ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 1202

By: Pope (Clay), Easley, Fields, Young, Sullivan (John), Deutschendorf, Kirby, Balkman, Miller (Doug), Hiett, Nance, Claunch, O'Neal, Benge, Braddock, Ericson, Ervin, Jones, Roach, Roggow, Taylor, Turner and Tyler of the House

and

Monson of the Senate

(revenue and taxation - amending 14 sections in Title 68 - franchise tax - county and municipal sales tax - codification - effective dates - emergency)

AMENDMENT NO. 1. Page 1, strike the stricken title, enacting clause and entire bill and insert

"[revenue and taxation - Simplified Sales and Use Tax Administration Act - Streamlined Sales and Use Tax Agreement – codification - effective date]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1354.14 of Title 68, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 10 of this act shall be known and may be cited as the "Simplified Sales and Use Tax Administration Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1354.15 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. “Agreement” means the Streamlined Sales and Use Tax Agreement;

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. “Commission” or “Tax Commission” means the Oklahoma Tax Commission;

5. “Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity;

6. “Sales tax” means a tax levied by the state, by a county or by another entity under Section 1350 et seq. of Title 68 of the Oklahoma Statutes or a sales tax levied by a municipality under Section 2701 of Title 68 of the Oklahoma Statutes;

7. “Seller” means any person making sales, leases or rentals of personal property or services;

8. “State” means any state of the United States and the District of Columbia; and

9. “Use tax” means a tax levied under Section 1401 et seq. of Title 68 of the Oklahoma Statutes or a use tax levied by a county, municipality or other entity as provided by law.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1354.16 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Legislature finds that a simplified sales and use tax system will reduce and, over time, eliminate the burden and cost for all vendors to collect sales and use taxes levied by this state and its political subdivisions. The Legislature further finds that this state should participate in multistate discussions to review or 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.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1354.17 of Title 68, unless there is created a duplication in numbering, reads as follows:

For the purposes of reviewing or amending the Agreement embodying the simplification requirements as contained in Section 7 of this act, the state shall enter into multistate discussions. For purposes of such discussions, the state shall be represented by one member of the Senate appointed by the President Pro Tempore of the Senate, one member of the House of Representatives appointed by the Speaker of the House of Representatives, one state employee employed in the area of taxation or finance appointed by the Governor and one member or employee of the Oklahoma Tax Commission appointed by the Oklahoma Tax Commission.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1354.18 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Tax Commission is authorized and directed to enter into the Streamlined Sales and Use Tax 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 at such time as the

Legislature directs the Tax Commission to do so or at such time as the Legislature amends the Oklahoma Sales Tax Code and the Oklahoma Use Tax Code to conform with the provisions of the Agreement. In furtherance of the Agreement, the Tax Commission is authorized to 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.

The Tax Commission is further authorized to take other actions reasonably required to implement the provisions set forth in this act, including, but not limited to, the promulgation of rules and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

The Tax Commission or the Tax Commission's designee is authorized to represent this state before the other states that are signatories to the Agreement.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1354.19 of Title 68, unless there is created a duplication in numbering, reads as follows:

No provision of the Agreement authorized by this act in whole or part invalidates or amends any provision of the law of this state. Adoption of the Agreement by this state 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.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1354.20 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Tax Commission 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, and

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, and

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; and

9. Advisory Councils. The Agreement must 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.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1354.21 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Agreement authorized by this act 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.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1354.22 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The Agreement authorized by this act binds and inures only to the benefit of this state 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.

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 this state'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 this state, or any political subdivision of this state on the ground that the action or inaction is inconsistent with the Agreement.

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

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1354.23 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. 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 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 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.

B. 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.

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 is liable for the failure of the system to meet the performance standard.

SECTION 11. This act shall become effective November 1, 2001."

Passed the Senate the 17th day of April, 2001.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2001.

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Presiding Officer of the House
of Representatives