HB 1390

Department of Legislative Services

Maryland General Assembly
2001 Session

FISCAL NOTE

House Bill 1390 (Delegate Hixson, *et al.*)
Ways and Means Budget and Taxation

Simplified Sales and Use Tax Administration Act

This bill enacts the Simplified Sales and Use Tax Administration Act, as proposed by the National Conference of State Legislatures (NCSL), and authorizes the State to discuss, and ultimately enter into, a Streamlined Sales and Use Tax Agreement.

The bill takes effect July 1, 2001.

Fiscal Summary

State Effect: There is no impact on the State from participation in the Agreement. Applying the terms of the Agreement to the State would require further legislation. Any administrative expenditures by the Comptroller to participate in negotiations regarding the Agreement could be absorbed with existing budgeted resources.

Local Effect: None. Any changes to local sales tax provisions (of which there are few in Maryland) would require further legislation.

Small Business Effect: None.

Analysis

Bill Summary: The bill authorizes the State to participate in multistate discussions regarding a Streamlined Sales and Use Tax Agreement. It provides that the State will be represented by no more than four representatives (one from each house of the General Assembly, an individual appointed by the Governor, and the Comptroller or his designee). It authorizes the Comptroller to enter into the Agreement with one or more states to simplify and modernize sales and use tax administration, although further State legislation would be required to implement the Agreement's provisions. The bill specifies that adoption of the Agreement does not amend or modify any existing State law, and that implementation of the terms of the Agreement must be by action of the State.

The Act includes the outline of the streamlined sales and use tax collection and administration system specified in the Agreement: simplified tax rates; uniform standards for sourcing of transactions, exempt sales, and returns and remittances; central registration for sellers; monetary allowances for certified service providers and sellers implementing new technological models; consumer privacy; and State administration of local sales and use taxes, including restricting variance between State and local sales tax bases, restricting the frequency of changes in local sales and use tax rates, and providing timely notice of boundary changes for local taxing jurisdictions. The Agreement must ensure that seller registration will not be used as a factor in determining the seller's nexus with the state for any other tax, and establish advisory councils of private sector representatives and representatives of nonmember states.

The bill provides that a certified service provider -- who would contract with remote sellers to collect and remit all states' sales taxes for the seller -- is generally liable for sales and use tax due each member state on all sales transactions it processes for the seller. 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.

The bill specifies that 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. That seller, however, is subject to audit for transactions not processed by the certified service provider.

The bill requires the Comptroller to provide semiannual reports to the Governor and to the Legislative Policy Committee and the fiscal committees of the General Assembly on the progress of the multistate discussions.

This bill takes the place of Chapter 698 of 2000 (the prior legislation authorizing the Comptroller to participate in NCSL's efforts to develop the Streamlined Sales Tax Project), which would terminate June 30, 2001 rather than June 30, 2002.

Current Law: There is currently no joint mechanism for states to collect and remit sales and use taxes. Under the U.S. Supreme Court decisions in *National Bellas Hess* and *Quill*, a state or local government cannot require businesses without a nexus to the state (e.g., physical presence within its borders) to collect sales or use taxes. Remote sellers (via Internet, phone, and mail order catalogs) are therefore protected from sales tax collection obligations. If the seller is not required to collect and remit the sales tax, then the buyer is required to pay the use tax, but such collections from individual taxpayers are minimal.

Background: The issue of tax noncollection from out-of-state sellers exists with the present system of collecting sales and use taxes on phone and mail order sales; however, the exponential growth of e-commerce has magnified this potential revenue loss for the State. Meanwhile, remote sellers argue that the current system of state and local sales tax administration is complex and burdensome due to differences in sales tax law among the states, coupled with the extensive use of the tax by local governments in many states.

NCSL and other multistate organizations argue that sales tax laws and administration must be substantially overhauled and simplified and become more uniform across the states if the states are to be successful in either: (1) convincing remote sellers to voluntarily collect and remit sales taxes to all the states, or (2) convincing Congress to overrule *Quill* and require such collection.

Chapter 698 (HB 1421) of 2000 authorized the Comptroller to enter into discussions with other states regarding the development of a multistate, streamlined system for sales tax collection and administration. The Streamlined Sales Tax Project (SSTP) was formed to design, test, and implement a sales and use tax system that will simplify the collection and administration of these taxes. The project's goal is to develop a system that may be used by both traditional "brick and mortar" vendors and e-commerce vendors. The project began in March 2000, with Maryland being one of 39 states currently participating.

This bill incorporates model legislation adopted by NCSL in January 2001 based on the SSTP dicussions. The bill expresses the State's intent to simplify the sales tax system and provides authorization to the Comptroller to enter into the Agreement. The Agreement contains the first set of simplifications the states may undertake to streamline their sales and use tax collection systems. These changes affect areas such as state administration, central registration for sellers, and uniform procedures for remittances. This bill, however, does not include any of the statutory changes that would be required to conform State law to the Agreement. Further legislative action would be required.

Certain provisions included in earlier drafts of the Agreement developed by the SSTP were more controversial. These provisions, such as uniform definitions and rounding procedures, would have had a greater fiscal impact on the State. The Comptroller advises that some states are proceeding with the more stringent harmonization requirements of the earlier SSTP draft agreement. Only those states enacting NCSL's version of the Simplified Sales and Use Tax Administration Act -- either with the provisions contained in the Streamlined Sales and Use Tax Agreement, or without them (as is the case with this bill) -- will be allowed to vote on any changes to the Agreement until July 1, 2003. The more controversial provisions noted above will be the subject of further negotiation among the states that enact one of the two NCSL versions.

After July 1, 2003 a state that has not brought their sales and use tax collection in compliance with the Agreement shall lose its voting privileges on amendments to the Agreement until it complies with the Agreement.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office, Department of Legislative Services

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