

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: H3/7/01

A Bill

Act 1279 of 2001
HOUSE BILL 2170

5 By: *Revenue & Taxation- House*
6 By: Senator Hill
7

For An Act To Be Entitled

9 AN ACT TO ALLOW THE ARKANSAS DEPARTMENT OF
10 FINANCE AND ADMINISTRATION TO ENTER INTO AN
11 AGREEMENT WITH OTHER STATES TO SIMPLIFY AND
12 MODERNIZE SALES AND USE TAX ADMINISTRATION; AND
13 FOR OTHER PURPOSES.
14

Subtitle

15 UNIFORM SALES AND USE TAX ADMINISTRATION
16 ACT.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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SECTION 1. Title.

23 This act shall be known as and referred to as the "Uniform Sales and
24 Use Tax Administration Act".
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SECTION 2. Definitions.

27 As used in this act:

28 (a) "Agreement" means the Streamlined Sales and Use Tax Agreement;

29 (b) "Certified automated system" means software certified jointly by
30 the states that are signatories to the agreement and which is used to
31 calculate the sales and use tax imposed by each jurisdiction on a
32 transaction, determine the amount of tax to remit to the appropriate state,
33 and maintain a record of the transaction;
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35 (c) "Certified service provider" means an agent certified jointly by
36 the states that are signatories to the agreement to perform all of the

1 seller's sales and use tax functions;

2 (d) "Director" means the Director of the Department of Finance and
3 Administration;

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

7 (f) "Sales tax" means the tax levied under the Arkansas Gross Receipts
8 Act of 1941, beginning at Arkansas Code 26-52-101;

9 (g) "Seller" means any person making sales, leases or rentals of
10 personal property or services;

11 (h) "State" means any state of the United States and the District of
12 Columbia; and

13 (i) "Use tax" means the tax levied under the Arkansas Compensating Tax
14 Act of 1949, beginning at Arkansas Code 26-53-101.

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16 SECTION 3. Legislative Finding.

17 The 83rd General Assembly finds that this state should enter into an
18 agreement with one or more states to simplify and modernize sales and use tax
19 administration in order to substantially reduce the burden of tax compliance
20 for all sellers and for all types of commerce.

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22 SECTION 4. Authority to Enter Agreement.

23 (a) The director is authorized and directed to enter into the
24 Streamlined Sales and Use Tax Agreement with one or more states to simplify
25 and modernize sales and use tax administration in order to substantially
26 reduce the burden of tax compliance for all sellers and for all types of
27 commerce.

28 (b) In furtherance of the agreement, the director is authorized to act
29 jointly with other states that are members of the agreement to establish
30 standards for certification of a certified service provider and certified
31 automated system and establish performance standards for multistate sellers.

32 (c) The director is further authorized to take other actions
33 reasonably required to implement the provisions set forth in this act.

34 (d) Other actions authorized by this section include, but are not
35 limited to, the adoption of rules and regulations and the joint procurement,
36 with other member states, of goods and services in furtherance of the

1 cooperative agreement.

2 (e) The director or his designee is authorized to represent this state
3 before the other states that are signatories to the agreement.

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5 SECTION 5. Relationship to State Law.

6 (a) No provision of the agreement authorized by this act in whole or
7 part invalidates or amends any provision of the law of this state.

8 (b) Adoption of the agreement by this state does not amend or modify
9 any law of this State.

10 (c) Implementation of any condition of the agreement in this state,
11 whether adopted before, at, or after membership of this state in the
12 agreement, must be by the action of this state.

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14 SECTION 6. Agreement Requirements.

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

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

19 (1) Limiting the number of state rates.

20 (2) Limiting the application of maximums on the amount of state
21 tax that is due on a transaction.

22 (3) Limiting the application of thresholds on the application of
23 state tax.

24 (b) Uniform Standards. The agreement must establish uniform standards
25 for the following:

26 (1) The sourcing of transactions to taxing jurisdictions.

27 (2) The administration of exempt sales.

28 (3) The allowances a seller can take for bad debts.

29 (4) Sales and use tax returns and remittances.

30 (c) Uniform Definitions. The agreement must require states to develop
31 and adopt uniform definitions of sales and use tax terms. The definitions
32 must enable a state to preserve its ability to make policy choices not
33 inconsistent with the uniform definitions.

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

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

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

8 (1) Restricting variances between the state and local tax bases.

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

14 (3) Restricting the frequency of changes in the local sales and
15 use tax rates and setting effective dates for the application of local
16 jurisdictional boundary changes to local sales and use taxes.

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

19 (g) Monetary Allowances. The agreement must outline any monetary
20 allowances that are to be provided by the states to sellers or certified
21 service providers.

22 (h) State Compliance. The agreement must require each state to
23 certify compliance with the terms of the agreement prior to joining and to
24 maintain compliance, under the laws of the member state, with all provisions
25 of the agreement while a member.

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

29 (j) Advisory Councils. The agreement must provide for the appointment
30 of an advisory council of private sector representatives and an advisory
31 council of non-member state representatives to consult with in the
32 administration of the agreement.

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34 SECTION 7. Cooperating Sovereigns.

35 (a) The agreement authorized by this act is an accord among individual
36 cooperating sovereigns in furtherance of their governmental functions.

1 (b) The agreement provides a mechanism among the member states to
2 establish and maintain a cooperative, simplified system for the application
3 and administration of sales and use taxes under the duly adopted law of each
4 member state.

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6 SECTION 8. Limited Binding and Beneficial Effect.

7 (a)(1) The agreement authorized by this act binds and inures only to
8 the benefit of this state and the other member states.

9 (2) No person, other than a member state, is an intended
10 beneficiary of the agreement.

11 (3) Any benefit to a person other than a State is established by
12 the law of this state and the other member states and not by the terms of the
13 agreement.

14 (b)(1) Consistent with subsection (a), no person shall have any cause
15 of action or defense under the agreement or by virtue of this state's
16 approval of the agreement.

17 (2) No person may challenge, in any action brought under any
18 provision of law, any action or inaction by any department, agency, or other
19 instrumentality of this state, or any political subdivision of this state on
20 the ground that the action or inaction is inconsistent with the agreement.

21 (c) No law of this state, or the application thereof, may be declared
22 invalid as to any person or circumstance on the ground that the provision or
23 application is inconsistent with the agreement.

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25 SECTION 9. Seller and Third Party Liability.

26 (a)(1) A certified service provider is the agent of a seller, with
27 whom the certified service provider has contracted, for the collection and
28 remittance of sales and use taxes.

29 (2) As the seller's agent, the certified service provider is
30 liable for sales and use tax due each member state on all sales transactions
31 it processes for the seller except as set out in this section.

32 (3) A seller that contracts with a certified service provider is
33 not liable to the state for sales or use tax due on transactions processed by
34 the certified service provider unless the seller misrepresented the type of
35 items it sells or committed fraud.

36 (4) In the absence of probable cause to believe that the seller

1 has committed fraud or made a material misrepresentation, the seller is not
2 subject to audit on the transactions processed by the certified service
3 provider.

4 (5) A seller is subject to audit for transactions not processed
5 by the certified service provider.

6 (6) The member states acting jointly may perform a system check
7 of the seller and review the seller's procedures to determine if the
8 certified service provider's system is functioning properly and the extent to
9 which the seller's transactions are being processed by the certified service
10 provider.

11 (b)(1) A person that provides a certified automated system is
12 responsible for the proper functioning of that system and is liable to the
13 state for underpayments of tax attributable to errors in the functioning of
14 the certified automated system.

15 (2) A seller that uses a certified automated system remains
16 responsible and is liable to the state for reporting and remitting tax.

17 (c) A seller that has a proprietary system for determining the amount
18 of tax due on transactions and has signed an agreement establishing a
19 performance standard for that system is liable for the failure of the system
20 to meet the performance standard.

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22 SECTION 10. Emergency Clause. It is hereby found and determined by
23 the 83rd General Assembly that passage of this bill would allow Arkansas to
24 continue participating in the national Streamlined Sales Tax Project; that
25 the Streamlined Sales Tax Project is an effort created by state governments,
26 with input from local governments and the private sector, to simplify and
27 modernize sales and use tax administration; that the Streamlined Sales Tax
28 System is focused on improving sales and use tax administration systems for
29 all sellers and for all types of commerce; and that it is imperative for
30 states to develop a more modern sales and use tax system in order to level
31 the playing field between in-state and out-of-state sellers and preserve the
32 sales and use tax system. Therefore, an emergency is declared to exist and
33 this act being immediately necessary for the preservation of the public
34 peace, health and safety shall become effective on the date of its approval
35 by the Governor. If the bill is neither approved nor vetoed by the Governor,
36 it shall become effective on the expiration of the period of time during

1 which the Governor may veto the bill. If the bill is vetoed by the Governor
2 and the veto is overridden, it shall become effective on the date the last
3 house overrides the veto.

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/s/ Revenue & Taxation - House

APPROVED: 4/4/2001