
A BILL FOR AN ACT

RELATING TO MARKETPLACE FAIRNESS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 238, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§238- Collection by remote sellers. (a) Upon the
5 effective date of an Act of Congress that authorizes the states
6 to require certain businesses to pay, collect, or remit state or
7 local sales or use taxes, and upon this State's satisfaction of
8 the requirements imposed by such Act of Congress, every remote
9 seller, as defined in chapter 255D-A, shall collect and remit
10 the use tax imposed by sections 238-2, 238-2.3, and 238-2.6.

11 (b) This section shall not be deemed to have any effect on
12 analysis of taxpayer nexus with the State."

13 SECTION 2. Chapter 255D, Hawaii Revised Statutes, is
14 amended by adding a new part to be appropriately designated and
15 to read as follows:

16 "PART . ALTERNATIVE TO STREAMLINED SALES AND USE TAX

17 AGREEMENT

18 §255D-A Definitions. For the purposes of this part:



1 "Certified software provider" means a person that:

- 2 (1) Provides software to remote sellers to facilitate
3 state sales and use tax compliance; and
4 (2) Is certified by a state to provide such software.

5 "Remote sale" means a sale sourced to a state in which the
6 seller would not legally be required to pay, collect, or remit
7 state or local sales and use taxes unless provided for by an act
8 of Congress.

9 "Remote seller" means a person that makes a remote sale;
10 provided that the seller has gross annual receipts in total
11 remote sales in the United States in the preceding calendar year
12 exceeding \$1,000,000. For purposes of determining whether this
13 threshold is met, the gross annual receipts from remote sales of
14 two or more persons shall be aggregated if:

- 15 (1) The persons are related to the remote seller within
16 the meaning of subsections (b) and (c) of section 267
17 or section 707(b)(1) of the Internal Revenue Code; or
18 (2) The persons have one or more ownership relationships
19 and the relationships were designed with the principal
20 purpose of avoiding the collection and remittance of
21 state or local sales and use taxes.



1 "Sourced" means the location for which state and local
2 sales and use taxes are to be applied. Generally, a remote sale
3 is sourced to:

4 (1) The location where a product or service that is sold
5 is received by the purchaser, based on the location
6 indicated by instructions for delivery that the
7 purchaser furnishes to the seller;

8 (2) When no delivery location is specified, the customer's
9 address that is either known to the seller or, if not
10 known, obtained by the seller during the consummation
11 of the transaction, including the address of the
12 customer's payment instrument if no other address is
13 available; or

14 (3) If an address is unknown and a billing address cannot
15 be obtained, the address of the seller from which the
16 remote sale was made.

17 **§255D-B Implementation of minimum simplification**
18 **requirements.** If the State seeks to require sellers to collect
19 and remit sales and use taxes with respect to remote sales
20 sourced to the State, but is not a member state under the
21 Streamlined Sales and Use Tax Agreement, the department shall



1 establish rules to implement minimum simplification
2 requirements. These rules shall:

3 (1) Provide the following:

4 (A) A single entity within the State responsible for
5 all state and local sales and use tax
6 administration, return processing, and audits for
7 remote sales sourced to the State;

8 (B) A single audit of a remote seller for all state
9 and local taxing jurisdictions within the State;
10 and

11 (C) A single sales and use tax return to be used by
12 remote sellers to be filed with the single entity
13 responsible for tax administration;

14 provided that the department shall not require a
15 remote seller to file sales and use tax returns any
16 more frequently than returns are required for
17 nonremote sellers or impose requirements on remote
18 sellers that the department does not impose on
19 nonremote sellers with respect to the collection of
20 sales and use taxes;

21 (2) Provide a uniform sales and use tax base;



- 1 (3) Source all remote sales in compliance with the
- 2 sourcing definition set forth in section 255D-A;
- 3 (4) Provide the following:
- 4 (A) Information indicating the taxability of products
- 5 and services, along with any product and service
- 6 exemptions, from sales and use tax in the State
- 7 and a rates and boundary database;
- 8 (B) Software, free of charge for remote sellers,
- 9 that:
- 10 (i) Calculates sales and use taxes due on each
- 11 transaction at the time the transaction is
- 12 completed;
- 13 (ii) Files sales and use tax returns; and
- 14 (iii) Is updated to reflect rate changes, as
- 15 described in paragraph (8); and
- 16 (C) Certification procedures for persons to be
- 17 approved as certified software providers;
- 18 provided that the software provided by certified
- 19 software providers shall be capable of
- 20 calculating and filing sales and use taxes in all
- 21 states;



- 1 (5) Relieve remote sellers from liability to the State for
2 the incorrect collection, remittance, or noncollection
3 of sales and use taxes, including any penalties or
4 interest, if the liability is the result of an error
5 or omission made by a certified software provider;
- 6 (6) Relieve certified software providers from liability to
7 the State for the incorrect collection, remittance, or
8 noncollection of sales and use taxes, including any
9 penalties or interest, if the liability is the result
10 of misleading or inaccurate information provided by a
11 remote seller;
- 12 (7) Relieve remote sellers and certified software
13 providers from liability to the State for incorrect
14 collection, remittance, or noncollection of sales and
15 use taxes, including any penalties or interest, if the
16 liability is the result of incorrect information or
17 software provided by the State; and
- 18 (8) Provide remote sellers and certified software
19 providers with ninety days notice of a rate change by
20 the State, update the information described in
21 subparagraph (4)(A) accordingly, and relieve any
22 remote seller or certified software provider from



1 liability for collecting sales and use taxes at the
2 immediately preceding effective rate during the
3 ninety-day notice period if the required notice is not
4 provided.

5 **§255D-C No effect on nexus.** Nothing in this part shall be
6 deemed to have any effect on analysis of taxpayer nexus with the
7 State."

8 SECTION 3. Chapter 255D, Hawaii Revised Statutes, is
9 amended by designating sections 255D-1 to 255D-9 as part I,
10 entitled:

11 **"PART I. GENERAL PROVISIONS"**

12 SECTION 4. In codifying the new sections added by section
13 2 of this Act, the revisor of statutes shall substitute
14 appropriate section numbers for the letters used in designating
15 the new sections in this Act.

16 SECTION 5. New statutory material is underscored.

17 SECTION 6. This Act shall take effect on July 1, 2050.



Report Title:

Streamlined Sales and Use Tax Agreement; Alternative; Minimum Simplification Requirements

Description:

Provides an alternative to Hawaii becoming a member state under the Streamlined Sales and Use Tax Agreement. Directs DOTAX to establish rules to meet minimum simplification requirements. Effective 7/1/2050. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

