

23 (k) "Seller" means any person who sells, leases, or rents
24 tangible personal property or services to another person.

25 (l) "Sourcing" means determining the tax situs of a
26 transaction.

27 (m) "State" means any state of the United States or the

1 District of Columbia.

2 (n) "Use tax" means the tax levied under the use tax act.

3 (o) "Use tax act" means 1937 PA 94, MCL 205.91 to 205.111.

4 (p) "Voluntary seller" means a seller who does not have a
5 requirement to obtain a license or register to collect the sales
6 or use tax for this state.

7 Sec. 5. This act simplifies the sales tax and use tax
8 administration in order to substantially reduce the burden of tax
9 compliance for all sellers and for all types of commerce.

10 Sec. 7. The payment, collection, and remittance of the
11 sales and use taxes under this act are subject to the provisions
12 of the general sales tax act and the use tax act.

13 Sec. 9. The state treasurer on behalf of this state may
14 enter into the streamlined sales and use tax agreement with 1 or
15 more states. The state treasurer or his or her designee may also
16 certify and recertify this state's compliance with the agreement
17 and take any other action reasonably necessary to participate or
18 continue to participate under the agreement. The department may
19 take actions reasonably required to implement the provisions of
20 this act including, but not limited to, the promulgation of rules
21 under the administrative procedures act of 1969, 1969 PA 306, MCL
22 24.201 to 24.328, and regulations, and the joint procurement,
23 with other member states, of goods and services in furtherance of
24 the cooperative agreement.

25 Sec. 11. (1) Any provision of the agreement or any
26 application of a provision of the agreement to any person or
27 circumstance that is inconsistent with any law of this state does

1 not have effect.

2 (2) The agreement authorized by this act binds and inures
3 only to the benefit of this state and the other member states.
4 No person, other than a member state, is an intended beneficiary
5 of the agreement. Any benefit to a person other than this state
6 is established by the law of this state and the other member
7 states and not by the terms of the agreement.

8 (3) Nothing in the agreement shall be construed to limit the
9 authority of the courts in this state. A person has all the
10 rights, remedies, and obligations provided for in 1941 PA 122,
11 MCL 205.1 to 205.31. A person does not have any cause of action
12 or defense under the agreement because of this state's approval
13 of the agreement or on the ground that the department's action or
14 inaction is inconsistent with the agreement.

15 (4) A law of this state, or the application of a law, may not
16 be declared invalid as to any person or circumstance on the
17 ground that the provision or application is inconsistent with the
18 agreement.

19 (5) No provision of the agreement authorized by this act in
20 whole or in part invalidates or amends any provision of the law
21 of this state. Adoption of the agreement by this state does not
22 amend or modify any law of this state.

23 Sec. 13. (1) A state delegation of 4 representatives from
24 this state shall be appointed to the board on July 1, 2004
25 according to the following:

26 (a) A member or former member of the senate or an employee of
27 the senate or the senate fiscal agency appointed jointly by the

1 majority and minority leaders of the senate for a term of 2-1/2
2 year.

3 (b) A member or former member of the house of representatives
4 or an employee of the house of representatives or the house
5 fiscal agency appointed jointly by the speaker and minority
6 leader of the house of representatives for a term of 1-1/2
7 years.

8 (c) The state treasurer or his or her designee for a term of
9 2-1/2 years.

10 (d) The governor or his or her designee for a term of 1-1/2
11 years.

12 (2) At the end of each initial appointment, a member shall be
13 appointed every 2 years for a 2-year term as follows:

14 (a) A member or former member of the senate or an employee of
15 the senate or the senate fiscal agency appointed jointly by the
16 majority and minority leaders of the senate.

17 (b) A member or former member of the house of representatives
18 or an employee of the house of representatives or the house
19 fiscal agency appointed jointly by the speaker and minority
20 leader of the house of representatives.

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

22 (d) The governor or his or her designee.

23 (3) The state delegation may represent this state in all
24 meetings of the board. The state delegation shall vote on behalf
25 of this state and represent the position of this state in all of
26 the following coming before the board:

27 (a) Certify a person as a certified service provider.

1 (b) Certify a software program as a certified automated
2 system.

3 (c) Establish 1 or more sales or use tax performance
4 standards for multistate sellers that meet eligibility criteria
5 set by the board and that have developed a proprietary system to
6 determine the amount of sales and use tax due on transactions.

7 (d) Participate in the issue resolution process.

8 (e) Participate in determining the compliance of petitioning
9 states.

10 (f) Any other actions necessary and proper to fulfill the
11 purposes of the agreement.

12 (4) The state delegation shall report quarterly in writing to
13 the committees responsible for reviewing tax issues in the senate
14 and the house of representatives on the board's activities and
15 shall recommend what state statutes are required to be amended to
16 be substantially in compliance with the agreement. The report
17 shall be posted on the department's website.

18 (5) The taxes imposed under the sales tax act and the use tax
19 act shall be administered by the department under the provisions
20 of those acts, 1941 PA 122, MCL 205.1 to 205.31, and this act.

21 (6) The state delegation may also participate as a member of
22 the streamlined sales and use tax implementing states in all
23 matters.

24 Sec. 15. (1) If the state treasurer determines that it is
25 in the best interest of this state, this state may withdraw from
26 membership in the agreement. This state may withdraw from
27 membership by submitting a notice of intent to withdraw to the

1 governing board, the chief executive of each member state's tax
2 agency, and the committees responsible for reviewing tax issues
3 in the senate and the house of representatives and by posting the
4 notice of intent on this state's website. The withdrawal will be
5 effective on the first day of the calendar quarter that begins
6 not less than 60 days after notice is given.

7 (2) This state will remain liable for its share of any
8 financial or contractual obligations incurred by the governing
9 board before the effective date of withdrawal. The appropriate
10 share of those obligations shall be determined by this state and
11 the board in good faith based on the benefits received and
12 burdens incurred by both.

13 Sec. 17. (1) If this state is found to be out of
14 substantial compliance with the agreement, this state may be
15 subject to sanctions, including expulsion from membership in the
16 agreement by a 3/4 vote of the entire board not including this
17 state.

18 (2) If this state is expelled from membership in the
19 agreement or sanctioned in any manner, this state will remain
20 liable for its share of any financial or contractual obligations
21 incurred by the board before the effective date of expulsion.
22 The appropriate share of those obligations shall be determined by
23 this state and the governing board in good faith based on the
24 benefits received and burdens incurred by both.

25 Sec. 19. (1) A person may participate under the agreement
26 only by registering in the central registration system provided
27 for by the agreement.

1 (2) The department shall participate in an online
2 registration system with other member states that allows sellers
3 to register online. There is no registration fee or written
4 signature required of a seller for registration under the
5 agreement.

6 (3) A seller registered under the agreement is considered
7 registered in each of the member states. A seller may also
8 choose to register directly with other member states.

9 (4) A seller may cancel its registration under the agreement
10 at any time according to the agreement. A seller who cancels its
11 registration remains liable for remitting taxes collected to this
12 state.

13 (5) By registering under the agreement, the seller agrees to
14 be subject to the general sales tax act and use tax act and to
15 collect and remit sales and use taxes for all taxable sales into
16 this state.

17 (6) Registration of a person under the agreement and
18 collection of sales and use taxes by that person in this state
19 does not provide nexus with this state and shall not be used as a
20 factor in determining nexus with this state for any tax purpose.

21 (7) A seller may use an agent to register for the seller
22 under the agreement in this state.

23 (8) Withdrawal or revocation of this state does not relieve a
24 seller of its responsibility to remit taxes collected on behalf
25 of this state.

26 (9) A seller or certified service provider is not liable for
27 having charged and collected an incorrect amount of sales or use

1 tax resulting from their reliance on erroneous data provided in
2 the taxability matrix provided for under section 31 or by the
3 department on tax rates.

4 Sec. 21. A seller registered under the agreement may select
5 1 of the following models for purposes of collecting and
6 remitting sales and use taxes under the agreement:

7 (a) Model 1. The seller uses a certified service provider to
8 act as the seller's agent to perform all of the seller's sales
9 and use tax collection functions other than the seller's
10 obligation to remit sales or use tax on its own purchases.

11 (b) Model 2. The seller uses a certified automated system to
12 perform part of the seller's sales and use tax collection
13 functions, but the seller retains responsibility for remitting
14 the tax.

15 (c) Model 3. The seller has sales in at least 5 member
16 states, has total annual sales of \$500,000,000.00 or more, has a
17 proprietary system that calculates the amount of tax due in each
18 taxing jurisdiction, and has entered into a performance agreement
19 with the member states establishing a tax performance standard
20 for the seller. For purposes of Model 3, "seller" includes an
21 affiliated group of sellers using the same proprietary system.

22 (d) Model 4. Any other system approved by the department.

23 Sec. 23. (1) In computing the amount of tax remitted to
24 this state, a certified service provider under Model 1 described
25 in section 21 may take a deduction from the revenue collected
26 under Model 1 in this state as determined by the contract between
27 the board and that certified service provider. The deduction

1 under this section may be based on 1 or more of the following:

2 (a) A base rate applicable to taxable transactions processed
3 by the certified service provider for this state.

4 (b) For a voluntary seller, a percentage of tax revenue
5 generated for this state by that voluntary seller for a period
6 not to exceed 24 months after the voluntary seller registered
7 under the agreement.

8 (2) In computing the amount of tax remitted to this state, a
9 seller who has selected Model 2 as described in section 21 may
10 take a deduction in addition to the deductions taken under
11 section 4 of the general sales tax act or section 4f of the use
12 tax act for a period not to exceed 24 months after the seller
13 registered under the agreement equal to 1 or more of the
14 following:

15 (a) For all sellers, a base rate established by the board
16 after the base rate is established for certified service
17 providers under subsection (1).

18 (b) For a voluntary seller, a percentage of tax revenue
19 generated for this state by that voluntary seller.

20 (3) In computing the amount of tax remitted to this state, a
21 seller who has selected Model 3 as described in section 21 or a
22 seller who has not selected any model described in section 21 may
23 take the deductions under section 4 of the general sales tax act
24 or section 4f of the use tax act. In addition, a voluntary
25 seller who selected Model 3 or a voluntary seller who has not
26 selected any model described in section 21 may take a deduction
27 for a period not to exceed 24 months after the seller registered

1 under the agreement equal to a percentage, determined by the
2 board, of tax revenue generated for this state by that voluntary
3 seller.

4 Sec. 25. (1) A certified service provider is the agent of a
5 seller, with whom the certified service provider has contracted
6 for the collection and remittance of sales and use taxes. As the
7 seller's agent, the certified service provider is liable for
8 sales and use tax due to this state on all sales transactions it
9 processes for the seller unless the seller made a material
10 misrepresentation or committed fraud.

11 (2) A seller that uses a certified automated system is
12 responsible and is liable to this state for reporting and
13 remitting tax.

14 Sec. 27. (1) Except as provided in subsection (3), a
15 certified service provider shall not retain or disclose the
16 personally identifiable information of consumers. A certified
17 service provider's system shall be designed and tested to assure
18 the privacy of consumers by protecting their anonymity.

19 (2) A certified service provider shall provide clear and
20 conspicuous notice of its information practices to consumers,
21 including, but not limited to, what information it collects, how
22 it collects the information, how it uses the information, how
23 long it retains the information, and whether it discloses the
24 information to member states.

25 (3) A certified service provider's retention or disclosure to
26 member states of personally identifiable information is limited
27 to that required to ensure the validity of exemptions claimed

1 because of a consumer's status or intended use of the goods or
2 services purchased.

3 (4) A certified service provider shall provide the necessary
4 technical, physical, and administrative safeguards to protect
5 personally identifiable information from unauthorized access and
6 disclosure.

7 (5) This privacy policy is subject to enforcement by the
8 attorney general.

9 (6) If personally identifiable information is retained by
10 this state for the purpose of subsection (3), in the absence of
11 exigent circumstances, a person shall be afforded reasonable
12 access to their own data, with a right to correct inaccurately
13 recorded data.

14 (7) The agreement does not enlarge or limit this state's
15 authority to do any of the following:

16 (a) Conduct audits or other reviews as provided under the
17 agreement or this state's law.

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

21 (c) Prevent, consistent with this state's law, disclosures of
22 confidential 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 (8) The department shall publish on the department's website
2 this state's policy relating to the collection, use, and
3 retention of personally identifiable information obtained from a
4 certified service provider under subsection (3).

5 (9) The department shall destroy personally identifiable
6 information obtained from a certified service provider when the
7 information is no longer required for purposes under subsection
8 (3).

9 (10) If a person other than a member state or person
10 authorized by a member state's law or the agreement seeks to
11 discover personally identifiable information about an individual
12 from this state, the department shall make a reasonable and
13 timely effort to notify that individual of the request.

14 (11) As used in this section, "personally identifiable
15 information" means information that identifies a specific
16 person.

17 Sec. 29. (1) A seller registered under the agreement is not
18 liable for any uncollected or nonremitted sales or use tax on
19 transactions with purchasers in this state before the date of
20 registration if the seller was not licensed or registered under
21 the general sales tax act or the use tax act in this state in the
22 12-month period preceding the effective date of this state's
23 participation in the agreement. The seller is also not
24 responsible for any penalty or interest that may be due on those
25 transactions. This subsection applies only if the seller is
26 registered in this state within 12 months of the effective date
27 of this state's participation in the agreement.

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

2 (a) Any tax liability of the registered seller for
3 transactions that are subject to sales or use tax in this state
4 in which the registered seller is the purchaser.

5 (b) Any sales or use taxes already paid or remitted to this
6 state or to taxes collected by the seller.

7 (c) Any transactions for which the seller received notice of
8 the commencement of an audit and the audit is not finally
9 resolved, including related administrative or judicial
10 processes.

11 (3) Subsection (1) applies to the seller absent the seller's
12 fraud or intentional misrepresentation of a material fact only if
13 the seller continues to be registered under the agreement and
14 continues collection and remittance of applicable sales and use
15 taxes in this state for at least 36 months. The statute of
16 limitations applicable to assessing a tax liability is tolled
17 during this 36-month period.

18 Sec. 31. (1) The department shall publish on the state
19 website a notification to sellers registered under the agreement
20 of a change in rate or tax base within 5 business days of
21 receiving notice of the public act number assigned by the
22 secretary of state to the act that changes that tax rate or base
23 or of an amendment to sales and use tax rules or regulations.
24 Whenever possible, a rate or tax base change should occur on the
25 first day of a calendar quarter.

26 (2) Failure of a seller to receive notice under subsection
27 (1), however, does not relieve the seller of its obligation to

1 collect the sales or use tax.

2 (3) The department shall complete a taxability matrix as
3 provided for under section 328 of the agreement, maintain it in a
4 database in a downloadable format approved by the board, and
5 provide notice of changes in the matrix.

6 Sec. 33. The state delegation shall appoint a business
7 advisory group of not more than 8 members to consult with the
8 delegation on streamlined sales and use tax matters as requested
9 by the delegation.

10 Enacting section 1. This act takes effect _____.

11 Enacting section 2. This act does not take effect unless
12 all of the following bills of the 92nd Legislature are enacted
13 into law:

14 (a) Senate Bill No. _____ or House Bill No. 5503 (request
15 no. 03959'03).

16 (b) Senate Bill No. _____ or House Bill No. 5502 (request
17 no. 03960'03).

18 (c) Senate Bill No. _____ or House Bill No. 5505 (request
19 no. 05610'03).