



CHESTER J. CULVER  
GOVERNOR

## OFFICE OF THE GOVERNOR

PATTY JUDGE  
LT. GOVERNOR

April 21, 2010

The Honorable Michael Mauro  
Secretary of State  
State Capitol Building  
LOCAL

Dear Mr. Secretary:

I hereby transmit:

**Senate File 2375**, an Act relating to the administration of the sales and use taxes under the streamlined sales tax agreement and including effective date provisions.

The above Senate File is hereby approved this date.

Sincerely,

A handwritten signature in black ink, appearing to read "Chester J. Culver".

Chester J. Culver  
Governor

CJC:bdj

cc: Secretary of the Senate  
Chief Clerk of the House





Senate File 2375

AN ACT

RELATING TO THE ADMINISTRATION OF THE SALES AND USE TAXES UNDER  
THE STREAMLINED SALES TAX AGREEMENT AND INCLUDING EFFECTIVE  
DATE PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 321.105A, subsection 2, paragraph a, unnumbered paragraph 1, Code Supplement 2009, is amended to read as follows:

For purposes of this subsection, "purchase price" applies to the measure subject to the fee for new registration. "Purchase price" shall be determined in the same manner as "sales price" is determined for purposes of computing the tax imposed upon the sales price of tangible personal property under chapter 423, pursuant to the definition of sales price in section 423.1~~7~~ subsection ~~47~~, subject to the following exemptions:

Sec. 2. Section 423.1, Code 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 0A. "*Affiliate*" means any entity to which any of the following applies:

a. Directly, indirectly, or constructively controls another entity.

b. Is directly, indirectly, or constructively controlled by another entity.

c. Is subject to the control of a common entity. A common entity is one which owns directly or individually more than ten percent of the voting securities of the entity.

Sec. 3. Section 423.1, subsections 27, 28, and 29, Code 2009, are amended to read as follows:

27. "*Model 1 seller*" is a seller registered under the agreement that has selected a certified service provider as its

agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

28. "Model 2 seller" is a seller registered under the agreement that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

29. "Model 3 seller" is a seller registered under the agreement that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a "seller" includes an affiliated group of sellers using the same proprietary system.

Sec. 4. Section 423.1, Code 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 29A. "Model 4 seller" is a seller registered under the agreement that is not a model 1, model 2, or model 3 seller.

Sec. 5. Section 423.1, subsection 47, paragraph a, subparagraph (6), Code 2009, is amended by striking the subparagraph.

Sec. 6. Section 423.1, subsection 47, paragraph c, Code 2009, is amended to read as follows:

c. The sales price does not include and the sales tax shall not apply to amounts received for charges included in paragraph "a", subparagraphs (3) through ~~(7)~~ (6), if they are separately contracted for, separately stated on the invoice, billing, or similar document given to the purchaser, and the amounts represent charges which are not the sales price of a taxable sale or of the furnishing of a taxable service.

Sec. 7. Section 423.1, Code 2009, is amended by adding the following new subsections:

NEW SUBSECTION. 52A. "State agency" means an authority, board, commission, department, instrumentality, or other administrative office or unit of this state, or any other state entity reported in the Iowa comprehensive annual financial report, including public institutions of higher education.

NEW SUBSECTION. 62. "Voting security" means a security to which any of the following applies:

a. Confers upon the holder the right to vote for the

election of members of the board of directors or similar governing body of the entity.

*b.* Is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote.

*c.* Is a general partnership interest.

Sec. 8. Section 423.2, subsection 1, paragraph a, Code 2009, is amended to read as follows:

*a.* For the purposes of this subchapter, sales of the following services are treated as if they were sales of tangible personal property:

(1) Sales of engraving, photography, retouching, printing, and binding services.

(2) Sales of vulcanizing, recapping, and retreading services.

(3) Sales of prepaid ~~telephone calling cards and prepaid authorization numbers~~ services and prepaid wireless calling services.

(4) Sales of optional service or warranty contracts, except residential service contracts regulated under chapter 523C, which provide for the furnishing of labor and materials and require the furnishing of any taxable service enumerated under this section. The sales price is subject to tax even if some of the services furnished are not enumerated under this section. Additional sales, services, or use taxes shall not be levied on services, parts, or labor provided under optional service or warranty contracts which are subject to tax under this subsection.

~~If the optional service or warranty contract is a computer software maintenance or support service contract and there is no separately stated fee for the taxable personal property or for the nontaxable service, the tax imposed by this subsection shall be imposed on fifty percent of the sales price from the sale of such contract. If the contract provides for technical support services only, no tax shall be imposed under this subsection. The provisions of this subparagraph (4) also apply to the use tax.~~

(5) Sales of optional service or warranty contracts for computer software maintenance or support services.

(a) If a service or warranty contract does not specify a fee amount for nontaxable services or taxable personal property, the tax imposed pursuant to this section shall be imposed upon an amount equal to one-half of the sales price of the contract.

(b) If a service or warranty contract provides only for

technical support services, no tax shall be imposed pursuant to this section.

(6) Subparagraphs (4) and (5) shall also apply to the use tax imposed under section 423.5.

Sec. 9. Section 423.2, subsection 10, Code 2009, is amended to read as follows:

10. a. Any person or that person's affiliate, which is a retailer in this state or a retailer maintaining a place of business in this state under this chapter, that enters into a contract with an agency of this state must register, collect, and remit Iowa sales tax under this chapter on all sales of tangible personal property and enumerated services.

b. Every bid submitted and each contract executed by a state agency shall contain a certification by the bidder or contractor stating that the bidder or contractor is registered with the department and will collect and remit Iowa sales tax due under this chapter. In the certification, the bidder or contractor shall also acknowledge that the state agency may declare the contract or bid void if the certification is false. Fraudulent certification, by act or omission, may result in the state agency or its representative filing for damages for breach of contract.

~~For the purposes of this subsection, the following definitions apply:~~

~~a. "Affiliate" means any entity to which any of the following applies:~~

~~(1) Directly, indirectly, or constructively controls another entity.~~

~~(2) Is directly, indirectly, or constructively controlled by another entity.~~

~~(3) Is subject to the control of a common entity. A common entity is one which owns directly or individually more than ten percent of the voting securities of the entity.~~

~~b. "State agency" means an authority, board, commission, department, instrumentality, or other administrative office or unit of this state, or any other state entity reported in the Iowa comprehensive annual financial report, including public institutions of higher education.~~

~~c. "Voting security" means a security to which any of the following applies:~~

~~(1) Confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the entity.~~

~~(2) Is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote.~~

~~(3) Is a general partnership interest.~~

Sec. 10. Section 423.5, subsection 8, Code 2009, is amended to read as follows:

8. Any person or that person's affiliate, which is a retailer in this state or a retailer maintaining a place of business in this state under this chapter, that enters into a contract with an agency of this state must register, collect, and remit Iowa use tax under this chapter on all sales of tangible personal property and enumerated services. Every bid submitted and each contract executed by a state agency shall contain a certification by the bidder or contractor stating that the bidder or contractor is registered with the department and will collect and remit Iowa use tax due under this chapter. In the certification, the bidder or contractor shall also acknowledge that the state agency may declare the contract or bid void if the certification is false. Fraudulent certification, by act or omission, may result in the state agency or its representative filing for damages for breach of contract.

~~For the purposes of this subsection, "affiliate", "state agency", and "voting security" mean the same as defined in section 423.2, subsection 10.~~

Sec. 11. Section 423.46, Code 2009, is amended to read as follows:

**423.46 Rate and base changes — liability for failure to collect.**

1. The department shall make a reasonable effort to provide sellers with as much advance notice as practicable of a rate change and to notify sellers of legislative changes in the tax base and amendments to sales and use tax rules. Failure of a seller to receive notice or failure of this state to provide notice or limit the effective date of a rate change shall not relieve the seller of its obligation to collect sales or use taxes for this state Except as provided in subsection 2, a seller shall not be relieved of the obligation to collect sales or use taxes for this state by either a failure to receive such notice or by a failure of the state to provide notice.

2. A seller will be relieved of liability for failing to collect sales or use taxes for this state at the new rate under all of the following conditions and to the following extent:

a. The department fails to provide for at least thirty days

between the enactment of the statute providing for a rate change and the effective date of such rate change.

b. The seller continues to collect sales or use taxes at the rate in effect immediately prior to the rate change.

c. The erroneous collection described in paragraph "b" does not continue for more than thirty days after the effective date of the rate change.

3. The relief from the obligation to collect sales or use taxes described in subsection 2 shall not apply if a seller fraudulently fails to collect tax at the new rate or if a seller has solicited purchasers on the basis of the rate in effect immediately prior to the rate change.

Sec. 12. Section 423.48, subsection 2, Code 2009, is amended by adding the following new paragraph:

NEW PARAGRAPH. h. Upon the registration of a seller, the department shall provide to the seller information regarding the options available for the filing of returns and remittances. Such information shall include information on the requirements of filing simplified electronic returns and remittances.

Sec. 13. Section 423.48, subsection 3, Code 2009, is amended by adding the following new paragraph:

NEW PARAGRAPH. d. A model 2, model 3, or model 4 seller making no sales sourced in the state in the preceding twelve months may elect to be registered in the state as a seller that anticipates making no sales sourced in the state. Making such an election shall not relieve the seller of the obligation to collect and remit sales or use taxes on sales sourced in the state.

Sec. 14. Section 423.48, Code 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 4. The provisions of this section shall not be construed to relieve a seller of the obligation to register in the state if required to do so, and to collect and remit sales or use taxes for at least thirty-six months and to meet any other requirements necessary for amnesty in Iowa under the terms of an agreement as provided in section 423.54.

Sec. 15. Section 423.49, Code 2009, is amended by striking the section and inserting in lieu thereof the following:

**423.49 Return requirements — electronic filing.**

1. Except as provided in subsection 7, all sellers registered under the agreement shall file a single return per month for the state and all taxing jurisdictions within this state.

2. The director shall by rule determine the date on which returns shall be filed. The date shall not be earlier than the twentieth day of the following month.

3. The department shall provide to all registered and unregistered sellers, except sellers of products qualifying for exclusion from the provisions of section 308 of the agreement, a simplified return that can be filed electronically.

a. The simplified return shall be provided in a form approved by the governing board and shall not contain a field unless that field has been approved by the governing board.

b. The simplified return shall contain two parts. The first part shall contain information relating to remittances and allocations. The second part shall contain information relating to exempt sales.

c. The department shall notify the governing board if the submission of the second part of the return is no longer necessary.

d. The department shall not require a model 4 seller to submit the second part of the simplified return but may provide for another means of collecting the information contained in the second part of the return as described in subsection 4, paragraph "e".

4. a. A certified service provider shall file a simplified return electronically on behalf of a model 1 seller and shall file audit reports for the seller as provided for in article V of the rules and procedures of the agreement.

b. A certified service provider shall file the first part of the simplified return, as described in subsection 3, once per month, as required pursuant to subsection 1.

c. A model 1 seller may file both the first and second parts of the simplified return. Model 1 sellers filing both parts shall also file audit reports as described in paragraph "a".

d. A model 4 seller may elect to file a simplified return. Model 4 sellers electing to do so shall file the first part of the return each month.

e. A model 4 seller required to register in the state may submit the information collected in the second part of the return in one of the following ways:

(1) By filing monthly both the first and second parts electronically on a simplified return as described in subsection 3.

(2) By filing the second part together with the required December filing of the first part. A seller filing the second

part of a return pursuant to this subparagraph shall include information for all months of that calendar year and shall report the information in an annual rather than a monthly fashion.

(3) The department shall notify the governing board prior to requiring the submission of the second part of the simplified return pursuant to this paragraph "e".

5. The department shall adopt rules for the filing of returns by a model 4 seller electing not to file a simplified return pursuant to this section.

6. A seller which has previously elected to file a simplified return shall provide at least three months' notice of an intent to discontinue the filing of such returns.

7. *a.* A seller making the election under section 423.48, subsection 3, paragraph "d", is exempt from the requirements of this section and shall not be required to file a return.

*b.* The exemption allowed under paragraph "a" is only applicable as long as a seller makes no taxable sales in this state. If a seller makes a taxable sale in this state, the seller shall file a return the month after such a sale is made.

8. A seller may file a return for more than one legal entity at the same time only if such entities are affiliated.

9. The department shall adopt a standardized process for the transmission and receipt of returns and related information. The adoption of a procedure pursuant to this subsection is subject to the approval of the governing board.

10. *a.* The department shall notify a seller registered under the agreement that has no obligation to register in this state of a failure to file a return required under this section and allow the seller at least thirty days after such notification to file the return.

*b.* A liability amount may be established for an assessment of taxes based solely on a seller's failure to timely file a return if such seller has a history of nonfiling or late filing.

Sec. 16. Section 423.50, Code 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 5. The department shall adopt a standardized process for the remittance of tax payments. The procedure shall have the capability of processing multiple payments and simplified returns by affiliated entities, certified service providers, or tax preparers. The process adopted pursuant to this subsection is subject to the approval of the governing board.

Sec. 17. EFFECTIVE UPON ENACTMENT. This Act, being deemed of immediate importance, takes effect upon enactment.

  
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JOHN P. KIBBIE

President of the Senate

  
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PATRICK J. MURPHY

Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2375, Eighty-third General Assembly.

  
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MICHAEL E. MARSHALL

Secretary of the Senate

Approved April 21<sup>ST</sup>, 2010

  
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CHESTER J. CULVER

Governor