

1 HB472
2 34972-1
3 By Representatives Lindsey, Hill, Hammett, Newton (D), Thomas
4 (J), Guin, Graham, Hooper, Knight, Wren and Black (M)
5 RFD: Ways and Means Education Fund
6 First Read: 20-FEB-2001

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8 SYNOPSIS: This bill would authorize the State of
9 Alabama to adopt and enter into, with one or more
10 participating states, an interstate proposal
11 entitled the "Streamlined Sales and Use Tax
12 Agreement." The proposal is designed to provide a
13 standardized system among the states for
14 simplification and modernization of sales tax and
15 use tax administration to substantially reduce the
16 burden of tax compliance for all sellers and for
17 all types of commerce including catalog and
18 internet vendors; would authorize the Commissioner
19 of the Alabama Department of Revenue to promulgate
20 rules and regulations deemed necessary to
21 administer this act; and would provide for a
22 delayed effective date.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT

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2 To create Chapter 23A, Title 40, Code of Alabama
3 1975, authorizing the State of Alabama to adopt and enter
4 into, with one or more participating states, the Streamlined
5 Sales and Use Tax Agreement, that is designed to provide a
6 standardized system among the states for simplification and
7 modernization of sales tax and use tax administration to
8 substantially reduce the burden of tax compliance for all
9 sellers and for all types of commerce including nonresident
10 catalog and internet vendors; authorizing the Commissioner of
11 the Alabama Department of Revenue to promulgate rules and
12 regulations deemed necessary to administer this act; providing
13 for amendment of current sales and use tax statutes to remove
14 conflict with provisions of the agreement; and providing for
15 an effective date.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. A new Chapter 23A is added to Title 40 to
18 read as follows:

19 CHAPTER 23A
20 UNIFORM SALES TAX AND USE TAX
21 ADMINISTRATION

22 Section 40-23A-1.

23 (a) The Legislature of Alabama finds that this state
24 should enter into an agreement with one or more states to

1 simplify and modernize sales and use tax administration in
2 order to substantially reduce the burden of tax compliance for
3 all sellers, to reduce the costs of administration, and to
4 provide a means by which taxes may be levied and collected
5 from those sellers located outside of this state which sell to
6 residents inside this state through catalog sales, internet
7 sales and other means but do not have nexus within this state.

8 (b) This chapter shall be known as "The Uniform
9 Sales and Use Tax Administration Act."

10 Section 40-23A-2.

11 As used in this chapter the following terms shall
12 have the following meanings:

13 (1) AGREEMENT. The Streamlined Sales and Use Tax
14 Agreement.

15 (2) AGREEMENT SIGNATORIES. Those states which have
16 agreed to participate in the provisions of the unified pact
17 entitled the "Streamlined Sales and Use Tax Agreement."

18 (3) CERTIFIED AUTOMATED SYSTEM. Software certified
19 jointly by the agreement signatories to calculate the tax
20 imposed by each jurisdiction on a transaction, determine the
21 amount of tax to remit to the appropriate state, and maintain
22 a record of the transaction.

23 (4) CERTIFIED SERVICE PROVIDER. An agent certified
24 jointly by the agreement signatories to perform all of the
25 seller's sales tax and use tax functions.

26 (5) DEPARTMENT. The Alabama Department of Revenue.

1 (6) PERSON. Any individual, trust, estate,
2 fiduciary, partnership, limited liability company, limited
3 liability partnership, corporation, or any other legal entity.

4 (7) SALES TAX. The tax levied under Article 1,
5 Chapter 23 of this title.

6 (8) SELLER. Any person making sales of tangible
7 personal property.

8 (9) STATE. Any state of the United States and the
9 District of Columbia.

10 (10) USE TAX. The tax levied under Article 2,
11 Chapter 23 of this title.

12 Section 40-23A-3.

13 (a) The Department of Revenue shall enter into the
14 Streamlined Sales and Use Tax Agreement with one or more
15 states to simplify and modernize sales and use tax
16 administration in order to substantially reduce the burden of
17 tax compliance for all sellers and for all types of commerce.
18 In furtherance of the agreement, the department may act
19 jointly with other states that are members of the agreement to
20 establish standards for certification of a certified service
21 provider and certified automated system and establish
22 performance standards for multistate sellers. The department
23 also may take other actions reasonably required to implement
24 the provisions set forth in this chapter.

25 (b) The department is also authorized to perform
26 other actions including, but not limited to, the adoption of
27 rules and regulations and the joint procurement, with other

1 member states, of goods and services in furtherance of the
2 cooperative agreement.

3 (c) The department is authorized to represent this
4 state before the other states that are signatories to the
5 agreement.

6 Section 40-23A-4.

7 No provision of the agreement authorized by this
8 chapter in whole or part invalidates or amends any provision
9 of the law of this state. Adoption of the agreement by this
10 state does not amend or modify any law of this state.
11 Implementation of any condition of the agreement in this
12 state, whether adopted before, at, or after membership of this
13 state in the agreement, must be by the action of this state.

14 Section 40-23A-5.

15 The department shall not enter into the agreement
16 unless the agreement requires each state to abide by the
17 following requirements:

18 (1) Uniform State Rate. The agreement must set
19 restrictions to achieve more uniform state rates through the
20 following:

- 21 a. Limiting the number of state rates.
- 22 b. Eliminating maximums on the amount of state tax
23 that are due on a transaction.
- 24 c. Eliminating thresholds on the application of
25 state tax.

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

1 a. The sourcing of transactions to taxing
2 jurisdictions.

3 b. The administration of exempt sales.

4 c. The allowances a seller can take for bad debts.

5 d. Sales and use tax returns and remittances.

6 (3) Uniform Definitions. The agreement must require
7 states to develop and adopt uniform definitions of sales and
8 use tax terms. The definitions must enable a state to preserve
9 its ability to make policy choices not inconsistent with the
10 uniform definitions.

11 (4) Central Registration. The agreement must provide
12 a central, electronic registration system that allows a seller
13 to register to collect and remit sales and use taxes for all
14 signatory states.

15 (5) No Nexus Attribution. The agreement must provide
16 that registration with the central registration system and the
17 collection of sales and use taxes in the signatory states will
18 not be used as a factor in determining whether the seller has
19 nexus with a state for any tax.

20 (6) Local Sales and Use Taxes. The agreement must
21 provide for reduction of the burdens of complying with local
22 sales and use taxes through the following:

23 a. Restricting and eliminating variances between the
24 state and local tax bases.

25 b. Requiring states to administer any sales and use
26 taxes levied by local jurisdictions within the state so that
27 sellers collecting and remitting these taxes will not have to

1 register or file returns with, remit funds to, or be subject
2 to independent audits from local taxing jurisdictions.

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

7 d. Providing notice of changes in local sales and
8 use tax rates and of changes in the boundaries of local taxing
9 jurisdictions.

10 (7) Monetary Allowances. The agreement must outline
11 any monetary allowances that are to be provided by the states
12 to sellers or certified service providers.

13 (8) State Compliance. The agreement must require
14 each state to certify compliance with the terms of the
15 agreement prior to joining and to maintain compliance, under
16 the laws of the member state, with all provisions of the
17 agreement while a member.

18 (9) Consumer Privacy. The agreement must require
19 each state to adopt a uniform policy for certified service
20 providers that protects the privacy of consumers and maintains
21 the confidentiality of tax information.

22 Section 40-23A-6.

23 The agreement authorized by this chapter is an
24 accord among individual cooperating sovereigns in furtherance
25 of their governmental functions. The agreement provides a
26 mechanism among the member states to establish and maintain a
27 cooperative, simplified system for the application and

1 administration of sales and use taxes under the duly adopted
2 law of each member state.

3 Section 40-23A-7.

4 The agreement authorized by this chapter binds and
5 inures only to the benefit of this state and the other member
6 states. No person, other than a member state, is an intended
7 beneficiary of the agreement.

8 Section 40-23A-8.

9 Any benefit to a person is established by the law of
10 this state and the other member states and not by the terms of
11 the agreement. No law of this state, or the application
12 thereof, may be declared invalid as to any person or
13 circumstance on the ground that the provision or application
14 is inconsistent with the agreement. No person shall have any
15 cause of action or defense under the agreement or by virtue of
16 this state's approval of the agreement. No person may
17 challenge, in any action brought under any provision of law,
18 any action or inaction by any department, agency, or other
19 instrumentality of this state, or any political subdivision of
20 this state on the ground that the action or inaction is
21 inconsistent with the agreement.

22 Section 40-23A-9.

23 (a) A certified service provider is the agent of a
24 seller, with whom the certified service provider has
25 contracted, for the collection and remittance of sales and use
26 taxes. As the seller's agent, the certified service provider
27 is liable for sales and use tax due each member state on all

1 sales transactions it processes for the seller except as set
2 out in this section. A seller that contracts with a certified
3 service provider is not liable to the state for sales or use
4 tax due on transactions processed by the certified service
5 provider unless the seller misrepresented the type of items it
6 sells or committed fraud. In the absence of misrepresentation
7 or fraud, a seller that contracts with a certified service
8 provider is not subject to audit on the transactions processed
9 by the certified service provider. A seller is subject to
10 audit for transactions not processed by the certified service
11 provider. The member states acting jointly may perform a
12 system check of the seller and review the seller's procedures
13 to determine if the certified service provider's system is
14 functioning properly and the extent to which the seller's
15 transactions are being processed by the certified service
16 provider.

17 (b) A person that provides a certified automated
18 system is responsible for the proper functioning of that
19 system and is liable to the state for underpayments of tax
20 attributable to errors in the functioning of the certified
21 automated system. A seller that uses a certified automated
22 system remains responsible and is liable to the state for
23 reporting and remitting tax.

24 (c) A seller that has a proprietary system for
25 determining the amount of tax due on transactions and has
26 signed an agreement establishing a performance standard for

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

3 Section 40-23A-10.

4 The Commissioner of the Alabama Department of
5 Revenue shall promulgate rules and regulations for the
6 implementation and administration of the provisions of this
7 chapter.

8 Section 2. This act shall become operative upon the
9 passage by the United States Congress of an act authorizing a
10 uniform law relating to interstate taxing and after the
11 Department of Revenue, by regulation, makes a finding that a
12 federal law authorizing this act has been enacted.

13 Section 3. This act shall become effective
14 immediately following its passage and approval by the
15 Governor, or its otherwise becoming law.