

STORAGE NAME: h1329.sa.doc
DATE: April 2, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 1329
RELATING TO: Simplified Sales & Use Tax Administration Act
SPONSOR(S): Representative(s) Gannon
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) STATE ADMINISTRATION
 - (2) FISCAL POLICY & RESOURCES
 - (3) FISCAL RESPONSIBILITY COUNCIL
 - (4)
 - (5)
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I. SUMMARY:

The National Conference of State Legislatures (NCSL) adopted the "Simplified Sales and Use Tax Administration Act" on January 27, 2001. This was a result of the work of a special task force on state and local taxation of telecommunications and electronic commerce. The Act was unanimously adopted by the NCSL Executive Committee.

The "Simplified Sales and Use Tax Administration Act" is essentially an agreed upon form of legislation developed by the NCSL designed to assist each state in developing its own piece of similar legislation. Among other inclusions, it recommends that each state cite the particular section of statute in which both sales and use tax are defined, and subsequently address the necessity, purpose, and administrative requirements of a "Simplified Sales and Use Tax Administration Act."

HB 1329 creates the "Simplified Sales and Use Tax Administration Act" for the State of Florida and authorizes the Department of Revenue to enter into the "Streamlined Sales and Use Tax Agreement" with one or more states in order to simplify and modernize sales and use tax administration. HB 1329 provides definitions; provides legislative intent; provides the authority to enter into multistate negotiations; authorizes the Department of Revenue to establish standards for certification and establish standards of performance; provides that any agreement must meet particular requirements; provides that no person has any cause of action or defense under the agreement; provides that certified service providers are liable for taxes on all sales transactions completed by such provider; provides that any person utilizing a certified automated system is subject to liability; provides that any seller utilizing a proprietary system for determining the amount of tax due, and has signed an agreement establishing a performance standard, is liable for the failure of the system to meet the performance standard.

HB 1329 provides that no provision of the agreement authorized by this legislation invalidates or amends any provision of current law. Accordingly, implementation of any condition of the agreement in the State of Florida must be by action of this state.

This bill does not appear to have a fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

On January 27, 2001, the National Conference of State Legislatures (NCSL) adopted the "Simplified Sales and Use Tax Administration Act" (the Act). This was a result of the work of a special task force on state and local taxation of telecommunications and electronic commerce. The Act was unanimously adopted by the NCSL Executive Committee. The Act was based on the premise that a simplified sales and use tax system will reduce, and over time, eliminate the burden and cost for all vendors to collect a state's sales and use tax.¹

The Act is essentially an agreed upon form of legislation developed by the NCSL designed to assist each state in developing its own piece of similar legislation. Among other inclusions, it recommends that each state cite the particular section of statute in which both sales and use tax are defined, and subsequently address the necessity, purpose, and administrative requirements of a "Simplified Sales and Use Tax Administration Act."²

Chapter 212, F.S., describes sales and use tax, and which particular items are subject to taxation. Section 212.05, F.S., states that every person who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under Chapter 212, F.S., or who stores for use or consumption in the state any item or article of tangible personal property and who leases or rents such property in the state, is exercising a taxable privilege.

C. EFFECT OF PROPOSED CHANGES:

HB 1329 creates the "Simplified Sales and Use Tax Administration Act." It defines the following terms: agreement, certified automated system, certified service provider, person, sales tax, seller, state, and use tax.

HB 1329 provides for legislative intent: The Legislature finds that a simplified sales and use tax system will reduce, and over time, eliminate the burden and cost for all vendors to collect this

¹ Pursuant to the unanimously adopted "Simplified Sales and Use Tax Administration Act" by the National Conference of State Legislatures' Special Task Force on State and Local Taxation of Telecommunications and Electronic Commerce, January 27, 2001, retrieved on-line at www.ncsl.org/programs/press/2001/Web_Act.htm

² *Id.*

state's sales and use tax. The Legislature further finds that this state should participate in multistate discussions to review and/or amend the terms of the agreement to simplify and modernize sales and use tax administration in order to reduce the burden of tax compliance for all sellers and for all types of commerce.

HB 1329 provides the authority to participate in multistate negotiations represented by four delegates: one appointed by the Governor, one appointed by the President of the Senate, one appointed by the Speaker of the House, and one appointed by the Executive Director of the Department of Revenue (DOR).

HB 1329 authorizes the DOR to enter into the "Streamlined Sales and Use Tax Agreement" (the Agreement) with one or more states. The DOR may act jointly with other states that are members of the agreement to establish standards for certification of both a certified service provider³ and a certified automated system,⁴ and to establish performance standards for multistate sellers. The DOR is authorized to take actions to implement the provisions of the Agreement. Examples of such actions are the adoption of rules and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement. The DOR is further authorized to represent the State of Florida before the other states involved in the Agreement.

HB 1329 provides that no part of this legislation invalidates or amends any other provision of law. Implementation of any condition of the Agreement in this state must be accomplished through the action of this state. Any agreement entered into by the DOR must

- Establish a simplified state rate that sets restrictions to limit over time the number of state tax rates;
- Establish uniform standards for the sourcing of transactions to taxing jurisdictions,⁵ the administration of exempt sales, and sales and use tax returns and remittances;
- Provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states;
- Provide that registration with the central registration system and the collection of sales and use taxes in the signatory states must not be used as a factor in determining whether the seller has a nexus⁶ with a state for any tax;
- Provide for reduction of the burdens of complying with local sales and use taxes by restricting variances between state and local tax bases; requiring states to administer any sales and use taxes levied by local jurisdictions within the state; restricting the frequency of changes in the local sales and use tax rates; setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and providing notice of

³ HB 1329 defines a "certified service provider" as an agent certified by the states that are signatories to the agreement to perform all of the seller's sales tax functions.

⁴ HB 1329 defines a "certified automated system" as software certified jointly by the states that are signatories to 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.

⁵ The goal of this requirement is to establish uniform guidelines when you have multistate transactions. It is an attempt to ensure that the transactions are sourced to the correct state each time, and to ensure that each state is playing by the same rules. Pursuant to telephone conversation with staff of the Department of Revenue on April 5, 2001.

⁶ Black's Law Dictionary, 6th ed., p. 1044, defines "nexus": "A multistate corporation's taxable income can be apportioned to a specific state only if the entity has established a sufficient presence, or nexus, with that state. State law, which often follows the Uniform Division of Income for Tax Purposes Act (UDITPA), specifies various activities that lead to such nexus in various states."

- changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions;
- Outline any monetary allowances that are to be provided by the states to sellers or certified service providers;
 - 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;
 - Require each state to certify compliance with the terms of the Agreement prior to joining and to maintain compliance throughout;
 - 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; and
 - Provide for advisory councils to consult with the administration of the Agreement.

This bill clearly provides that, despite its requirements, no person has any cause of action or defense under the Agreement and no person may challenge any action or inaction by any department, agency, or political subdivision of the state on the ground that such action is inconsistent with the Agreement. No current law of this state may be declared invalid on the ground that the application of such law is inconsistent with the Agreement.

HB 1349 also provides that a certified service provider, who through contracting with the seller collects and remits sales and use taxes, is liable for sales and use tax due each member state on all sales transactions it processes for the seller. The seller is not subject to audit on the transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. However, the seller is subject to audit on the 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.

Additionally, HB 1349 states that a person who provides a certified automated system is responsible for the proper functioning of that system and is liable for any underpayments of tax as a result of errors in the certified automated system. The seller that uses such system does, however, remain responsible and is liable to the state for reporting and remitting tax. If a seller utilizes a proprietary⁷ system for determining the amount of tax due, the seller is liable for the failure of the system.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁷ Black's Law Dictionary, 6th ed., p. 1219, defines "proprietary": "Belonging to ownership; owned by a particular person; belonging or pertaining to a proprietor; relating to a certain owner or proprietor."

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

Authorizes the Department of Revenue to adopt rules to carry out the provisions of the Agreement.

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C. OTHER COMMENTS:

The Department of Revenue supports HB 1329. Although the decision to enter into a "Simplified Sales and Use Tax Agreement" is a state policy decision, the Department of Revenue supports such initiative.⁸

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

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⁸ Pursuant to telephone conversation with staff of the Department of Revenue's Legislative Affairs Office on April 3, 2001.