

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

SECOND REGULAR SESSION-2002

Legislative Document

No. 1872

S.P. 668

In Senate, December 14, 2001

**An Act to Enable the State to Enter into an Agreement with Other States
to Simplify and Modernize Sales and Use Tax Administration.**

(EMERGENCY)

Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 204.

Received by the Secretary of the Senate on December 14, 2001. Referred to the Committee on Taxation and ordered printed pursuant to Joint Rule 308.2

A handwritten signature in black ink that reads "Pamela L. Cahill".

PAMELA L. CAHILL
Secretary of the Senate

Presented by Senator GAGNON of Kennebec.
Cosponsored by Representative: GREEN of Monmouth.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Streamlined Sales Tax Project is an effort on the part of state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax administration; and

Whereas, the Streamlined Sales Tax Project is focused on improving sales and use tax administration systems for all sellers and for all types of commerce; and

Whereas, it is imperative for states to develop a more modern sales and use tax system in order to level the playing field between in-state and out-of-state sellers and prevent a continued erosion of state sales and use tax revenue bases; and

Whereas, legislative action is immediately necessary in order to ensure the State's full participation in, and the ultimate success of, the Streamlined Sales Tax Project; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 36 MRSA c. 921 is enacted to read:

CHAPTER 921

UNIFORM SALES AND USE TAX ADMINISTRATION ACT

§7121. Short title

This chapter may be known and cited as the "Uniform Sales and Use Tax Administration Act."

§7122. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Agreement. "Agreement" means the Streamlined Sales and Use Tax Agreement.

2 2. Certified automated system. "Certified automated
3 system" means software certified jointly by the states that are
4 signatories to the agreement to calculate the tax imposed by each
5 jurisdiction on a transaction, determine the amount of tax to
6 remit to the appropriate state and maintain a record of the
7 transaction.

8 3. Certified service provider. "Certified service
9 provider" means an agent certified jointly by the states that are
10 signatories to the agreement to perform all of the seller's sales
11 tax functions.

12 4. Sales tax. "Sales tax" means the tax imposed by
13 section 1811.

14 5. Seller. "Seller" means any person making sales, leases
15 or rentals of personal property or services.

16 6. State. "State" means any state of the United States or
17 the District of Columbia.

18 7. Use tax. "Use tax" means the tax imposed by section
19 1861.

20 **§7123. Purpose and intent**

21 The Legislature finds that this State should enter with one
22 or more states into the agreement in order to simplify and
23 modernize sales and use tax administration and to substantially
24 reduce the burden of tax compliance for all sellers and for all
25 types of commerce.

26 **§7124. Authority to enter agreement**

27 The State Tax Assessor shall enter into the agreement on
28 behalf of this State, subject to the provisions of section 7126.
29 The assessor is authorized to act jointly with other states that
30 are members of the agreement to establish standards for
31 certification of a certified service provider and certified
32 automated system and to establish performance standards for
33 multistate sellers. The assessor may take other actions
34 reasonably required to implement the provisions of this chapter.
35 Other actions authorized by this section include, but are not
36 limited to, the adoption of rules and the joint procurement, with
37 other member states, of goods and services in furtherance of the
38 agreement. Rules adopted pursuant to this section are routine
39 technical rules as defined in Title 5, chapter 375, subchapter
40 II-A. The assessor or the assessor's designee may represent this
41 State before the other states that are signatories to the
42 agreement.

2 **§7125. Relationship to state law**

4 No provision of the agreement in whole or in part
6 invalidates or amends any other provision of this Title or of any
8 other law of this State. Adoption of the agreement by the State
10 Tax Assessor does not amend or modify any law of this State.
12 Implementation of any condition of the agreement in this State,
14 whether implemented before, upon or after membership of this
16 State in the agreement must be by the action of the Legislature.

18 **§7126. Agreement requirements**

20 The State Tax Assessor may not enter into the agreement
22 unless the agreement requires each state to abide by the
24 following requirements.

26 **1. Uniform state rate.** The agreement must set restrictions
28 to achieve over time more uniform state rates through:

30 A. Limiting the number of state rates;

32 B. Limiting the application of maximums on the amount of
34 state tax that is due on a transaction; and

36 C. Limiting the application of thresholds on the application
38 of state tax.

40 **2. Uniform standards.** The agreement must establish uniform
42 standards for:

44 A. The sourcing of transactions to taxing jurisdictions;

46 B. The administration of exempt sales;

48 C. The allowances a seller can take for bad debts; and

D. Sales and use tax returns and remittances.

3. Uniform definitions. The agreement must require states
to develop and adopt uniform definitions of sales and use tax
terms. The definitions must enable each state to preserve its
ability to make policy choices not inconsistent with the uniform
definitions.

4. Central registration. The agreement must provide for a
central, electronic registration system that allows a seller to
register to collect and remit sales and use taxes for all
signatory states to the agreement.

2 5. No nexus attribution. The agreement must provide that
3 registration with the central registration system described in
4 subsection 4 and the collection of sales and use taxes in the
5 signatory states to the agreement are not factors in determining
6 whether a seller has a nexus with a state for any tax.

7 6. Local sales and use taxes. The agreement must provide
8 for reduction of the burdens of complying with local sales and
9 use taxes through:

10 A. Restricting variances between the state and local tax
11 bases;

12 B. Requiring a state to administer any sales and use taxes
13 levied by local jurisdictions within the state so that
14 sellers collecting and remitting these taxes do not have to
15 register or file returns with, remit funds to or be subject
16 to independent audits from local taxing jurisdictions;

17 C. Restricting the frequency of changes in the local sales
18 and use tax rates and setting effective dates for the
19 application of local jurisdictional boundary changes to
20 local sales and use taxes; and

21 D. Providing notice of changes in local sales and use tax
22 rates and of changes in the boundaries of local taxing
23 jurisdictions.

24 7. Monetary allowances. The agreement must outline any
25 monetary allowances that are to be provided by the states to
26 sellers or certified service providers.

27 8. State compliance. The agreement must require each state
28 to certify compliance with the terms of the agreement prior to
29 joining and to maintain compliance under its laws with all
30 provisions of the agreement while a member.

31 9. Taxpayer privacy. The agreement must require each state
32 to adopt a uniform policy for certified service providers that
33 protects the privacy of taxpayers and maintains the
34 confidentiality of tax information.

35 10. Advisory councils. The agreement must provide for the
36 appointment of an advisory council of private sector
37 representatives and an advisory council of nonmember state
38 representatives to consult with the signatory states to the
39 agreement in the administration of the agreement.

40 §7127. Cooperating sovereigns

2 The agreement is an accord among individual cooperating
3 sovereigns in furtherance of their governmental functions. The
4 agreement provides a mechanism among the member states to
5 establish and maintain a cooperative, simplified system for the
6 application and administration of sales and use taxes under the
7 duly adopted law of each member state.

8 **§7128. Limited binding and beneficial effect**

10 1. Generally. The agreement binds and inures only to the
11 benefit of this State and the other member states. A person,
12 other than a member state, may not be an intended beneficiary of
13 the agreement. Any benefit to a person other than a state is
14 established by the laws of this State and the other member states
15 and not by the terms of the agreement.

16 2. No cause of action. A person does not have any cause of
17 action or defense under the agreement or by virtue of this
18 State's approval of the agreement. A person may not challenge,
19 in any action brought under any provision of law, any action or
20 inaction by any department, agency or other instrumentality of
21 this State, or any political subdivision of this State, on the
22 ground that the action or inaction is inconsistent with the
23 agreement.

24 3. Other laws of State. A law of this State, or the
25 application of a law of this State, may not be declared invalid
26 as to any person or circumstance on the ground that the provision
27 or application is inconsistent with the agreement.

28 **§7129. Seller and 3rd-party liability**

29 1. Certified service provider agent of seller. A certified
30 service provider is the agent of the seller with whom the
31 certified service provider has contracted for the collection and
32 remittance of sales and use taxes. As the seller's agent, the
33 certified service provider is liable for sales and use taxes due
34 each signatory state to the agreement on all sales transactions
35 the certified service provider processes for the seller, except
36 as set forth in this section. A seller that contracts with a
37 certified service provider is not liable to the state for sales
38 or use taxes due on transactions processed by the certified
39 service provider unless the seller misrepresents the type of
40 items the seller sells or commits fraud. In the absence of
41 probable cause to believe that the seller has committed fraud or
42 made a material misrepresentation, the seller is not subject to
43 audit on the transactions processed for the seller by a certified
44 service provider. A seller is subject to audit for transactions
45 not processed by a certified service provider. The signatory
46 states to the agreement acting jointly may perform a system check
47 on the transactions processed for the seller by a certified
48 service provider.

2 of the seller and review the seller's procedures to determine if
3 the certified service provider's system is functioning properly
4 and the extent to which the seller's transactions are being
5 processed by a certified service provider.

6 **2. Responsibility for errors.** A person that provides a
7 certified automated system is responsible for the proper
8 functioning of that system and is liable to the State for
9 underpayments of tax attributable to errors in the functioning of
10 the certified automated system. A seller that uses a certified
11 automated system remains responsible and is liable to the State
12 for reporting and remitting tax.

13 **3. Proprietary system of seller.** A seller that has a
14 proprietary system for determining the amount of tax due on
15 transactions and has signed an agreement with this State
16 establishing a performance standard for that system is liable for
17 the failure of the system to meet the performance standard.

18 **Emergency clause.** In view of the emergency cited in the
19 preamble, this Act takes effect when approved.

24 SUMMARY

25 This bill enables the State to enter into an agreement with
26 other states governing the uniform administration of sales and
27 use tax laws.
28