

SB 245

FILED

2002 MAR -7 P 5: 52

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2002

ENROLLED

SENATE BILL NO. 245

(By Senator Helmick, et al)

PASSED February 22, 2002

In Effect from **Passage**

FILED

2002 MAR -7 P 5:52

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 245

(BY SENATORS HELMICK, ANDERSON, LOVE, MINEAR, ROSS,
SHARPE, FANNING, MINARD, ROWE, MITCHELL AND HUNTER)

[Passed February 22, 2002; in effect from passage.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fifteen-b, relating to authorizing state participation in review and amendment of a multistate streamlined sales and use tax agreement; providing definitions; authorizing tax commissioner to enter into the agreement when the agreement requires each cooperating state to abide by certain requirements; authorizing tax commissioner to establish certain standards and take other actions; limitations on the effect of the agreement; and limitations on liability of sellers, certified service providers and certified automated system providers.

Be it enacted by the Legislature of West Virginia:

That chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by

adding thereto a new article, designated article fifteen-b, to read as follows:

ARTICLE 15B. SIMPLIFIED SALES AND USE TAX ADMINISTRATION ACT.

§11-15B-1. Title.

1 The provisions of this article shall be known as and
2 referred to as the "Simplified Sales and Use Tax Adminis-
3 tration Act".

§11-15B-2. Definitions.

1 As used in this article:

2 (1) "Agreement" means the streamlined sales and use tax
3 agreement.

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

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

13 (4) "Person" means an individual, trust, estate, fiduciary,
14 partnership, limited liability company, limited liability
15 partnership, corporation or any other legal entity.

16 (5) "Sales tax" means the tax levied under article fifteen
17 of this chapter.

18 (6) "Seller" means any person making sales, leases or
19 rentals of personal property or services.

20 (7) "State" means any state of the United States and the
21 District of Columbia.

22 (8) "Use tax" means the tax levied under article fifteen-a
23 of this chapter.

§11-15B-3. Legislative finding.

1 The Legislature finds that a simplified sales and use tax
2 system will reduce and over time eliminate the burden and
3 cost for all vendors to collect this state's sales and use tax.
4 The Legislature further finds that this state should partici-
5 pate in multistate discussions to review and/or amend the
6 terms of the agreement to simplify and modernize sales
7 and use tax administration in order to substantially reduce
8 the burden of tax compliance for all sellers and for all
9 types of commerce.

§11-15B-4. Authority to participate in multistate negotiations.

1 For the purposes of reviewing and/or amending the
2 agreement embodying the simplification requirements as
3 contained in section seven of this article, the state shall
4 enter into multistate discussions. For purposes of such
5 discussions, the state shall be represented by no more than
6 four delegates, two of whom shall be appointed by the
7 president of the Senate and the speaker of the House of
8 Delegates. The other two delegates shall be the secretary
9 of tax and revenue and the tax commissioner, or their
10 respective designees.

§11-15B-5. Authority to enter agreement.

1 Subject to approval of the Legislature, by concurrent
2 resolution or general law, the tax commissioner is autho-
3 rized and directed to enter into the streamlined sales and
4 use tax agreement with one or more states to simplify and
5 modernize sales and use tax administration in order to
6 substantially reduce the burden of tax compliance for all
7 sellers and for all types of commerce. In furtherance of the
8 agreement, the tax commissioner is authorized to act
9 jointly with other states that are members of the agree-
10 ment to establish standards for certification of a certified
11 service provider and certified automated system and
12 establish performance standards for multistate sellers.
13 The tax commissioner is further authorized to take other

14 actions reasonably required to implement the provisions
15 set forth in this article. Other actions authorized by this
16 section include, but are not limited to, the adoption of
17 rules and the joint procurement, with other member states,
18 of goods and services in furtherance of the cooperative
19 agreement. The tax commissioner or the commissioner's
20 designee is authorized to represent this state before the
21 other states that are signatories to the agreement.

§11-15B-6. Relationship to state law.

1 No provision of the agreement authorized by this article,
2 in whole or part, invalidates or amends any provision of
3 the law of this state. Adoption of the agreement by this
4 state does not amend or modify any law of this state.
5 Implementation of any condition of the agreement in this
6 state, whether adopted before, at or after membership of
7 this state in the agreement, must be by the action of this
8 state.

§11-15B-7. Agreement requirements.

1 The tax commissioner may not enter into the streamlined
2 sales and use tax agreement unless the agreement requires
3 each state to abide by the following requirements:

4 (1) *Simplified state rate.* – The agreement must set
5 restrictions to limit over time the number of state rates.

6 (2) *Uniform standards.* – The agreement must establish
7 uniform standards for the following:

- 8 (A) The sourcing of transactions to taxing jurisdictions;
- 9 (B) The administration of exempt sales; and
- 10 (C) Sales and use tax returns and remittances.

11 (3) *Central registration.* – The agreement must provide
12 a central electronic registration system that allows a seller
13 to register to collect and remit sales and use taxes for all
14 signatory states.

15 (4) *No nexus attribution.* – The agreement must provide
16 that registration with the central registration system and
17 the collection of sales and use taxes in the signatory states
18 will not be used as a factor in determining whether the
19 seller has nexus with a state for any tax.

20 (5) *Local sales and use taxes.* – The agreement must
21 provide for reduction of the burdens of complying with
22 local sales and use taxes through the following:

23 (A) Restricting variances between the state and local tax
24 bases;

25 (B) Requiring states to administer any sales and use
26 taxes levied by local jurisdictions within the state so that
27 sellers collecting and remitting these taxes will not have to
28 register or file returns with, remit funds to or be subject to
29 independent audits from local taxing jurisdictions;

30 (C) Restricting the frequency of changes in the local sales
31 and use tax rates and setting effective dates for the
32 application of local jurisdictional boundary changes to
33 local sales and use taxes; and

34 (D) Providing notice of changes in local sales and use tax
35 rates and of changes in the boundaries of local taxing
36 jurisdictions.

37 (6) *Monetary allowances.* – The agreement must outline
38 any monetary allowances that are to be provided by the
39 states to sellers or certified service providers.

40 (7) *State compliance.* – The agreement must require each
41 state to certify compliance with the terms of the agreement
42 prior to joining and to maintain compliance, under the
43 laws of the member state, with all provisions of the
44 agreement while a member.

45 (8) *Consumer privacy.* – The agreement must require
46 each state to adopt a uniform policy for certified service
47 providers that protects the privacy of consumers and
48 maintains the confidentiality of tax information.

49 (9) *Advisory councils.* – The agreement must provide for
50 the appointment of an advisory council of private sector
51 representatives and an advisory council of nonmember
52 state representatives to consult with in the administration
53 of the agreement.

§11-15B-8. Cooperating sovereigns.

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

§11-15B-9. Limited binding and beneficial effect.

1 (a) The agreement authorized by this article binds and
2 inures only to the benefit of this state and the other
3 member states. No person, other than a member state, is
4 an intended beneficiary of the agreement. Any benefit to
5 a person other than a state is established by the law of this
6 state and the other member states and not by the terms of
7 the agreement.

8 (b) Consistent with subsection (a) of this section, no
9 person shall have any cause of action or defense under the
10 agreement or by virtue of this state's approval of the
11 agreement. No person may challenge, in any action
12 brought under any provision of law, any action or inaction
13 by any department, agency or other instrumentality of this
14 state, or any political subdivision of this state on the
15 ground that the action or inaction is inconsistent with the
16 agreement.

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

§11-15B-10. Seller and third party liability.

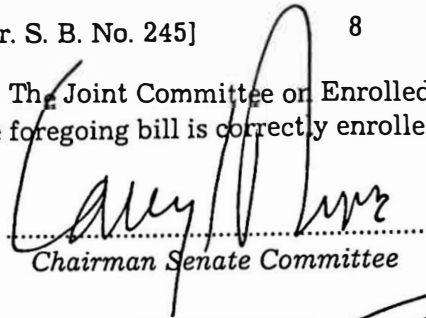
1 (a) (1) A certified service provider is the agent of a seller,
2 with whom the certified service provider has contracted,
3 for the collection and remittance of sales and use taxes. As
4 the seller's agent, the certified service provider is liable for
5 sales and use tax due each member state on all sales
6 transactions it processes for the seller except as set out in
7 this section.

8 (2) A seller that contracts with a certified service pro-
9 vider is not liable to the state for sales or use tax due on
10 transactions processed by the certified service provider
11 unless the seller misrepresented the type of items it sells or
12 committed fraud. In the absence of probable cause to
13 believe that the seller has committed fraud or made a
14 material misrepresentation, the seller is not subject to
15 audit on the transactions processed by the certified service
16 provider. A seller is subject to audit for transactions not
17 processed by the certified service provider. The member
18 states acting jointly may perform a system check of the
19 seller and review the seller's procedures to determine if the
20 certified service provider's system is functioning properly
21 and the extent to which the seller's transactions are being
22 processed by the certified service provider.

23 (b) A person that provides a certified automated system
24 is responsible for the proper functioning of that system
25 and is liable to the state for underpayments of tax attrib-
26 utable to errors in the functioning of the certified auto-
27 mated system. A seller that uses a certified automated
28 system remains responsible and is liable to the state for
29 reporting and remitting tax.

30 (c) A seller that has a proprietary system for determining
31 the amount of tax due on transactions and has signed an
32 agreement establishing a performance standard for that
33 system is liable for the failure of the system to meet the
34 performance standard.

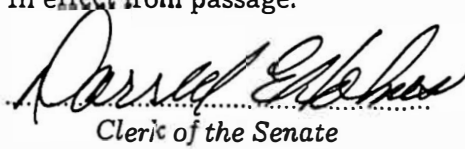
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

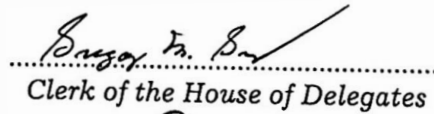

.....
Chairman Senate Committee

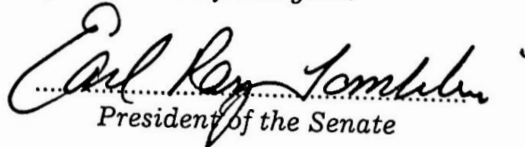

.....
Chairman House Committee

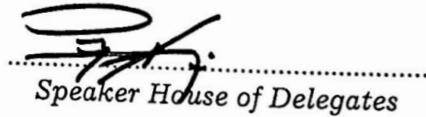
Originated in the Senate.

In effect from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within is approved this the 17th
Day of March, 2002.

.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/1/02

Time 11:20 am