

By: Senator(s) Smith

To: Finance

SENATE BILL NO. 2089

1 AN ACT TO AUTHORIZE AND DIRECT THE STATE TAX COMMISSION TO
 2 ENTER INTO THE STREAMLINED SALES AND USE TAX AGREEMENT WITH ONE OR
 3 MORE STATES TO SIMPLIFY AND MODERNIZE SALES AND USE TAX
 4 ADMINISTRATION IN ORDER TO SUBSTANTIALLY REDUCE THE BURDEN OF TAX
 5 COMPLIANCE FOR ALL SELLERS AND FOR ALL TYPES OF COMMERCE; TO
 6 AUTHORIZE THE STATE TAX COMMISSION TO ACT JOINTLY WITH OTHER
 7 STATES THAT ARE MEMBERS OF THE AGREEMENT TO ESTABLISH STANDARDS
 8 FOR CERTIFICATION OF CERTIFIED SERVICE PROVIDERS AND CERTIFIED
 9 AUTOMATED SYSTEMS AND ESTABLISH PERFORMANCE STANDARDS FOR
 10 MULTISTATE SELLERS; TO PROVIDE THAT THE AGREEMENT MUST MEET
 11 CERTAIN MINIMUM STANDARDS BEFORE IT MAY BE ENTERED INTO BY THE
 12 STATE TAX COMMISSION; AND FOR RELATED PURPOSES.

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

14 **SECTION 1.** This act shall be known as and referred to as the
 15 "Uniform Sales and Use Tax Administration Act."

16 **SECTION 2.** As used in this act:

17 (a) "Agreement" means the Streamlined Sales and Use Tax
 18 Agreement.

19 (b) "Certified Automated System" means software
 20 certified jointly by the states that are signatories to the
 21 agreement to calculate the tax imposed by each jurisdiction on a
 22 transaction, determine the amount of tax to remit to the
 23 appropriate state, and maintain a record of the transaction.

24 (c) "Certified Service Provider" means an agent
 25 certified jointly by the states that are signatories to the
 26 agreement to perform all of the seller's sales tax functions.

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

30 (e) "Sales Tax" means the tax levied under Chapter 65,
 31 Title 27, Mississippi Code of 1972.



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

34 (g) "State" means any state of the United States and
35 the District of Columbia.

36 (h) "Use Tax" means the tax levied under Chapter 67,
37 Title 27, Mississippi Code of 1972.

38 **SECTION 3.** The Legislature finds that this state should
39 enter into an agreement with one or more states to simplify and
40 modernize sales and use tax administration in order to
41 substantially reduce the burden of tax compliance for all sellers
42 and for all types of commerce.

43 **SECTION 4.** The State Tax Commission is authorized and
44 directed to enter into the Streamlined Sales and Use Tax Agreement
45 with one or more states to simplify and modernize sales and use
46 tax administration in order to substantially reduce the burden of
47 tax compliance for all sellers and for all types of commerce. In
48 furtherance of the agreement, the State Tax Commission is
49 authorized to act jointly with other states that are members of
50 the agreement to establish standards for certification of a
51 certified service provider and certified automated system and
52 establish performance standards for multistate sellers.

53 The State Tax Commission is further authorized to take other
54 actions reasonably required to implement the provisions set forth
55 in this act. Other actions authorized by this section include,
56 but are not limited to, the adoption of rules and regulations and
57 the joint procurement, with other member states, of goods and
58 services in furtherance of the cooperative agreement.

59 The State Tax Commission, or its designee, is authorized to
60 represent this state before the other states that are signatories
61 to the agreement.

62 **SECTION 5.** No provision of the agreement authorized by this
63 act, in whole or in part, invalidates or amends any provision of
64 the law of this state. Adoption of the agreement by this state



65 does not amend or modify any law of this state. Implementation of
66 any condition of the agreement in this state, whether adopted
67 before, at or after membership of this state in the agreement must
68 be by the action of this state.

69 **SECTION 6.** The State Tax Commission shall not enter into the
70 Streamlined Sales and Use Tax Agreement unless the agreement
71 requires each state to abide by the following requirements:

72 (a) The agreement must set restrictions to achieve over
73 time more uniform state rates through the following:

74 (i) Limiting the number of state rates;

75 (ii) Limiting the application of maximums on the
76 amount of state tax that is due on a transaction; and

77 (iii) Limiting the application of thresholds on
78 the application of state tax.

79 (b) The agreement must establish uniform standards for
80 the following:

81 (i) The sourcing of transactions to taxing
82 jurisdictions;

83 (ii) The administration of exempt sales;

84 (iii) The allowances a seller can take for bad
85 debts; and

86 (iv) Sales and use tax returns and remittances.

87 (c) The agreement must require states to develop and
88 adopt uniform definitions of sales and use tax terms. The
89 definitions must enable a state to preserve its ability to make
90 policy choices not inconsistent with the uniform definitions.

91 (d) The agreement must provide a central, electronic
92 registration system that allows a seller to register to collect
93 and remit sales and use taxes for all signatory states.

94 (e) The agreement must provide that registration with
95 the central registration system and the collection of sales and
96 use taxes in the signatory states will not be used as a factor in
97 determining whether the seller has nexus with a state for any tax.



98 (f) The agreement must provide for reduction of the
99 burdens of complying with local sales and use taxes through the
100 following:

101 (i) Restricting variances between the state and
102 local tax bases;

103 (ii) Requiring states to administer any sales and
104 use taxes levied by local jurisdictions within the state so that
105 sellers collecting and remitting these taxes will not have to
106 register or file returns with, remit funds to, or be subject to
107 independent audits from local taxing jurisdictions;

108 (iii) Restricting the frequency of changes in the
109 local sales and use tax rates and setting effective dates for the
110 application of local jurisdictional boundary changes to local
111 sales and use taxes; and

112 (iv) Providing notice of changes in local sales
113 and use tax rates and of changes in the boundaries of local taxing
114 jurisdictions.

115 (g) The agreement must outline any monetary allowances
116 that are to be provided by the states to sellers or certified
117 service providers.

118 (h) The agreement must require each state to certify
119 compliance with the terms of the agreement prior to joining and to
120 maintain compliance, under the laws of the member state, with all
121 provisions of the agreement while a member.

122 (i) The agreement must require each state to adopt a
123 uniform policy for certified service providers that protects the
124 privacy of consumers and maintains the confidentiality of tax
125 information.

126 (j) The agreement must provide for the appointment of
127 an advisory council of private sector representatives and an
128 advisory council of nonmember state representatives to consult
129 with in the administration of the agreement.



130 **SECTION 7.** The agreement authorized by this act is an accord
131 among individual cooperating sovereigns in furtherance of their
132 governmental functions. The agreement provides a mechanism among
133 the member states to establish and maintain a cooperative,
134 simplified system for the application and administration of sales
135 and use taxes under the duly adopted law of each member state.

136 **SECTION 8.** (1) The agreement authorized by this act binds
137 and inures only to the benefit of this state and the other member
138 states. No person, other than a member state, is an intended
139 beneficiary of the agreement. Any benefit to a person other than
140 a state is established by the law of this state and the other
141 member states and not by the terms of the agreement.

142 (2) Consistent with subsection (1) of this section, no
143 person shall have any cause of action or defense under the
144 agreement or by virtue of this state's approval of the agreement.
145 No person may challenge, in any action brought under any provision
146 of law, any action or inaction by any department, agency or other
147 instrumentality of this state, or any political subdivision of
148 this state on the ground that the action or inaction is
149 inconsistent with the agreement.

150 (3) No law of this state, or the application thereof, may be
151 declared invalid as to any person or circumstance on the ground
152 that the provision or application is inconsistent with the
153 agreement.

154 **SECTION 9.** (1) A certified service provider is the agent of
155 a seller, with whom the certified service provider has contracted,
156 for the collection and remittance of sales and use taxes. As the
157 seller's agent, the certified service provider is liable for sales
158 and use taxes due each member state on all sales transactions it
159 processes for the seller except as set out in this section. A
160 seller that contracts with a certified service provider is not
161 liable to the state for sales or use taxes due on transactions
162 processed by the certified service provider unless the seller



163 misrepresented the type of items it sells or committed fraud. In
164 the absence of probable cause to believe that the seller has
165 committed fraud or made a material misrepresentation, the seller
166 is not subject to audit on the transactions processed by the
167 certified service provider. A seller is subject to audit for
168 transactions not processed by the certified service provider. The
169 member states acting jointly may perform a system check of the
170 seller and review the seller's procedures to determine if the
171 certified service provider's system is functioning properly and
172 the extent to which the seller's transactions are being processed
173 by the certified service provider.

174 (2) A person that provides a certified automated system is
175 responsible for the proper functioning of that system and is
176 liable to the state for underpayments of tax attributable to
177 errors in the functioning of the certified automated system. A
178 seller that uses a certified automated system remains responsible
179 and is liable to the state for reporting and remitting tax.

180 (3) A seller that has a proprietary system for determining
181 the amount of tax due on transactions and has signed an agreement
182 establishing a performance standard for that system is liable for
183 the failure of the system to meet the performance standard.

184 **SECTION 10.** This act shall take effect and be in force from
185 and after its passage.

