

TAX CODE CHAPTER 142. SIMPLIFIED SALES AND USE TAX ADMINISTRATION ACT

TAX CODE

TITLE 2. STATE TAXATION

SUBTITLE D. COMPACTS AND UNIFORM LAWS

CHAPTER 142. SIMPLIFIED SALES AND USE TAX ADMINISTRATION ACT

Sec. 142.001. TITLE. This chapter may be cited as the Simplified Sales and Use Tax Administration Act.

Added by Acts 2001, 77th Leg., ch. 1053, Sec. 1, eff. June 15, 2001.

Sec. 142.002. DEFINITIONS. In this chapter:

(1) "Agreement" means the Streamlined Sales and Use Tax Agreement as amended and adopted on November 12, 2002.

(2) "Certified automated system" means software certified under 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 under the agreement to perform all of the seller's sales tax functions, other than the seller's obligation to remit tax on the seller's own purchases.

(3-a) "Model 1 seller" means a seller that has selected a certified service provider as the seller's agent to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on the seller's own purchases.

(3-b) "Model 2 seller" means a seller that has selected a certified automated system to perform part of the seller's sales and use tax functions, but retains responsibility for remitting the tax.

(3-c) "Model 3 seller" means a seller that has sales in at least five member states, has total annual sales revenue of at least \$500 million, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. The term includes an affiliated group of sellers using the same proprietary system.

(4) "Sales tax" means a sales tax administered or computed under Chapter 151.

(5) "Seller" means a person who sells, leases, or rents personal property or services.

(6) "Use tax" means a use tax administered or computed under Chapter 151.

Added by Acts 2001, 77th Leg., ch. 1053, Sec. 1, eff. June 15, 2001.

Amended by Acts 2003, 78th Leg., ch. 1310, Sec. 93, eff. Oct. 1, 2003.

Sec. 142.003. LEGISLATIVE FINDING. The legislature finds that a simplified sales and use tax system will reduce and over time eliminate the burden and costs of all vendors to collect this state's sales and use tax. The legislature also 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 to reduce the burden of tax compliance for all sellers and for all types of commerce.

Added by Acts 2001, 77th Leg., ch. 1053, Sec. 1, eff. June 15, 2001.

Sec. 142.004. NEGOTIATIONS. This state shall enter into multistate discussions for the purposes of reviewing or amending the agreement embodying the simplification requirements prescribed by Section 142.007. This state may be represented by not more than four delegates for purposes of those discussions.

Added by Acts 2001, 77th Leg., ch. 1053, Sec. 1, eff. June 15, 2001.

Sec. 142.005. AUTHORITY TO ENTER INTO AGREEMENT. (a) The comptroller is authorized and directed to participate in the development of 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. In the development of the agreement, the comptroller may 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.

(b) The comptroller or the comptroller's designee may represent this state before the other states that are signatories to the agreement.

(c) The comptroller may enter into the agreement on behalf of this state if the governor, lieutenant governor, speaker of the house of representatives, and comptroller unanimously agree that it would be in this state's best interest to be a signatory to the agreement.

Added by Acts 2001, 77th Leg., ch. 1053, Sec. 1, eff. June 15, 2001.  
Amended by Acts 2003, 78th Leg., ch. 1310, Sec. 94, eff. Oct. 1, 2003.

Sec. 142.0055. RULES. The comptroller may adopt rules relating to the administration and collection of the sales and use tax as necessary to comply with the agreement, including rules establishing the requirements for a seller to be a Model 1 seller, Model 2 seller, or Model 3 seller.

Added by Acts 2003, 78th Leg., ch. 1310, Sec. 95, eff. Oct. 1, 2003.

Sec. 142.006. RELATIONSHIP TO STATE LAW. The agreement authorized by this chapter does not, in whole or part, invalidate or amend a law of this state. Adoption of the agreement by this state does not amend or modify a law of this state. Implementation of a 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.

Added by Acts 2001, 77th Leg., ch. 1053, Sec. 1, eff. June 15, 2001.

Sec. 142.007. AGREEMENT REQUIREMENTS. (a) The comptroller may not enter into the agreement authorized by this chapter unless the agreement requires each state to comply with the requirements prescribed by this section.

(b) The agreement must set restrictions to limit over time the number of state rates.

(c) The agreement must establish uniform standards for:

(1) the sourcing of transactions to taxing

jurisdictions;

(2) the administration of exempt sales; and

(3) sales and use tax returns and remittances.

(d) 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.

(e) 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.

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

(1) restricting variances between the state and local tax bases;

(2) 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;

(3) 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

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

(g) 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.

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

(i) 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.

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

Added by Acts 2001, 77th Leg., ch. 1053, Sec. 1, eff. June 15, 2001.

Sec. 142.008. COOPERATING SOVEREIGNS. The agreement authorized by this chapter 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.

Added by Acts 2001, 77th Leg., ch. 1053, Sec. 1, eff. June 15, 2001.

Sec. 142.009. LIMITED BINDING AND BENEFICIAL EFFECT.

(a) The agreement authorized by this chapter binds and inures only to the benefit of this state and the other member states. A person, other than a member state, is not an intended beneficiary of the agreement. A 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), a person does not have a cause of action or defense under the agreement or by virtue of this state's approval of the agreement. A person may not challenge, in any action brought under any law, an 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) A law of this state, or the application of the law, may not be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

Added by Acts 2001, 77th Leg., ch. 1053, Sec. 1, eff. June 15, 2001.

Sec. 142.010. SELLER AND THIRD PARTY LIABILITY. (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 the provider processes for the seller except as provided by this section.

(b) A seller that contracts with a certified service provider is not liable to this 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.

(c) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to this 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 this state for reporting and remitting tax.

(d) 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.

Added by Acts 2001, 77th Leg., ch. 1053, Sec. 1, eff. June 15, 2001.

Sec. 142.011. SETTLEMENT OF TAX, PENALTY, AND INTEREST. On or after the later of the date on which the agreement takes effect as provided by the terms of the agreement or this state becomes a

signatory to the agreement, the comptroller may settle a claim for tax, penalty, or interest on tax imposed by Chapter 151 if necessary for the comptroller to comply with the terms of the agreement.

Added by Acts 2003, 78th Leg., ch. 1310, Sec. 96, eff. Oct. 1, 2003.