

**Introduced by Senator Bowen
(Coauthor: Senator Alpert)**

February 11, 2003

An act relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 157, as introduced, Bowen. Sales and use taxes: uniformity.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. Under the Bradley-Burns Uniform Local Sales and Use Tax Law, counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes.

This bill would make findings and declarations regarding the benefits of a simplified, uniform sales and use tax system. The bill would direct the board, as defined in this bill, or the board's designee, to represent this state in all meetings with certain other states regarding the development of a multistate, voluntary, streamlined system for sales and use tax collection and administration, as discussed in the Streamlined Sales and Use Tax Agreement adopted on January 27, 2001. This bill would also authorize the board to vote on behalf of this state and to represent the position of this state in all matters relating to the adoption of the agreement or amendments to the agreement. This bill would require the board to report quarterly to the Assembly and Senate Revenue and Taxation Committees on the progress in negotiating the agreement. This bill would prohibit the board or the board's designee from entering into the Streamlined Sales and Use Tax Agreement, unless the agreement requires that each state abide by the particular requirements, as specified in this bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. This shall be known as and referred to as the
- 2 “Simplified Sales and Use Tax Administration Act.”
- 3 SEC. 2. For purposes of this act:
- 4 (a) “Agreement” means the Streamlined Sales and Use Tax
- 5 Agreement.
- 6 (b) “Board” means the board of governance, as defined in this
- 7 act, or the board’s designee.
- 8 (c) “Certified automated system” means software certified
- 9 jointly by the states that are signatories to the agreement to
- 10 calculate the tax imposed by each jurisdiction on a transaction,
- 11 determine the amount of tax to remit to the appropriate state, and
- 12 maintain a record of the transaction.
- 13 (d) “Certified service provider” means an agent certified
- 14 jointly by the states that are signatories to the agreement to perform
- 15 all of the seller’s sales tax functions.
- 16 (e) “Person” means an individual, trust, estate, fiduciary,
- 17 partnership, limited liability company, limited liability
- 18 partnership, corporation, or any other legal entity.
- 19 (f) “Sales tax” means the tax levied by Chapter 2
- 20 (commencing with Section 6051) of Part 1 of Division 2 of the
- 21 Revenue and Taxation Code.
- 22 (g) “Purchaser” means a person to whom a sale of tangible
- 23 personal property is made or to whom a service is provided.
- 24 (h) “Seller” means any person making sales, leases, or rentals
- 25 of personal property of services.
- 26 (i) “Sourcing” means determining the tax situs of a
- 27 transaction.
- 28 (j) “State” means any state of the United States and the District
- 29 of Columbia.
- 30 (k) “Signatory state” means a state that has entered into the
- 31 agreement.
- 32 (l) “Use tax” means the tax levied by Chapter 3 (commencing
- 33 with Section 6201) of Part 1 of Division 2 of the Revenue and
- 34 Taxation Code.



1 SEC. 3. (a) There is created in state government a Board of
2 Governance consisting of two members of the Senate chosen by
3 the Senate Committee on Rules and two members of the Assembly
4 chosen by the Speaker of the Assembly.

5 (b) The board may represent this state in all meetings, limited
6 only to those states that are also authorized by statute to enter into
7 the agreement. The board shall vote on behalf of this state and shall
8 represent the position of this state in all matters relating to the
9 adoption of or amendments to the agreement.

10 (c) The board shall report quarterly to the Assembly and Senate
11 Revenue and Taxation Committees on the board's progress in
12 negotiating the agreement and shall recommend to the committees
13 the state statutes required to be added, amended, or otherwise
14 modified for purposes of substantially complying with the
15 agreement.

16 SEC. 4. The state's adoption of the agreement, pursuant to
17 Section 3, does not invalidate, amend, or otherwise modify, in
18 whole or in part, any provision of the law of this state.
19 Implementation of any provision of the agreement in this state,
20 whether adopted before, at, or after this state's adoption of the
21 agreement, shall be exclusively done by a separate act or acts of
22 the Legislature.

23 SEC. 5. The board may not enter into the agreement unless the
24 agreement requires each state to abide by the following
25 requirements:

26 (a) The agreement shall set restrictions to limit over time the
27 number of state rates.

28 (b) The agreement shall establish uniform standards for the
29 following:

30 (1) The sourcing of transactions to taxing jurisdictions.

31 (2) The administration of exempt sales.

32 (3) Sales and use tax returns and remittances.

33 (c) The agreement shall provide a central electronic
34 registration system that allows a seller to register to collect and
35 remit sales and use taxes for all signatory states.

36 (d) The agreement shall provide that registration with the
37 central registration system and the collection of sales and use taxes
38 in the signatory states does not by itself determine whether the
39 seller has nexus with a state for any tax.



1 (e) The agreement shall provide for reduction of the burdens of
2 complying with local sales and use taxes through the following:
3 (1) Restricting variances between the state and local taxes
4 bases.
5 (2) Requiring states to administer any sales and use taxes levied
6 by local jurisdictions within the state so that sellers collecting and
7 remitting these taxes will not have to register or file returns with,
8 remit funds to, or be subject to independent audits from local
9 taxing jurisdictions.
10 (3) Restricting the frequency of changes in local sales and use
11 tax rates and setting effective dates for the application of local
12 jurisdictional boundary changes to local sales and use taxes.
13 (4) Providing notice of changes in local sales and use tax rates
14 and of changes in the boundaries of local taxing jurisdictions.
15 (f) The agreement shall outline any monetary allowances that
16 are to be provided by the states to sellers or certified service
17 providers. The agreement shall allow for a joint public and private
18 sector study of the compliance cost on sellers and certified service
19 providers to collect sales and use taxes or state and local
20 governments under various levels of complexity.
21 (g) The agreement shall require each state to certify
22 compliance with the terms of the agreement prior to joining and
23 to maintain compliance, under the laws of the member state, with
24 all provisions of the agreement while a member.
25 (h) The agreement shall require each state to adopt a uniform
26 policy for certified service providers that protects the privacy of
27 consumers and maintains the confidentiality of tax information.
28 (i) The agreement shall provide for the appointment of an
29 advisory council of private sector representatives and an advisory
30 council of nonmember state representatives to consult with in the
31 administration of the agreement.
32 SEC. 6. The agreement authorized by this act is an accord
33 among individual cooperating sovereigns in furtherance of their
34 governmental functions. The agreement provides a mechanism
35 among the member states to establish and maintain a cooperative,
36 simplified system for the application and administration of sales
37 and use taxes under the duly adopted law of each member state.
38 SEC. 7. (a) The agreement authorized by this act binds and
39 inures only to the benefit of this state and the other member states.
40 No person, other than a member state, is an intended beneficiary



1 of the agreement. Any benefit to a person other than a state is
2 established by the law of this state and the other member states and
3 not by the terms of the agreement.

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

11 (c) No law of this state, or the application thereof, may be
12 declared invalid as to any person or circumstance on the ground
13 that the provision or application is inconsistent with the
14 agreement.

15 SEC. 8. (a) A certified service provider is the agent of a
16 seller, with whom the certified service provider has contracted, for
17 the collection and remittance of sales and use taxes. As the seller's
18 agent, the certified service provider is liable for sales and use tax
19 due each member state on all sales transactions it processes for the
20 seller except as set out in this section. A seller that contracts with
21 a certified service provider is not liable to the state for sales or use
22 tax due on transactions processed by the certified service provider
23 unless the seller misrepresented the type of items it sells or
24 committed fraud. In the absence of probable cause to believe that
25 the seller has committed fraud or made a material
26 misrepresentation, the seller is not subject to audit on the
27 transactions processed by the certified service provider. A seller is
28 subject to audit for transactions not processed by the certified
29 service provider. The member states acting jointly may perform a
30 system check of the seller and review the seller's procedures to
31 determine if the certified service provider's system is functioning
32 properly and the extent to which the seller's transactions are being
33 processed by the certified service provider.

34 (b) A person that provides a certified automated system is
35 responsible for the proper functioning of that system and is liable
36 to the state for underpayments of tax attributable to errors in the
37 functioning of the certified automated system. A seller that uses a
38 certified automated system remains responsible and is liable to the
39 state for reporting and remitting tax.



- 1 (c) A seller that has a proprietary system for determining the
- 2 amount of tax due on transactions and has signed an agreement
- 3 establishing a performance standard for that system is liable for the
- 4 failure of the system to meet the performance standard.

