

**Cross references.** — For legal adviser to secretary of taxation and revenue, see 9-11-11 NMSA 1978.

### **7-5-6. Local government advisors.**

The governor, after consultation with representatives of local governments, shall appoint three persons who are representative of subdivisions affected or likely to be affected by the Multistate Tax Compact. The member of the commission representing New Mexico, and any alternate designated by him, shall consult regularly with these appointees, in accordance with Article VI 1(b) of the compact.

**History:** 1953 Comp., § 72-15A-42, enacted by Laws 1967, ch. 56, § 6.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1967, ch. 56 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1967, 90 days after the adjournment of the legislature.

### **7-5-7. Interaudits provisions made applicable.**

Article VIII of the Multistate Tax Compact relating to interaudits shall be in force in and with respect to New Mexico.

**History:** 1953 Comp., § 72-15A-44, enacted by Laws 1967, ch. 56, § 8.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1967, ch. 56 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1967, 90 days after the adjournment of the legislature.

## **ARTICLE 5A**

### **Streamlined Sales and Use Tax Administration**

#### **7-5A-1. Short title.**

This act may be cited as the "Streamlined Sales and Use Tax Administration Act".

**History:** Laws 2005, ch. 225, § 1.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 225 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## **7-5A-2. Legislative findings.**

The legislature finds that a simplified sales tax and use tax system that treats transactions in a competitively neutral manner will strengthen and preserve sales taxes and use taxes as vital revenue sources for this state and its local governments and will help preserve the fiscal sovereignty of this state. The legislature also finds that such a system will substantially reduce the administrative burdens of collection for sellers. While states have the sovereign right to set their own tax policies, states should cooperatively develop a streamlined sales tax and use tax system that is simplified, uniform and fair.

**History:** Laws 2005, ch. 225, § 2.

### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 225 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## **7-5A-3. Definitions.**

As used in the Streamlined Sales and Use Tax Administration Act:

- A. "agreement" means the streamlined sales and use tax agreement;
- B. "certified automated system" means software certified jointly by member states to:
  - (1) calculate the sales tax imposed by each jurisdiction on a transaction;
  - (2) determine the amount of tax to remit to the appropriate state; and
  - (3) maintain a record of the transaction;
- C. "certified service provider" means an agent that performs all of the sales tax functions of a seller and that is certified jointly by member states to perform all of the sales tax functions of the seller;
- D. "member state" means a state of the United States that enters into the agreement with another state and the District of Columbia if it enters into the agreement with another state;

E. "person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation and any other legal entity;

F. "sales tax" means the gross receipts tax levied pursuant to the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] or a tax imposed by a state on the sale of goods or services;

G. "seller" means a person making sales, leases and rentals of personal property and services; and

H. "use tax" means the compensating tax levied pursuant to the Gross Receipts and Compensating Tax Act.

**History:** Laws 2005, ch. 225, § 3.

### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 225 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

#### **7-5A-4. Authority to enter agreement.**

A. The secretary of taxation and revenue may enter into the agreement with one or more member states to simplify and modernize sales tax and use tax administration and to reduce the burden of tax compliance for sellers.

B. The secretary of taxation and revenue is authorized to:

(1) act jointly with member states to establish standards for a certified automated system and establish performance standards for multistate sellers pursuant to the agreement;

(2) take actions reasonably required to implement the provisions of the Streamlined Sales and Use Tax Administration Act; and

(3) adopt rules with member states pursuant to the agreement.

C. The secretary of taxation and revenue or the secretary's designee is authorized to represent this state before member states.

**History:** Laws 2005, ch. 225, § 4.

### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 225 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## **7-5A-5. Relationship to state law.**

A provision of the agreement does not invalidate or amend any provision of state law. Implementation of a condition of the agreement shall be adopted by the legislature.

**History:** Laws 2005, ch. 225, § 5.

### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 225 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## **7-5A-6. Agreement requirements.**

The secretary of taxation and revenue shall not enter into the agreement unless the agreement:

A. sets restrictions to achieve more uniform state tax rates by limiting:

- (1) the number of member state tax rates;
- (2) the application of maximums on the amount of member state taxes due on transactions; and
- (3) the application of thresholds on the application of member state taxes;

B. establishes uniform standards for:

- (1) sourcing transactions to taxing jurisdictions;
- (2) administering exempt sales; and
- (3) providing allowances that a seller can receive for bad debts;

C. requires member states to develop and adopt uniform definitions of sales tax and use tax terms that enable the member states to make policy choices consistent with the definitions;

D. provides for a certified automated system that allows a seller to register to collect and remit sales taxes and use taxes for each member state;

E. provides that registration with the certified automated system and the collection of a sales tax and a use tax in a member state will not be used to determine if the seller has a nexus with a member state for tax purposes;

F. provides for reduction of the burden of complying with local sales taxes and use taxes by:

(1) restricting variances between the member state and local tax bases;

(2) requiring each member state to administer the sales tax and use tax levied by a local jurisdiction within the member state so that a seller collecting and remitting the taxes will not be required to register or file a return with, remit funds to or be subject to an independent audit from a local taxing jurisdiction;

(3) restricting change in each local sales tax rate and use tax rate and setting an effective date for a change in the boundaries of a local taxing jurisdiction; and

(4) providing notice of a change in each local sales tax rate and use tax rate and of a change in the boundaries of a local taxing jurisdiction;

G. outlines monetary allowances provided by member states to sellers and certified service providers;

H. requires each state to certify compliance with the terms of the agreement before becoming a member state and to maintain compliance with provisions of the agreement pursuant to the law of the member state while a member state;

I. requires each member state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information; and

J. provides for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives with which to consult with respect to the administration of the agreement.

**History:** Laws 2005, ch. 225, § 6.

## **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 225 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

**Amnesty for registration is unconstitutional.** — Granting amnesty, pursuant to Section 402 of the Streamlined Sales and Use Tax Agreement, to a seller for gross receipts tax liability incurred during the twelve-month period preceding the state's

participation in the agreement would amount to a subsidy of the seller's business in violation of the anti-donation clause of Article IX, Section 14 of the New Mexico Constitution and Article IV, Section 32, which prohibits the diminution or extinguishment of an obligation already in occurred and owed to the state. 2012 Op. Att'y Gen. No. 12-01.

### **7-5A-7. Member states.**

The agreement is an accord among member states in furtherance of their governmental functions. The agreement permits each member state to establish and maintain a cooperative, uniform, simplified system to apply sales taxes and use taxes pursuant to the law of the member state.

**History:** Laws 2005, ch. 225, § 7.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 225 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

### **7-5A-8. Limited binding and beneficial effect.**

A. The agreement binds and benefits only this state and other member states. Only a member state is an intended beneficiary of the agreement. A benefit to a person other than a member state is established by the law of this state and member states and not by the terms of the agreement.

B. A person shall not:

- (1) have a cause of action or a defense pursuant to the agreement; and
- (2) challenge an action or inaction of a department, agency, political subdivision or instrumentality of this state on the grounds that the action or inaction is not consistent with the agreement.

C. A law of this state or the application of the law is valid despite the inconsistency of the law or its application with the agreement.

**History:** Laws 2005, ch. 225, § 8.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 225 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.