

## **IC 6-2.5-11**

### Chapter 11. Simplified Sales and Use Tax Administration Act

#### **IC 6-2.5-11-1**

##### **Short title**

Sec. 1. This chapter shall be known as and referred to as the "simplified sales and use tax administration act".

*As added by P.L.107-2001, SEC.1.*

#### **IC 6-2.5-11-2**

##### **Definitions**

Sec. 2. As used in this chapter:

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

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

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

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

(5) "Sales tax" means the state gross retail tax levied under IC 6-2.5.

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

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

(8) "Use tax" means the use tax levied under IC 6-2.5.

*As added by P.L.107-2001, SEC.1.*

#### **IC 6-2.5-11-3**

##### **Findings of general assembly**

Sec. 3. The general assembly 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 state's sales and use tax. The general assembly further finds that this state should participate in multistate discussions to review, amend, or review and amend the terms of the agreement to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and all types of commerce.

*As added by P.L.107-2001, SEC.1.*

#### **IC 6-2.5-11-4**

##### **Delegates to review or amend agreement**

Sec. 4. (a) For the purposes of reviewing, amending, or reviewing and amending the agreement embodying the simplification

requirements set forth in section 7 of this chapter, the state shall enter into multistate discussions. For purposes of those discussions, the state shall be represented by four (4) delegates, appointed as follows:

- (1) One (1) member of the house of representatives, appointed by the speaker of the house of representatives.
- (2) One (1) member of the senate, appointed by the president pro tempore of the senate.
- (3) One (1) individual appointed by the governor.
- (4) The commissioner of the department of state revenue, who is an ex officio member.

A delegate appointed under subdivisions (1) through (3) serves at the pleasure of the officer who appointed that delegate.

(b) Each delegate who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The delegate is also entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the delegate's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency. Expenses incurred under this subsection shall be paid out of the funds appropriated to the department of state revenue.

(c) Each delegate who is a state employee but who is not a member of the general assembly is entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the delegate's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(d) Each delegate who is a member of the general assembly is entitled to receive the per diem, mileage, and travel allowances paid to members of the general assembly under travel policies established by the legislative council. Per diem, mileage, and travel allowances paid under this subsection shall be paid from appropriations made to the legislative council or the legislative services agency.

*As added by P.L.107-2001, SEC.1.*

### **IC 6-2.5-11-5**

#### **Powers of department**

Sec. 5. The department may enter into the agreement with one (1) or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the department may act jointly with other states that are members of the agreement to establish standards for certification of certified service providers and certified automated systems and to establish performance standards for multistate sellers. The department may take other actions reasonably required to implement this chapter. Other actions authorized by this section include, but are not limited to, the adoption of rules and the joint procurement, with other member states, of goods and services in

furtherance of the cooperative agreement. The department or the department's designee shall represent the state of Indiana before the other states that are signatories to the agreement.

*As added by P.L.107-2001, SEC.1.*

#### **IC 6-2.5-11-6**

##### **Effect on Indiana law**

Sec. 6. No provision of the agreement authorized by this chapter in whole or in part invalidates or amends any provision of the law of Indiana. Adoption of the agreement by the state of Indiana does not amend or modify any Indiana law. Implementation of any condition of the agreement in Indiana, whether adopted before, at, or after membership of this state in the agreement, must be by the action of this state.

*As added by P.L.107-2001, SEC.1.*

#### **IC 6-2.5-11-7**

##### **Requirements in agreement**

Sec. 7. The department shall not enter into the agreement unless the agreement requires each state to abide by the following requirements:

- (1) Simplified State Rate. The agreement must set restrictions to limit over time the number of state rates.
- (2) Uniform Standards. The agreement must establish uniform standards for the following:
  - (A) The sourcing of transactions to taxing jurisdictions.
  - (B) The administration of exempt sales.
  - (C) Sales and use tax returns and remittances.
- (3) Central Registration. The agreement must provide a central electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.
- (4) No Nexus Attribution. The agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.
- (5) Local Sales and Use Taxes. The agreement must provide for reduction of the burdens of complying with local sales and use taxes through the following:
  - (A) Restricting variances between the state and local tax bases.
  - (B) Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions.
  - (C) Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes.

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

(6) Monetary Allowances. The agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers. The agreement must 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 on or before July 1, 2002.

(7) State Compliance. The agreement must require each state to certify compliance with the terms of the agreement before joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while the state is a member.

(8) Consumer Privacy. The agreement must 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.

(9) Advisory Councils. The agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult in the administration of the agreement.

*As added by P.L.107-2001, SEC.1.*

#### **IC 6-2.5-11-8**

##### **Provisions in agreement**

Sec. 8. The agreement authorized by this chapter is an accord among individual cooperating sovereign states in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

*As added by P.L.107-2001, SEC.1.*

#### **IC 6-2.5-11-9**

##### **State is only intended beneficiary of agreement; no individual causes of action**

Sec. 9. (a) The agreement authorized by this chapter binds and inures only to the benefit of the state of Indiana and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of the state of Indiana and the other member states and not by the terms of the agreement.

(b) Consistent with subsection (a), no person shall have any cause of action or defense under the agreement or by virtue of the state of Indiana's approval of the agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the state of

Indiana, or any political subdivision of the state of Indiana on the grounds that the action or inaction is inconsistent with the agreement.

(c) No law of Indiana, or the application thereof, may be declared invalid as to any person or circumstance on the grounds that the provision or application is inconsistent with the agreement.

*As added by P.L.107-2001, SEC.1.*

#### **IC 6-2.5-11-10**

##### **Certified services providers; allowances for sellers and certified service providers under the agreement; relief for failure to collect tax**

Sec. 10. (a) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section. A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for 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 to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

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

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

(d) A certified service provider or a seller that obtains a certification or taxability matrix from the department is not liable for sales or use tax collection errors that result from reliance on the department's certification or taxability matrix. If the department determines that an item or transaction is incorrectly classified as to the taxability of the item or transaction, the department shall notify the certified service provider or the seller of the incorrect classification. The certified service provider or the seller must revise the incorrect classification within ten (10) days after receiving notice of the determination from the department. If the classification error is not corrected within ten (10) days after receiving the department's

notice, the certified service provider or the seller is liable for failure to collect the correct amount of sales or use tax due and owing.

(e) If at least thirty (30) days are not provided between the enactment of a statute changing the rate set forth in IC 6-2.5-2-2 and the effective date of the rate change, the department shall relieve the seller of liability for failing to collect tax at the new rate if:

- (1) the seller collected the tax at the immediately preceding effective rate; and
- (2) the seller's failure to collect at the current rate does not extend beyond thirty (30) days after the effective date of the rate change.

A seller is not eligible for the relief provided for in this subsection if the seller fraudulently fails to collect at the current rate or solicits purchases based on the immediately preceding effective rate.

(f) The department shall allow any monetary allowances that are provided by the member states to sellers or certified service providers in exchange for collecting the sales and use taxes as provided in article VI of the agreement.

*As added by P.L.107-2001, SEC.1. Amended by P.L.195-2005, SEC.4; P.L.145-2007, SEC.9; P.L.182-2009(ss), SEC.183; P.L.113-2010, SEC.53; P.L.84-2011, SEC.4.*

#### **IC 6-2.5-11-11**

##### **Relief from penalties, tax, and interest in certain transactions involving reliance on data provided by the department**

Sec. 11. (a) This section applies only to transactions occurring after December 31, 2008.

(b) A purchaser is relieved from liability for penalties imposed under IC 6-8.1-10-2.1 for failure to pay the amount of tax due if any of the following occurs:

(1) A purchaser's seller or certified service provider relied on erroneous data provided by the department regarding any of the following:

- (A) Tax rates.
- (B) Boundaries.
- (C) Taxing jurisdiction assignments.
- (D) The taxability matrix.

(2) A purchaser with a direct pay permit relied on erroneous data provided by the department regarding any of the following:

- (A) Tax rates.
- (B) Boundaries.
- (C) Taxing jurisdiction assignments.
- (D) The taxability matrix.

(3) A purchaser relied on erroneous data in the taxability matrix provided by the department.

(c) The department shall relieve a purchaser from liability for tax and interest for having failed to pay the correct amount of sales or use tax in the circumstances described in subsection (b); however, the relief is limited to tax and interest attributable to the department's erroneous classification in the taxability matrix of terms:

- (1) included as taxable or exempt;
- (2) included in the sales price;
- (3) excluded from the sales price;
- (4) included in a definition; or
- (5) excluded from a definition.

*As added by P.L.145-2007, SEC.10.*

#### **IC 6-2.5-11-12**

##### **Review of software; limited relief from liability**

Sec. 12. (a) The department shall review software submitted to the governing board for certification as a certified automated system. The review is to determine that the program adequately classifies product based exemptions granted under IC 6-2.5-5. Upon satisfactory completion of the review, the department shall certify to the governing board the department's acceptance of the classifications made by the system.

(b) The governing board and the member states are not responsible for classification of an item or a transaction within the product based exemptions certified by the department. The relief from liability provided in this section is not available to a certified service provider or Model 2 seller that has incorrectly classified an item or a transaction into a product based exemption certified by the department. This subsection does not apply to the individual listing of items or transactions within a product definition approved by the governing board or the member states.

(c) If the department determines that an item or a transaction is incorrectly classified as to the taxability of the item or transaction, the department shall notify the certified service provider or Model 2 seller of the incorrect classification. The certified service provider or Model 2 seller must revise the classification within ten (10) days after receiving notice of the determination from the department. If the classification error is not corrected within ten (10) days after receiving the department's notice, the certified service provider or Model 2 seller is liable for failure to collect the correct amount of sales or use tax due and owing.

*As added by P.L.145-2007, SEC.11.*