

2001 ASSEMBLY BILL 317

April 12, 2001 – Introduced by JOINT COMMITTEE ON INFORMATION POLICY AND TECHNOLOGY. Referred to Joint committee on Information Policy and Technology.

- 1 **AN ACT to create** 77.524 and 77.65 of the statutes; **relating to:** the Uniform
2 Sales and Use Tax Administration Act and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill creates the Uniform Sales and Use Tax Administration Act (uniform act). The uniform act permits the department of revenue (DOR) to enter into the streamlined sales and use tax agreement (agreement). The agreement is intended to simplify and modernize sales tax and use tax administration for the states that enter into the agreement. If DOR enters into the agreement, DOR may act jointly with other states that are signatories to the agreement to establish standards for the certification of service providers and automated systems to aid out-of-state sellers with the collection of state sales and use taxes. DOR may not enter into the agreement unless the agreement requires that a state that is a signatory to the agreement fulfill certain requirements, including: 1) developing and adopting uniform definitions related to sales tax and use tax; 2) providing, with all states that are signatories to the agreement, a central electronic registration system that allows a seller to register to collect and remit sales and use taxes for all states that are signatories to the agreement; 3) restricting the frequency of changes in any local sales tax and use tax rates and providing notice of any such changes; and 4) adopting a uniform policy, with the states that are signatories to the agreement, for certified service providers that protects a consumer's privacy and maintains tax information confidentiality.

The bill creates definitions for "certified automated system" and "certified service provider." "Certified automated system" means software that is certified

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jointly by the states that are signatories to the agreement and that is used to calculate the sales tax and use tax imposed on a transaction by each appropriate jurisdiction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction. “Certified service provider” means an agent that is certified jointly by the states that are signatories to the agreement and that performs all of a seller’s sales tax and use tax functions. A certified service provider is, generally, liable for the sales tax and use tax that are due the state on all sales transactions that the provider processes for a seller. However, a seller is liable for sales tax and use tax due the state on transactions that the provider processed, if the seller has misrepresented to the provider, or to the state, the type of items that the seller sells, or has committed fraud related to transactions that the provider processed. A person that provides a certified automated system is responsible for the system’s proper functioning and is liable to this state for tax underpayments that are attributable to errors in the system’s functioning. A seller that uses a certified automated system is responsible and liable to this state for reporting and remitting sales tax and use tax.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 77.524 of the statutes is created to read:

2 **77.524 Seller and 3rd-party liability. (1)** In this subsection:

3 (a) “Certified automated system” means software that is certified jointly by the
4 states that are signatories to the agreement, as defined in s. 77.65 (2) (a), and that
5 is used to calculate the sales tax and use tax imposed under this subchapter and
6 subch. V on a transaction by each appropriate jurisdiction, to determine the amount
7 of tax to remit to the appropriate state, and to maintain a record of the transaction.

8 (b) “Certified service provider” means an agent that is certified jointly by the
9 states that are signatories to the agreement, as defined in s. 77.65 (2) (a), and that
10 performs all of a seller’s sales tax and use tax functions related to the seller’s retail
11 sales.

12 (c) “Seller” has the meaning given in s. 77.65 (2) (e).

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1 **(2)** A certified service provider is the agent of the seller with whom the certified
2 service provider has contracted and is liable for the sales and use taxes that are due
3 the state on all sales transactions that the provider processes for a seller, except as
4 provided in sub. (3).

5 **(3)** A seller that contracts with a certified service provider is not liable for sales
6 and use taxes that are due the state on transactions that the provider processed,
7 unless the seller has misrepresented the type of items that the seller sells or has
8 committed fraud. The seller is subject to an audit on transactions that the certified
9 service provider processed only if there is probable cause to believe that the seller has
10 committed fraud or made a material misrepresentation. The seller is subject to an
11 audit on transactions that the certified service provider does not process. The states
12 that are signatories to the agreement, as defined in s. 77.65 (2) (a), may jointly check
13 the seller's business system and review the seller's business procedures to determine
14 if the certified service provider's system is functioning properly and to determine the
15 extent to which the seller's transactions are being processed by the certified service
16 provider.

17 **(4)** A person that provides a certified automated system is responsible for the
18 system's proper functioning and is liable to this state for tax underpayments that are
19 attributable to errors in the system's functioning. A seller that uses a certified
20 automated system is responsible and liable to this state for reporting and remitting
21 sales and use tax.

22 **(5)** A seller that has a proprietary system for determining the amount of tax
23 that is due on transactions and that has signed an agreement with the states that
24 are signatories to the agreement as defined in 77.65 (2) (a), establishing a

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1 performance standard for the system is liable for the system's failure to meet the
2 performance standard.

3 **SECTION 2.** 77.65 of the statutes is created to read:

4 **77.65 Uniform sales and use tax administration. (1) SHORT TITLE.** This
5 section shall be known as the "Uniform Sales and Use Tax Administration Act."

6 **(2) DEFINITIONS.** In this section:

7 (a) "Agreement" means the streamlined sales and use tax agreement.

8 (b) "Department" means the department of revenue.

9 (c) "Person" means an individual, trust, estate, fiduciary, partnership, limited
10 liability company, limited liability partnership, corporation, or any other legal entity.

11 (d) "Sales tax" means the tax imposed under ss. 77.52, 77.57, and 77.71 (1).

12 (e) "Seller" means any person who sells, leases, or rents personal property or
13 services.

14 (f) "State" means any state of the United States and the District of Columbia.

15 (g) "Use tax" means the tax imposed under ss. 77.53 and 77.71 (2), (3), and (4).

16 **(3) DEPARTMENT AUTHORITY.** The department may enter into the agreement to
17 simplify and modernize sales tax and use tax administration in order to
18 substantially reduce the tax compliance burden for all sellers and for all types of
19 commerce. The department may act jointly with other states that are signatories to
20 the agreement to establish standards for the certification of a certified service
21 provider and certified automated system and to establish performance standards for
22 multistate sellers. The department may promulgate rules to administer this section,
23 may procure jointly with other states that are signatories to the agreement goods and
24 services in furtherance of the agreement, and may take other actions reasonably
25 required to implement this section. The secretary of revenue or the secretary's

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1 designee may represent this state before the states that are signatories to the
2 agreement.

3 **(4) AGREEMENT REQUIREMENTS.** The department may not enter into the
4 agreement unless the agreement requires that a state that is a signatory to the
5 agreement do all of the following:

6 (a) Limit the number of state sales and use tax rates.

7 (b) Limit the application of any maximums on the amount of state sales and
8 use tax that is due on a transaction.

9 (c) Limit thresholds on the application of sales and use tax.

10 (d) Establish uniform standards for the sourcing of transactions to the
11 appropriate taxing jurisdictions, for administering exempt sales, and for sales and
12 use tax returns and remittances.

13 (e) Develop and adopt uniform definitions related to sales and use tax.

14 (f) Provide, with all states that are signatories to the agreement, a central
15 electronic registration system that allows a seller to register to collect and remit sales
16 and use taxes for all states that are signatories to the agreement.

17 (g) Provide that the state shall not use a seller's registration with the central
18 electronic registration system under par. (f), and the subsequent collection and
19 remittance of sales and use taxes in the states that are signatories to the agreement,
20 to determine whether the seller has sufficient connection with the state for the
21 purpose of imposing any tax.

22 (h) Restrict variances between the state tax bases and local tax bases.

23 (i) Administer all sales and use taxes imposed by local jurisdictions within the
24 state so that sellers who collect and remit such taxes are not required to register with,

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1 or submit returns or taxes to, local jurisdictions and are not subject to audits by local
2 jurisdictions.

3 (j) Restrict the frequency of changes in any local sales and use tax rates and
4 provide notice of any such changes.

5 (k) Establish effective dates for the application of local jurisdictional boundary
6 changes to local sales and use tax rates and provide notice of any such changes.

7 (L) Provide monetary allowances to sellers and certified service providers as
8 outlined in the agreement.

9 (m) Certify compliance with the agreement before entering into the agreement
10 and maintain compliance with the agreement.

11 (n) Adopt a uniform policy, with the states that are signatories to the
12 agreement, for certified service providers that protects a consumer's privacy and
13 maintains tax information confidentiality.

14 (o) Appoint, with the states that are signatories to the agreement, an advisory
15 council to consult with in administering the agreement. The advisory council shall
16 consist of private sector representatives and representatives from states that are not
17 signatories to the agreement.

18 **(5) COOPERATING STATES.** The agreement entered into under this section is an
19 accord among cooperating states to further their governmental functions and
20 provides a mechanism among the cooperating states to establish and maintain a
21 cooperative, simplified system for the application and administration of sales and
22 use taxes that are imposed by each state that is a signatory to the agreement.

23 **(6) LIMITED BINDING AND BENEFICIAL EFFECT.** (a) The agreement entered into
24 under this section binds, and inures to the benefit of, only the states that are

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1 signatories to the agreement. Any benefit that a person may receive from the
2 agreement is established by this state's law and not by the terms of the agreement.

3 (b) No person shall have any cause of action or defense under the agreement
4 or because of the department entering into the agreement. No person may challenge
5 any action or inaction by any department, agency, other instrumentality of this state,
6 or any political subdivision of this state on the ground that the action or inaction is
7 inconsistent with the agreement.

8 (c) No law of this state, or the application of such law, may be declared invalid
9 on the ground that the law, or the application of such law, is inconsistent with the
10 agreement.

11 **(7) RELATIONSHIP TO STATE LAW.** No provision of the agreement in whole or in part
12 invalidates or amends any law of this state and the state becoming a signatory to the
13 agreement shall not amend or modify any law of this state.

14 (END)