

# Senate Study Bill 3265

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
WAYS AND MEANS BILL BY  
CO=CHAIRPERSON ZIEMAN)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act updating the state's sales and use tax law pursuant to the  
2 streamlined sales and use tax agreement and including  
3 effective date provisions.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
5 TLSB 6634SK 81  
6 mg/je/5

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1 1 Section 1. Section 423.2, subsection 8, Code Supplement  
1 2 2005, is amended by striking the subsection and inserting in  
1 3 lieu thereof the following:  
1 4 8. a. A tax of five percent is imposed on the sales price  
1 5 from sales of bundled transactions. For the purposes of this  
1 6 subsection, a "bundled transaction" is the retail sale of two  
1 7 or more distinct and identifiable products, except real  
1 8 property and services to real property, which are sold for one  
1 9 nonitemized price. A "bundled transaction" does not include  
1 10 the sale of any products in which the sales price varies, or  
1 11 is negotiable, based on the selection by the purchaser of the  
1 12 products included in the transaction.  
1 13 b. "Distinct and identifiable products" does not include  
1 14 any of the following:  
1 15 (1) Packaging or other materials that accompany the retail  
1 16 sale of the products and are incidental or immaterial to the  
1 17 retail sale of the products.  
1 18 (2) A product provided free of charge with the required  
1 19 purchase of another product. A product is "provided free of  
1 20 charge" if the sales price of the product purchased does not  
1 21 vary depending on the inclusion of the product which is  
1 22 provided free of charge.  
1 23 (3) Items included in the definition of "sales price"  
1 24 pursuant to section 423.1.  
1 25 c. "One nonitemized price" does not include a price that  
1 26 is separately identified by product on binding sales or other  
1 27 supporting sales-related documentation made available to the  
1 28 customer in paper or electronic form.  
1 29 Sec. 2. Section 423.18, Code Supplement 2005, is amended  
1 30 by striking the section and inserting in lieu thereof the  
1 31 following:  
1 32 423.18 MULTIPLE POINTS OF USE.  
1 33 1. Notwithstanding the provisions of section 423.15, a  
1 34 business purchaser that is not a holder of a direct pay permit  
1 35 that knows at the time of purchase of a digital good, computer  
2 1 software, or a service that the digital good, computer  
2 2 software, or service will be concurrently available for use in  
2 3 more than one jurisdiction shall deliver to the seller in  
2 4 conjunction with its purchase an exemption certificate  
2 5 claiming multiple points of use or meet the requirements of  
2 6 subsection 2 or 3. For the purpose of this section only,  
2 7 "computer software" includes but is not limited to computer  
2 8 software delivered electronically, by load and leave, or in  
2 9 tangible form. "Computer software" does not include computer  
2 10 software received in person by a business purchaser at a  
2 11 business location of the seller.  
2 12 a. Upon receipt of an exemption certificate claiming  
2 13 multiple points of use, the seller is relieved of all  
2 14 obligation to collect, pay, or remit the applicable tax, and  
2 15 the purchaser shall be obligated to collect, pay, or remit the

2 16 applicable tax on a direct pay basis.  
2 17 b. A purchaser delivering an exemption certificate  
2 18 claiming multiple points of use may use any reasonable, but  
2 19 consistent and uniform, method of apportionment that is  
2 20 supported by the purchaser's business books and records as  
2 21 they exist at the time the transaction is reported for sales  
2 22 or use tax purposes.  
2 23 c. A purchaser delivering an exemption certificate  
2 24 claiming multiple points of use shall report and pay the  
2 25 appropriate tax to each jurisdiction where concurrent use  
2 26 occurs. The tax due shall be calculated as if the apportioned  
2 27 amount of the digital good, computer software, or service had  
2 28 been delivered to each jurisdiction to which the sale is  
2 29 apportioned pursuant to paragraph "b".  
2 30 d. The exemption certificate claiming multiple points of  
2 31 use shall remain in effect for all future sales by the seller  
2 32 to the purchaser, except as to the subsequent sale's specific  
2 33 apportionment that is governed by the principles of paragraphs  
2 34 "b" and "c", until the exemption certificate is revoked in  
2 35 writing.

3 1 2. Notwithstanding subsection 1, when the seller knows  
3 2 that the product will be concurrently available for use in  
3 3 more than one jurisdiction, but the purchaser does not provide  
3 4 an exemption certificate claiming multiple points of use as  
3 5 required in subsection 1, the seller may work with the  
3 6 purchaser to produce the correct apportionment. The purchaser  
3 7 and seller may use any reasonable, but consistent and uniform,  
3 8 method of apportionment that is supported by the seller's and  
3 9 purchaser's business books and records as they exist at the  
3 10 time the transaction is reported for sales or use tax  
3 11 purposes. If the purchaser certifies the accuracy of the  
3 12 apportionment and the seller accepts the certification, the  
3 13 seller shall collect and remit the tax pursuant to subsection  
3 14 1, paragraph "c". In the absence of bad faith, the seller is  
3 15 relieved of any further obligation to collect tax on any  
3 16 transaction where the seller has collected tax pursuant to the  
3 17 information certified by the purchaser.

3 18 3. When the seller knows that the product will be  
3 19 concurrently available for use in more than one jurisdiction  
3 20 and the purchaser does not have a direct pay permit and does  
3 21 not provide the seller with an exemption certificate claiming  
3 22 a multiple points of use exemption as required in subsection  
3 23 1, or certification pursuant to subsection 2, the seller shall  
3 24 collect and remit the tax based on the provisions of section  
3 25 423.15.

3 26 4. A holder of a direct pay permit shall not be required  
3 27 to deliver an exemption certificate claiming multiple points  
3 28 of use to the seller. A direct pay permit holder shall follow  
3 29 the provisions of subsection 1, paragraphs "b" and "c", in  
3 30 apportioning the tax due on a digital good, computer software,  
3 31 or a service that will be concurrently available for use in  
3 32 more than one jurisdiction.

3 33 5. Nothing in this section shall limit a person's  
3 34 obligation for sales or use tax to this state in which the  
3 35 qualifying purchases are concurrently available for use, or  
4 1 limit a person's ability under local, state, federal, or  
4 2 constitutional law, to claim a credit for sales or use taxes  
4 3 legally due and paid to other jurisdictions.

4 4 Sec. 3. Section 423.20, subsection 1, paragraph j, Code  
4 5 2005, is amended to read as follows:

4 6 j. "Postpaid calling service" means the telecommunications  
4 7 service obtained by making a payment on a call-by-call basis  
4 8 either through the use of a credit card or payment mechanism,  
4 9 such as a bank card, travel card, credit card, or debit card,  
4 10 or by charge made to a telephone number which is not  
4 11 associated with the origination or termination of the  
4 12 telecommunications service. A "postpaid calling service"  
4 13 includes a telecommunications service, except a prepaid  
4 14 wireless calling service, that would be a prepaid calling  
4 15 service except it is not exclusively a telecommunications  
4 16 service.

4 17 Sec. 4. Section 423.20, subsection 1, Code 2005, is  
4 18 amended by adding the following new paragraph after paragraph  
4 19 k, and relettering the remaining paragraphs:

4 20 NEW PARAGRAPH. 1. "Prepaid wireless calling service"  
4 21 means a telecommunications service that provides the right to  
4 22 utilize mobile wireless service as well as other  
4 23 nontelecommunications services, including the download of  
4 24 digital products delivered electronically, content and  
4 25 ancillary services, which must be paid for in advance and that  
4 26 is sold in predetermined units or dollars of which the amount

4 27 declines with use in a known amount.

4 28 Sec. 5. Section 423.20, subsection 2, paragraph c,  
4 29 subparagraphs (1) and (3), Code 2005, are amended to read as  
4 30 follows:

4 31 (1) A sale of mobile telecommunications services other  
4 32 than air-to-ground radiotelephone service, ~~or~~ prepaid calling  
4 33 service, ~~or prepaid wireless calling service~~ is sourced to the  
4 34 customer's place of primary use as required by the federal  
4 35 Mobile Telecommunications Sourcing Act.

5 1 (3) A sale of prepaid calling service ~~or a sale of prepaid~~  
5 2 ~~wireless calling service~~ is sourced in accordance with section  
5 3 423.15. However, in the case of a sale of ~~mobile~~  
5 4 ~~telecommunications services that is a prepaid~~  
5 5 ~~telecommunications a prepaid wireless calling~~ service, the  
5 6 rule provided in section 423.15, subsection 1, paragraph "e",  
5 7 shall include as an option the location associated with the  
5 8 mobile telephone number.

5 9 Sec. 6. Section 423.45, subsection 4, paragraph b, Code  
5 10 2005, is amended to read as follows:

5 11 b. The sales tax liability for all sales of tangible  
5 12 personal property and all sales of services is upon the seller  
5 13 and the purchaser unless the seller takes ~~in good faith~~ from  
5 14 the purchaser a valid exemption certificate stating under  
5 15 penalty of perjury that the purchase is for a nontaxable  
5 16 purpose and is not a retail sale as defined in section 423.1,  
5 17 or the seller is not obligated to collect tax due, or unless  
5 18 the seller takes a fuel exemption certificate pursuant to  
5 19 subsection 5. If the tangible personal property or services  
5 20 are purchased tax free pursuant to a valid exemption  
5 21 certificate ~~which is taken in good faith by the seller~~, and  
5 22 the tangible personal property or services are used or  
5 23 disposed of by the purchaser in a nonexempt manner, the  
5 24 purchaser is solely liable for the taxes and shall remit the  
5 25 taxes directly to the department and sections 423.31, 423.32,  
5 26 423.37, 423.38, 423.39, 423.40, 423.41, and 423.42 shall apply  
5 27 to the purchaser.

5 28 Sec. 7. Section 423.45, subsection 4, paragraph d, Code  
5 29 2005, is amended by striking the paragraph and inserting in  
5 30 lieu thereof the following:

5 31 d. The protection afforded a seller by paragraph "b" does  
5 32 not apply to a seller who fraudulently fails to collect tax or  
5 33 to a seller who solicits purchasers to participate in the  
5 34 unlawful claim of an exemption.

5 35 Sec. 8. Section 423.51, subsection 2, Code 2005, is  
6 1 amended to read as follows:

6 2 2. Sellers that follow the requirements of this section  
6 3 are relieved from any tax otherwise applicable if it is  
6 4 determined that the purchaser improperly claimed an exemption  
6 5 and that the purchaser is liable for the nonpayment of tax.  
6 6 This relief from liability does not apply to a seller who  
6 7 ~~fraudulently does any of the following:~~

6 8 ~~a. Fraudulently fails to collect the tax or solicits tax.~~

6 9 ~~b. Solicits purchasers to participate in the unlawful~~  
6 10 ~~claim of an exemption.~~

6 11 ~~c. Accepts an exemption certificate when the purchaser~~  
6 12 ~~claims an entity-based exemption when the following conditions~~  
6 13 ~~are met:~~

6 14 ~~(1) The subject of the transaction sought to be covered by~~  
6 15 ~~the exemption certificate is actually received by the~~  
6 16 ~~purchaser at a location operated by the seller.~~

6 17 ~~(2) The state provides an exemption certificate that~~  
6 18 ~~clearly and affirmatively indicates that the claimed exemption~~  
6 19 ~~is not available in the state.~~

6 20 ~~d. Accepts an exemption certificate claiming multiple~~  
6 21 ~~points of use for tangible personal property other than~~  
6 22 ~~computer software for which an exemption claiming multiple~~  
6 23 ~~points of use is acceptable under section 423.18.~~

6 24 Sec. 9. Section 423.51, Code 2005, is amended by adding  
6 25 the following new subsections:

6 26 NEW SUBSECTION. 3. a. A seller otherwise obligated to  
6 27 collect tax from a purchaser is relieved of that obligation if  
6 28 the seller obtains a fully completed exemption certificate or  
6 29 secures the relevant data elements of a fully completed  
6 30 exemption certificate within ninety days after the date of  
6 31 sale.

6 32 b. If the seller has not obtained an exemption certificate  
6 33 or all relevant data elements as provided in paragraph "a",  
6 34 the seller may, within one hundred twenty days after a request  
6 35 for substantiation by the department, either prove that the  
7 1 transaction was not subject to tax by other means or obtain a  
7 2 fully completed exemption certificate from the purchaser,

7 3 taken in good faith.  
7 4 c. Nothing in this subsection shall affect the ability of  
7 5 the state to require purchasers to update exemption  
7 6 certificate information or to reapply with the state to claim  
7 7 certain exemptions.  
7 8 d. Notwithstanding paragraphs "a", "b", and "c", a seller  
7 9 is relieved of its obligation to collect tax from a purchaser  
7 10 if the seller obtains a blanket exemption certificate from the  
7 11 purchaser, and the seller and purchaser have a recurring  
7 12 business relationship. For the purposes of this paragraph, a  
7 13 recurring business relationship exists when a period of no  
7 14 more than twelve months elapses between sales transactions.  
7 15 The department may not request from the seller renewal of  
7 16 blanket certificates or updates of exemption certificate  
7 17 information or data elements when there is a recurring  
7 18 business relationship between the purchaser and seller.

7 19 NEW SUBSECTION. 4. All relief that this section provides  
7 20 to sellers is also provided to certified service providers  
7 21 under this chapter.

7 22 Sec. 10. Section 423.52, Code 2005, is amended to read as  
7 23 follows:

7 24 423.52 RELIEF FROM LIABILITY FOR SELLERS AND CERTIFIED  
7 25 SERVICE PROVIDERS.

7 26 1. Sellers and certified service providers using databases  
7 27 derived from zip codes or state or vendor provided address=

7 28 based databases are relieved from liability to this state or  
7 29 its local taxing jurisdictions for having charged and  
7 30 collected the incorrect amount of sales or use tax resulting  
7 31 from the seller or certified service provider relying on  
7 32 erroneous data provided by this state on tax rates,  
7 33 boundaries, or taxing jurisdiction assignments. If this state  
7 34 provides an address-based system for assigning taxing  
7 35 jurisdictions ~~whether or not pursuant to the federal Mobile~~  
8 1 ~~Telecommunications Sourcing Act~~, the director is not required  
8 2 to provide liability relief for errors resulting from reliance  
8 3 on the information provided by this state if the director has  
8 4 given adequate notice, as determined by the governing board,  
8 5 to affected parties of the decision to end this relief.

8 6 2. a. Model 2 sellers and certified service providers are  
8 7 relieved of liability to Iowa for any failure to charge and  
8 8 collect the correct amount of sales or use tax if this failure  
8 9 results from the model 2 seller's or the certified service  
8 10 provider's reliance upon this state's certification to the  
8 11 governing board that Iowa has accepted the governing board's  
8 12 certification of a piece of software as a certified automated  
8 13 system. The relief provided by this paragraph to a model 2  
8 14 seller or certified service provider does not extend to a  
8 15 seller or provider who has incorrectly classified an item or  
8 16 transaction into the product-based exemptions portion of a  
8 17 certified automated system. However, any model 2 seller or  
8 18 certified service provider who has relied upon an individual  
8 19 listing of items or transactions within a product definition  
8 20 approved by the governing board or Iowa may claim the relief  
8 21 allowed by this paragraph.

8 22 b. If the department determines that an item or  
8 23 transaction is incorrectly classified as to its taxability,  
8 24 the department shall notify the model 2 seller or certified  
8 25 service provider of the incorrect classification. The model 2  
8 26 seller or certified service provider shall have ten days to  
8 27 revise the classification after receipt of notice of the  
8 28 determination. Upon expiration of the ten days, the model 2  
8 29 seller or certified service provider shall be liable for the  
8 30 failure to collect the correct amount of sales or use taxes  
8 31 due and owing to the member state.

8 32 Sec. 11. EFFECTIVE DATES.

8 33 1. Except as provided in subsection 2, this Act takes  
8 34 effect January 1, 2008.

8 35 2. The sections of this Act amending section 423.45,  
9 1 subsection 4, being deemed of immediate importance, take  
9 2 effect upon enactment.

9 3 EXPLANATION

9 4 This bill updates the references to the Iowa sales and use  
9 5 tax law as implemented by the streamlined sales and use tax  
9 6 agreement (agreement). There were a number of amendments to  
9 7 the agreement which need to be included in the sales and use  
9 8 tax laws.

9 9 Code section 423.2(8) is amended to reflect a revision to  
9 10 the bundled transaction provision. A bundled transaction  
9 11 involves the sale of two or more products which are distinct  
9 12 and identifiable, and the products are sold for one  
9 13 nonitemized price.

9 14 Code section 423.18 is amended to reflect a revision to the  
9 15 multiple points of use provision. The revision provides that  
9 16 a business purchaser of digital goods, software, or a service  
9 17 that will be used in more than one jurisdiction is to deliver  
9 18 to the seller an exemption certificate claiming multiple  
9 19 points of use. Upon receipt of this certificate, the seller  
9 20 is relieved of collecting tax and the purchaser must pay tax  
9 21 on an apportionment basis. If the purchaser does not have the  
9 22 certificate, then the purchaser and seller will jointly arrive  
9 23 at the apportionment.

9 24 Code sections 423.20(1) and 423.20(2) are amended to add  
9 25 new provisions related to prepaid wireless calling service and  
9 26 the method of sourcing such service. Prepaid wireless calling  
9 27 service is a telecommunications service that provides the  
9 28 right to utilize mobile wireless service as well as other  
9 29 nontelecommunications services, including the download of  
9 30 digital products delivered electronically which are paid for  
9 31 in advance and sold in predetermined units which decline upon  
9 32 use.

9 33 Code section 423.45(4) is amended to conform the exemption  
9 34 certificate requirements for all retailers to the requirements  
9 35 for retailers registered under the agreement. The amendments  
10 1 are effective upon enactment.

10 2 Code section 423.51(2) is amended to add new provisions to  
10 3 the requirements related to exemption certificates. These  
10 4 provisions relate to the seller's loss of nonliability for  
10 5 collection of tax if the seller accepts an exemption  
10 6 certificate at the seller's business and the state has  
10 7 affirmatively indicated that the claimed exemption is not  
10 8 available in the state; and if the seller accepts an exemption  
10 9 certificate claiming multiple points of use of tangible  
10 10 personal property for which the multiple points of use  
10 11 exemption provisions of a different Code section apply.

10 12 Code sections 423.51 and 423.52 are amended to include new  
10 13 provisions related to the various types of relief available to  
10 14 sellers. These provisions include relief for reliance on the  
10 15 certification of the seller's software and classification of  
10 16 an item under the taxability matrix.

10 17 The bill takes effect January 1, 2008, except for the  
10 18 provisions amending Code section 423.45, which take effect  
10 19 upon enactment.

10 20 LSB 6634SK 81

10 21 mg:nh/je/5.2