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ROLL NUMBER

DESCRIPTION

2095

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Y. Hernandez
Operator's Signature

10-16-83
Date

2003 SENATE FINANCE AND TAXATION

SB 2095

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10-16-03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2095

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date January 29, 2003

Tape Number	Side A	Side B	Meter #
1	X		1-end
1		X	1-2189
Committee Clerk Signature <i>[Signature]</i>			

Minutes:

Senator Urlacher opened the hearing on SB2095. All committee members are present. This bill relates to adoption of the streamlined sales and use tax agreement as adopted by member states of the streamlines sales tax project.

Senator Dwight Cook, business owner, (mtr #32) - Here as a collector of sales tax for the state of North Dakota. Opened business in 1989, at that time found I had to collect and remit sales tax for the state of North Dakota. In 1995 received a letter that I was part of a random audit to ensure compliance with State Tax Law. Found some honest errors in audit which I took care of. Issue is that remote sellers (catalog sales) do not have to collect and remit sales tax. The citizen purchasing the product is responsible for remitting sales tax. Catalog companies do not need to collect and remit because they would have to know 45 different tax laws. Challenging this committee to find a solution to the problem. However, you can not mandate it. This bill does not mandate remote sellers to collect and remit sales tax. It is proposing a tax law that would apply to

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Page 2

Senate Finance and Taxation Committee

Bill/Resolution Number SB2095

Hearing Date January 29, 2003

all member states. Additionally, audit should include a "hold harmless" clause for honest mistakes. Suggesting a third party could collect and remit sales tax for remote sellers. The system must protect the sovereignty of North Dakota. Urging a Do Pass for SB2095 and SB2096.

Senator Wardner (mtr #965) - Do you envision more than one third party collecting tax for the remote sellers?

Senator Cook (mtr #989) - Yes, that would be possible.

Senator Wardner (mtr #1033) - When talking definitions, example candy, if taxing candy, the same items have to be candy.

Senator Cook (mtr #1060) - Right now, retailers decide the definition of candy. I envision definition goes to manufacturer. Could be embedded in the bar code on the product.

Senator Wardner (mtr #1141) - Could have situation, one state could sales tax vs. another state may not tax, this would still work?

Senator Cook (mtr #1158) - Yes, that is correct.

Senator Tollefson (mtr #1187) - It is not a mandate now, what would be the effect if an organization did not want to be involved.

Senator Cook (mtr #1220) - Under this law, remote sellers would have to choose whether they are going collect and remit. Feel many will voluntarily collect because burden of process has been removed.

Senator Wardner (mtr #1260) - At a previous statewide event, sponsor was frustrated with sales tax setup. Would this bill help.

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Senate Finance and Taxation Committee

Bill/Resolution Number SB2095

Hearing Date January 29, 2003

Senator Cook (mtr #1323) - 3rd party would be used by remote vendors. Cities would retain the right to tax differently so 3rd party would not work.

Senator Nichols (mtr #1380) - How do you see audit process working for remote sellers?

Senator Cook (mtr #1390) - That will be addressed in within the two bills.

Gary Anderson, Division Director of Sales and Special Taxes, ND Office of State Tax

Commissioner (mtr#1460) - Written testimony and Q and A attached. Tax Commissioner requests the committee's favorable consideration of this bill.

Senator Urlacher (mtr #2400) - You have attended meetings in the formulation of this agreement?

Mr. Anderson - Yes, began participation in March of 2002 in Denver and many since.

Senator Urlacher (mtr #2459) - Another committee that consisted of Sen.Cook and Rep.Drovdal and myself that attended meetings for the past year.

Senator Seymour (mtr #2500) - Referencing the Q & A sheet, #7, fifth bullet point, states "with congressional action" please define.

Mr. Anderson (mtr #2528) - In past sessions, legislation introduced many times, that requires states to simplify their sales taxes. Once states have formed compact, congress would provide authority to those states tax remote sellers.

Senator Tollefson (mtr #2735) - The mandate issue. In a competitive industry, sales tax can mean the difference between a sale and no sale. Why would remote sellers agree to this?

Mr. Anderson (mtr #2819) - Remote sellers are concerned about the cost of collecting and remitting taxes with the additional work of using 45 systems. Remote seller would use technology or 3rd party vendors. At this time have five remote seller vendors that would to

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Senate Finance and Taxation Committee

Bill/Resolution Number SB2095

Hearing Date January 29, 2003

register here. Feel a system of uniformity would be established. The streamlined sales and use tax system takes away their liability.

Representative David Drovdal (mtr #3229) - Believes in this issue. Collecting and remitting sales tax since 1967. Have lost sales to remote sellers more than Internet sellers. In small communities businesses continue to lose. This bill helps main street. Urges support of this bill, it will help ND.

Representative Lonny Winrich (mtr #4294) - Supports 2095 and 2096. Cautions to study bill carefully. Important to realize what it is not. Addresses the issue of equity.

Representative Ron Iverson (mtr #4520) - Testified in opposition to 2095 and 2096. Feels it is a mistake for North Dakota. Written testimony is attached. Referenced map in handout. Urges Do Not Pass.

Senator Wardner (mtr #5308) - What benefits would a state get if they didn't participate?

Representative Iverson (mtr #5330) - Businesses can move there and the system would continue as is. If we are going to have an agreement, it needs to be a national agreement.

Senator Wardner (mtr #5398) - Regarding California, what benefit would they receive?

Representative Iverson (mtr #5413) - Business that don't want to be a part of this can move there to get away from SST. We would have to change constitution to enact.

Senator Urlacher (mtr #5536) - Address sovereignty and constitutionality of SB2095.

Mr. Anderson (mtr #5593) - In regards to the responsibility of the retailer to report taxes, the law states that if the retailer has a presence the state it has an obligation to collect and report taxes for that state. On Internet sales, have the same requirements. Not obligated to collect if they do not

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10-16-03

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Senate Finance and Taxation Committee

Bill/Resolution Number SB2095

Hearing Date January 29, 2003

have a presence in the state. This bill enables remote sellers to come forward and register with the state.

Senator Wardner (mtr #6125) - A business as a remote seller, does not have to participate.

Mr. Anderson - That is correct, no obligation. The seller has to voluntarily register and collect taxes.

Tape 1, Side B

Senator Tollefson (mtr #15) - What is the fiscal effect?

Mr. Anderson (mtr #23) - Will address in SB2096.

Bruce Furness, Mayor of Fargo (mtr #50) - Fargo is a main retail center of ND. Fargo businesses feel they are at a competitive disadvantage to Internet sales. Support concept of all retailers being equal. Urges committee to move forward with amendments to allow ND to continue participation in project.

Senator Urlacher - The purpose of this hearing is to gather facts.

Connie Spryuczynatyk, North Dakota League of Cities (mtr #215) - We see competitive disadvantage from lack of tax on sales from remote providers. Cities will work in partnership with legislature. Urges passage and will work with committee to that end.

Paul Thomas, Administrator of the North Dakota Ag Coalition (mtr #400) - Testified in opposition to SB2095. Written testimony attached. Urges Do Not Pass.

Curley Haugland, President, Recreation Supply Company (mtr #525) - Testified in opposition to SB2095 and SB2096. In 1987 statute was defeated. Written testimony attached.

Senator Wardner (mtr #941) - We do have compacts with other states for other purposes.

Mr. Haugland (mtr #970) - Key is "without congressional approval"

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10-16-03
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Senate Finance and Taxation Committee

Bill/Resolution Number SB2095

Hearing Date January 29, 2003

Senator Nichols (mtr #992) - Are you concerned about the voluntary provisions?

Mr. Haugland (mtr #1020) - More than voluntary, privacy needs to be addressed. Would be a huge compromise in how we do business. We should not do an unconstitutional act.

Sandy Clark, North Dakota Farm Bureau, Public Policy Team (mtr #1165) - Testified in opposition to SB2095 and SB2096. Written testimony attached.

Senator Urlacher - Can constitutionality be addressed?

Daniel L. Rouse, Legal Counsel, Tax Department (mtr #1955) - Supremacy clause has been raised. Opinion on it is on its way from the Attorney Generals Office. US Supreme Court case similar case, a similar multi-state compact was upheld. Feel SST could be upheld on similar ground. The test on that kind of supremacy clause is whether the compact, SST, would increase the political powers of the state by way encroachment on the supremacy powers granted to the federal government. If it did encroach, it would require congressional approval.

Senator Urlacher - Closed the hearing on SB2095

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10-16-03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2095

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date February 3, 2003

Tape Number	Side A	Side B	Meter #
2	X		4,260
Committee Clerk Signature <i>[Signature]</i>			

Minutes:

Senator Urlacher opened discussion on SB2095. All committee are present. This bill relates to the streamlined sales tax. Gary Anderson will be speaking to Democratic caucus.

Senator Nichols (mtr #4400) - I have heard enough to make a decision.

Senator Urlacher - Bill has no fiscal effect.

Senator Tollefson (mtr #4477) - Why is there no fiscal note.

Senator Urlacher (mtr #4505) - 2095 is the authorization to move forward.

Senator Tollefson - Tax Department can't project that?

Senator Nichols - 2096 carries the fiscal note, 2095 carries the language.

Senator Tollefson - Question still stands on the fiscal note.

Senator Wardner (mtr #4769) - There is a fiscal note on 2096.

Senator Nichols (mtr #4854) - Question regarding the dollar amount of the cap.

Senator Urlacher - That would be up to the cities to define and adjust.

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10-16-03
Date

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Senate Finance and Taxation Committee

Bill/Resolution Number SB2095

Hearing Date February 3, 2003

Senator Nichols (mtr #4999) - Question pertains mostly to implement sales.

Senator Urlacher - Implement sales would be taken out as is defined differently.

Senator Wardner (mtr #5110) - Exempt items will remain the same.

Senator Wardner (mtr #5220) - Move Do Pass on SB2095. 2nd Senator Tollefson.

Roll call vote, 6 yea, 0 nay, 0 absent.

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Yherosa d. Lee

Date

10-16-03

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2095

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date February 4, 2003

Tape Number	Side A	Side B	Meter #
2	X		674-1390
Committee Clerk Signature <i>Mary Kay Wale</i>			

Minutes:

Senator Urlacher opened the discussion on SB2095. All committee members are present. This bill relates to the streamlined sales and use tax.

Senator Wardner (mtr #698) Motioned to reconsider committee action on 2095. 2nd to reconsider by Senator Seymour. Voice vote to bring bill back, 6 yea, 0 nay, 0 absent.

Senator Wardner (mtr #730) - We have an amendment from the Tax Department which is .0101.

Wording needed to be clarified and reviewed amendment.

Senator Urlacher (mtr #846) - We have the bill before us as amended.

Senator Tollefson motioned to amend as proposed by Tax Dept with amendment .0101. 2nd by Senator Wardner. Roll call vote 6 yea, 0 nay, 0 absent.

Senator Wardner motioned a Do Pass as Amended. 2nd by Senator Nichold Roll call vote 6 yea, 0 nay, 0 absent. Carrier Senator Urlacher.

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10-16-03
Date

FISCAL NOTE
Requested by Legislative Council
02/13/2003

Amendment to: SB 2095

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Engrossed SB 2095 is a statutory reference bill that deals with the adoption of the streamlined sales and use tax agreement. This bill has no fiscal impact.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Kathryn L. Strombeck	Agency:	Tax Dept.
Phone Number:	328-3402	Date Prepared:	02/14/2002

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10-16-03
Date

FISCAL NOTE
Requested by Legislative Council
01/03/2003

Bill/Resolution No.: SB 2095

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

SB 2095 is a statutory reference bill that deals with the adoption of the streamlined sales and use tax agreement. This bill has no fiscal impact.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Kathryn L. Strombeck	Agency:	Tax Dept.
Phone Number:	328-3402	Date Prepared:	01/28/2003

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10-16-03
Date

Date: 2.3.2005
Roll Call Vote #:

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2095

Senate	Finance and Taxation	Committee
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☐ Check here for Conference Committee

Legislative Council Amendment Number DO PASS

Action Taken _____

Motion Made By Sen. Leland Seconded By Sen. Tolleson

[illegible]

Total (Yes) 6 No 0

Absent _____

Floor Assignment Senator Lunsford

If the vote is on an amendment, briefly indicate intent:

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Operator's Signature Y. Heron, J. Lee

10-16-03
Date

38188.0101
Title.0200

Prepared by the Legislative Council staff for
Senate Finance and Taxation
February 4, 2003

93
2-5-3

PROPOSED AMENDMENTS TO SENATE BILL NO. 2095

Page 1, line 3, after the semicolon insert "to repeal chapter 57-39.4 of the North Dakota Century Code, relating to participation in multistate discussions and entering the streamlined sales and use tax agreement;"

Page 23, after line 30, insert:

"SECTION 2. REPEAL. Chapter 57-39.4 of the North Dakota Century Code, as it exists on July 31, 2003, is repealed."

Page 24, line 1, replace "This" with "Section 1 of this"

Renumber accordingly

Page No. 1

38188.0101

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Operator's Signature

10-16-03
Date

Date: 2-4-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2045

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Amend as proposed

Motion Made By Sen Tollefson Seconded By Sen Lundberg

Senators	Yes	No	Senators	Yes	No
Senator Urlacher - Chairman	<input checked="" type="checkbox"/>		Senator Nichols	<input checked="" type="checkbox"/>	
Senator Wardner - Vice Chairman	<input checked="" type="checkbox"/>		Senator Seymour	<input checked="" type="checkbox"/>	
Senator Syverson	<input checked="" type="checkbox"/>				
Senator Tollefson	<input checked="" type="checkbox"/>				

Total (Yes) 6 No 0

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

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10-16-03
Date

Date: 2.4.03
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2095

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Pass as amended

Motion Made By Sen. Luedtke Seconded By Sen. Nichols

Senators	Yes	No	Senators	Yes	No
Senator Urlacher - Chairman	/		Senator Nichols	/	
Senator Wardner - Vice Chairman	/		Senator Seymour	/	
Senator Syverson	/				
Senator Tollefson	/				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Senator Luedtke

If the vote is on an amendment, briefly indicate intent:

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10-16-03
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REPORT OF STANDING COMMITTEE (410)
February 5, 2003 12:43 p.m.

Module No: SR-22-1707
Carrier: Wardner
Insert LC: 38188.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2095: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2095 was placed on the Sixth order on the calendar.

Page 1, line 3, after the semicolon insert "to repeal chapter 57-39.4 of the North Dakota Century Code, relating to participation in multistate discussions and entering the streamlined sales and use tax agreement;"

Page 23, after line 30, insert:

"SECTION 2. REPEAL. Chapter 57-39.4 of the North Dakota Century Code, as it exists on July 31, 2003, is repealed."

Page 24, line 1, replace "This" with "Section 1 of this"

Renumber accordingly

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2003 HOUSE FINANCE AND TAXATION

SB 2095

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10-16-03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2095

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date March 11, 2003

Tape Number	Side A	Side B	Meter #
1	X		0.5
Committee Clerk Signature <i>Janie Stein</i>			

Minutes:

REP. WES BELTER, CHAIRMAN Called the hearing to order.

SEN. DWIGHT COOK, DIST. 34, Introduced the bill. Gave his comments on both SB 2095 and SB 2096. He stated he signed in as a Senator from Dist. 34 and a business owner and a tax collector. Gave his perspective as a business owner and tax collector. Related to a book he received from the Tax Department which gave him instructions on how to collect and remit sales tax. He stated, besides collecting sales tax for our state, he also had to collect for Minnesota and South Dakota, as he had customers located there. He related to an audit which he was involved in. He stated he paid sales tax money to Minnesota instead of North Dakota. He related to states who do not collect sales tax, stating it is because there are 45 different tax collections in as many different states, and testified there should only be one tax collection for every state.

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10-16-03
Date

Page 2

House Finance and Taxation Committee

Bill/Resolution Number SB 2095

Hearing Date March 11, 2003

REP. BELTER The illustration you gave us with the different books, if these two bills were passed, we still wouldn't have any authority to collect the sales tax from the shoe company you related to.

SEN. COOK We would not have any authority whatsoever to mandate that shoe company or any other remote seller collects or remits our sales tax. I believe with the burden removed, they will voluntarily do so.

REP. IVERSON If this B. A. Mason Company would be located in New York or California, would they be part of this sales tax proposal?

SEN. COOK No they would not.

REP. IVERSON So, states that don't participate in this, companies could move there if they wanted to, and get around it. They could have nexus in those states and not be part of the streamlined sales tax?

SEN. COOK I believe that is correct. One of the latest states that has introduced this type of law, is the state of Montana, a state that does not have a sales tax, also, I believe California and New York are stepping to the table.

REP. DROVDAL Asked him to elaborate on the effective date.

SEN. COOK It would be January 1, 2006. Personally, I would hope as you deliberate on this bill, that you look at those effective dates and have a discussion with the tax commissioner.

There is an extreme benefit, for the way this works, the first ten states, with twenty percent of the population in states that collect sales tax, will allow to form the governance of this process as it moves forward. I think there is a big advantage for North Dakota to be one of them. The implementing date being set where it is, is set to give us some time to work through this process,

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however, I think it would keep us from being one of the original states. That is a question this committee and this legislative body should deliberate on, as to the merits of that decision.

REP. DROYDAL Asked him to respond to North Dakota sovereignty.

SEN. COOK Sovereign rights means we are in control. I believe we are fully in control here.

No other state can pass a law which affects what the citizens of North Dakota's taxes are. Maybe an analogy which can best answer that question and let us get a handle on how our sovereignty is, Century Code 39-10-08 in our motor vehicle title, requires every citizen in North Dakota to drive on the right side of the road. We have the sovereign right to change that, so every citizen would have to drive on the left side, but it isn't a smart thing to do. I compare that to sales tax simplification. We have the sovereign right to do what it is we want, but hopefully, we recognize the benefit, especially, with this changing world of commerce we live in which doesn't recognize state boundaries, just like highways don't. I believe we have the sovereign right to implement a simplified sales tax collection.

REP. WINRICH In response to the chairman's question regarding what would happen with the shoe company, you said we would not be in a position to mandate that they collect sales tax, even if this passes, however, a number of multi-state sellers have volunteered to join in this compact, have they not?

SEN. COOK Yes, they have. The tax department could probably shed more light on that.

REP. KELSH If we adopted this, or entered into the compact, each state would still be responsible for conducting their own audit?

SEN. COOK No, I don't believe that is right. Remote sellers would be subjected to one audit.

REP. KELSH Who would be responsible for conducting the audit?

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SEN. COOK Deferred the question to the tax department.

REP. KELSH Part of the presentation we saw earlier in the session by the tax department, North Dakota would have a sovereignty as to what was taxed, but would not have the sovereignty or ability to determine what that tax break would be on every product, each state would have to enter into an agreement that all products would have to be taxed at the same rate?

SEN. COOK That is misinformation going around. We would determine what our sales tax rate is. One thing we give up, is some flexibility, you will see that in this bill. We will only be able to have one rate. How that affects North Dakota, as we have seven percent on alcohol and three percent on farm machinery, and the rest of our tax rate is five percent. The solution to that is in the bill, when we move alcohol and farm machinery out of the sales tax definition. Each state determines what the sales tax rate is.

REP. GROSZ You touched on one of my concerns, holding harmless for the remote tax collector, are you comfortable with the way the bill is written, to hold those people harmless?

SEN. COOK Yes, I am comfortable with that. To hold harmless means, you are not going to be subjected to fines and penalties. You are subjected to an audit, to see that the proper tax is remitted to the proper state, but when I was audited, I was also subjected to a fine.

REP. DAVID DROVDAL, DIST. 39 Testified in support of both SB 2095 and SB 2096. I come before you not only as a legislator but as a business person. I have also had the privilege of representing North Dakota for the last two years on the SSTP project, streamlined sales tax project. I have been filling out tax returns since about 1967. When I first got excited about remote sales, at that time it was catalog sales, I felt that I was not on a level playing field in my business. That is what got me going on the streamlined sales tax project. He stated he was asked

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to buy raffle tickets, and belong to all of the organizations in his community, and yet, he had to compete in these remote sales, all they had to do was send in a picture, and they didn't have to collect sales tax. That was the thorn in his side, then the internet came in and they didn't have to collect sales tax. Related to when he started in the legislature, there were all phone calls, now it is all e-mail. Now, he stated he has probably gotten two dozen phone calls, and a thousand or more e-mails. I got involved in this streamlined sales tax project because of this situation. Gave an explanation of the meetings he attended. He stated several retailers were at these meetings, because they are already doing business in multi states and already have this big burden of administration of the sales tax. The idea at the meetings was to simplify the taxes.

REP. FROELICH How will this affect the city of Bismarck with the 6% sales tax and the city of Williston with the 5% sales tax?

REP. DROVDAL Each city will have its own, they will be able to determine how much their tax is, or if they have a tax at all. They will follow the guidelines of the city, as far as definition goes, it is their choice. They can only have one rate.

REP. BELTER Some cities have a cap, where you only pay so much in sales tax, under this rule, that cap would not exist?

REP. DROVDAL That is correct, caps and holidays are not available under these rules. There were different ways we were working to address that, because some cities feel it is important.

REP. IVERSON Related to Article 3, section 302, lines 18, 19 and 20, read from the article.

REP. DROVDAL Stated that was not true, the cities can charge what they want.

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REP. WINRICH Stated the fiscal note is curious since it says there is no fiscal impact, what sort of projections did the committee have and what might be effective when this was implemented. What kind of gain in protective revenue are we anticipating?

REP. DROVDAL I am taking it out of the state and local tax revenue losses from e-commerce, it is really hard to justify that. They did come out with projections which were done in 1999, it shows projections in 2001, combined sales and local revenue losses were in 2001, 2006 and 2011. Take this a little bit tongue and cheek, it is not mandated, it is a voluntary system. In 2001, they showed a projected loss of 26.2 million dollars, 2006 76.4 million dollars and 2011 110.2 million dollars. If we wanted to make up that revenue in state tax, it would be about one percent more tax, the North Dakota retailers would have to collect to make up the difference.

REP. GROSZ You opened up by saying you wanted to be on a playing field with the catalog and internet sales, but this bill doesn't get you there if we can't mandate those companies collect the sales tax, how does this solve that issue, unless this is the first step of two, where the second step is actually mandating that all states have to go in to this compact and all sellers have to go in.

REP. DROVDAL I started out saying that's what got me on board, and I came around about 180 degrees, because I saw what was driving this, was the businesses themselves. If it makes it simpler for big businesses, it also makes it simpler for small North Dakota businesses to understand the system. It doesn't level the playing field on the fact that a lot of businesses will come on voluntarily. This state will never be able to mandate it ourselves, that is out of our control.

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REP. GROSZ I think we need some clarification then, if these large companies came to the table voluntarily, to see how the government is going to spend the tax, or did they come to the table because, if it is going to happen they want a say in how its going to happen.

REP. DROVDAL I think they were invited to participate. Everybody wanted this to work on a voluntary basis. If they aren't on board, it would never work. They had a vote on the definitions and everything, they were equal partners.

GARY ANDERSON, DIV. DIRECTOR OF SALES & SPECIAL TAXES, NORTH

DAKOTA OFFICE OF THE STATE TAX COMMISSIONER Testified in support of the bill. See attached written testimony plus streamlined sales tax system, together with a breakdown of the other states involved, and questions and answers relating to the streamlined sales tax system.

REP. BELTER Can cities still have their different rates of sales tax?

GARY ANDERSON Yes, the provision that Rep. Iverson was looking at, refers to common tax base. That is not the same as common tax rate. Tax base is the items you base your tax on. Tax rates is in a section on the following page. Cities have the ability to apply their own separate tax rate, but it indicates they have to have one tax rate. Grand Forks is the only city that currently has two tax rates. They have a one and three quarters percent and a quarter percent for restaurant, alcohol type entertainment tax, which they would have to bundle together with this bill. This will not change anything.

REP. BELTER For instance, if you buy a car in Fargo right now, the city sales tax is capped at \$25, if this passes, that cap would be removed, when you start talking about \$30,000 cars, that's a lot of money, now we are in a situation where, Fargo will have to figure out, is there such a way,

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where Fargo will have to say, we are not going to tax cars, or another scenario is, we will have to develop some type of refund thing, which will create a lot of work for the taxpayer and the car dealer to get your money back?

GARY ANDERSON The car is not the best situation, because they are subject to the excise tax law, and that law is not affected by this agreement. This applies only to the North Dakota Sales & Use Tax Law.

REP. BELTER Let's use furniture.

GARY ANDERSON If you buy \$5,000 of furniture, and you pay one percent, you will pay \$50 on that. The city has an option, those are discussions the cities are having right now. They have to look at the fact, do they keep that \$50 or do they work some revenue neutral percentage, or do they look at a refund process. In the situation regarding large purchases, it will probably affect more of the larger cities in North Dakota. In the small communities, I am questioning that there will be a lot of sales over \$2,500. The implement dealer may already be exempt in those small communities.

REP. KELSH Sen. Cook said Montana didn't have a sales tax, why are they even joining the compact, if they don't have a sales tax?

GARY ANDERSON I don't have the answer. I am assuming one of the things that would be driving that is, Montana like most states, are experiencing budget shortfalls, they have looked at the sales tax in the last two or three sessions, they continue to look at that, it may be that somebody is looking ahead.

REP. KELSH Who is responsible for the auditing?

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GARY ANDERSON It still leaves a lot of responsibility on the state. We have main street businesses, which we will be auditing their businesses. We have out of state companies holding permits, those companies are not part of the agreement, they continue to be bonded by us. Part of the process of removing the _____ here is that the large remote sellers, provide an opportunity to move that responsibility to a third party, called a certified service provider. It would take away from that company of having to deal with the tax application at all. When you order something over the internet, when you punch in that order, it goes directly to the third party provider, who has the software to determine what the tax rate is, if it is taxable or not, what is the tax rate in each state or city, then it sends it back with your order. When you issue the payment with your credit card, the third party actually handles the money.

REP. KELSH Are you saying, there wouldn't be anymore audits, there would be a clarification process through a third party provider and that would be it?

GARY ANDERSON There would be audits of the third party provider or the remote sellers who are participating in it, and main street business who continue to have representation in North Dakota. We would still audit some of the remote sellers, that would probably be more restricted. There is nothing that would preclude North Dakota from auditing a remote seller. It would reduce the cost of auditing.

REP. GROSZ Your testimony in regard to the fiscal note, it was estimated that all state and local sales and use losses for internet sales in North Dakota in 2002, would reach 22 million and all remote sales ranged from 17 million to 50 million, however, the fiscal note showed no fiscal effect. Is this a way to increase taxes on people, or if everyone is paying through the use tax now, so there wouldn't be a fiscal effect?

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GARY ANDERSON In terms of increasing taxes on taxpayers, actually what the streamlined sales tax would do, in terms of bringing sellers to the table, the law already provides, and those taxes should be collected and paid. Right now the retailer should be collecting and paying, and if they don't the customer has a responsibility to pay it to the state. Right now, the tax being lost to the state, is not a tax increase, it is simply escaping right now.

Mr. Anderson went on to testify in support of SB 2096 at this point.

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2095

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date March 24, 2003

Tape Number	Side A	Side B	Meter #
1	X		4.6
Committee Clerk Signature <i>Janice Stein</i>			

Minutes:

COMMITTEE ACTION

REP. IVERSON Presented amendments to the committee members, he stated we will not be able to join the streamlined sales tax until Congress lifts the moratorium on internet sales. It does not prohibit us from taking part in any discussions or working on a document, we just can't implement it until after Congress has acted.

REP. DROYDAL Stated this agreement has to do with North Dakota's sales tax, he stated these amendments would take us away from the table. He felt this was an unfriendly amendment to the bill and would not serve the retailers of North Dakota.

REP. IVERSON Stated he visited with Mr. Walstad at the Legislative Council, and he said this amendment would not prevent us from taking part in the streamlined sales tax. We just could not implement until Congress has acted.

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Bill/Resolution Number SB 2095
Hearing Date March 24, 2003

REP. WINRICH This amendment would also prevent North Dakota sellers and merchants from taking advantage of the simplification that the streamlined sales tax provides for collecting tax and administering the sales tax.

REP. IVERSON No, all it does is, until Congress lifts the moratorium, we would not be collecting the tax.

REP. WINRICH I thought you said, we could not implement the streamlined sales tax, that applies to in-state sellers as well.

REP. IVERSON That is correct.

REP. DROVDAL If we don't implement this act, then we don't comply with the agreement, we cannot go to the table, until we implement this act. It does affect us.

REP. CLARK Unless Congress lifts the moratorium on internet sales, we will never be able to collect taxes on internet sales. The way I read this amendment, this act becomes effective after Congress lifts the moratorium on internet sales.

REP. BELTER Took a voice vote on adopting the amendment, the motion failed.

REP. DROVDAL Made a motion for a DO PASS

REP. WINRICH Second the motion. MOTION CARRIED

9 YES 3 NO 2 ABSENT

REP. CLARK Was given the floor assignment.

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Date: **3-24-03**
Roll Call Vote #: **1**

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. **SB 2095**

House FINANCE & TAXATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep Drovdal Seconded By Rep. Winrich

Representatives	Yes	No	Representatives	Yes	No
BELTER, CHAIRMAN		✓			
DROVDAL, VICE-CHAIR	✓				
CLARK	✓				
FROELICH	✓				
GROSZ		✓			
HEADLAND	✓				
IVERSON		✓			
KELSH	A				
KLEIN	✓				
NICHOLAS	A				
SCHMIDT	✓				
WEILER	✓				
WIKENHEISER	✓				
WINRICH	✓				

Total (Yes) 9 No 3

Absent 2

Floor Assignment Rep Clark

If the vote is on an amendment, briefly indicate intent:

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REPORT OF STANDING COMMITTEE (410)
March 24, 2003 1:14 p.m.

Module No: HR-52-5557
Carrier: Clark
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2095, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman)
recommends **DO PASS** (9 YEAS, 3 NAYS, 2 ABSENT AND NOT VOTING).
Engrossed SB 2095 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-52-5557

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2003 TESTIMONY

SB 2095

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**Testimony before the Senate Finance and Taxation Committee
Senate Bill 2095**

January 29, 2003

Prepared by Gary Anderson, Division Director of Sales & Special Taxes
North Dakota Office of State Tax Commissioner
Phone: 328-3471
E-mail: ganderson@state.nd.us

Good morning Chairman Urlacher and Members of the Senate Finance and Taxation Committee.

Introduction

My name is Gary Anderson. I am the Division Director for Sales and Special Taxes, and I am here representing the North Dakota Office of State Tax Commissioner. Senate Bill 2095, which is a companion bill to Senate Bill 2096, is introduced at the Tax Commissioner's request. Senate Bill 2095 relates to the adoption of the Streamlined Sales and Use Tax Agreement as previously adopted by member states of the Streamlined Sales Tax Project on November 12, 2002.

Purpose of bill

The Agreement speaks to the criteria that participating states must comply in order to become part of a multistate tax compact whose purpose is to simplify the sales and use tax system utilized by sellers to collect and report taxes, and in turn, provide states an opportunity to legally collect taxes on remote sales.

The Agreement represents the work of 40 states and the District of Columbia. 36 of these states were voting participants that had previously received authorization from their legislature or their Governor to participate in multistate discussions leading to the development of the Streamlined Sales and Use Tax Agreement. North Dakota received

legislative authority during the 2001 Legislative Session through the creation of North Dakota Century Code chapter 57-39.4. 5 additional states participated in these discussions as non-voting states, and were identified as "observer states." (There are a total of 45 states and the District of Columbia that currently impose sales and use taxes.)

Senate Bill 2095 does not, in itself, amend North Dakota's existing sales and use tax laws. The changes that are necessary to bring North Dakota's tax laws into compliance with the Streamlined Sales and Use Tax Agreement's criteria are addressed in Senate Bill 2096. Senate Bill 2095 should be regarded as a template, in that it would be used as a guide in defining the simplifications that would be necessary to achieve and maintain streamlined sales and use tax system consistent with other participating states.

Bill's Provisions

In addressing the language of the bill, I would like to bring to your attention the attachment to my testimony entitled *Streamlined Sales Tax System Question & Answers*.

Section 1 of the bill begins by providing for the adoption of the Streamlined Sales and Use Tax Agreement, as referenced by 57-39.4-01 (Page 1, Lines 7 through 10). A complete copy of the Agreement is also being provided with my testimony.

Following 57-39.4-01, which provides for the adoption of the Agreement, the remainder of Senate Bill 2095 sets out in total the requirement that a state must accept to participate under the provisions of this Agreement. The requirements include:

- (301) State level administration – state administration of local sales and use taxes.
- (302) State and local tax bases – the tax base for local sales and use taxes must be identical to the state tax base, with exception of items reflected on page 2, lines 1 and 2.

- (303) Seller registration -- requires the availability of an online sales and use tax registration system.
- (304) Notice of state tax changes -- as practical, provides sellers with adequate notification of rate and tax base changes and limit effective date on rate changes to first day of calendar quarter.
- (305) Local rate and boundary changes -- provide sellers with adequate notification of rate and boundary changes, and establish a database that uses an address or zip code for determining a purchaser's taxing jurisdiction (state and applicable local tax rates).
- (306) Relief from certain liability -- relieves sellers from liability for incorrect collection of sales taxes when the sellers rely on erroneous data provided by states or local taxing jurisdictions.
- (307) Data base requirements and exceptions -- electronic data bases provided for in the Agreement are to be available in a downloadable format.
- (308) State and local tax rates -- the state may not have multiple sales and use tax rate, except on food and food ingredients and drugs; and also excludes natural gas (currently 2%) and new mobile homes (currently 3%). Local taxing jurisdictions may not have multiple sales and use tax rates (currently only one of the local taxing jurisdictions impose more than one sales and use tax rate).
- (309) Application of general sourcing rules and exclusions from the rules -- sourcing rules are the same for tangible personal property, digital goods, and services when the seller is determining responsibilities to collect sales and use taxes.
- (310) General sourcing rules -- provides uniform sourcing rules

- a. A product received at the seller's business location is sourced to the business location.
- b. A product received by the purchaser at a location other than the seller's business location is taxable at the delivery location.
- c. If (a) or (b) does not apply, the product received by the purchaser is sourced to the purchaser's address.
- d. If (a), (b), or (c) does not apply, the product received by the purchaser is sourced to the location indicated by the address of the purchaser's payment instrument.
- e. When none of the previous rules apply, the product received by the purchaser is sourced to the address from which the property was shipped from or originated from.

(311) General sourcing definitions – defines "receive" and "receipt".

(312) Multiple points of use – a purchaser who is not a direct permit holder may purchase items tax-free and instead self report the sales or use tax on items that are purchased as one transaction but delivered to multiple taxing jurisdictions.

(313) Direct mail sourcing – a purchaser who is not a direct permit holder shall provide to the seller (often times a printer) the direct mail information detailing the taxing jurisdictions where the direct mail is mailed.

(314) Telecommunications sourcing – defines the sourcing rules applying to call-by-call telecommunications charges, as well as charges sold on a basis other than call-by-call.

- (315) Telecommunications sourcing definitions -- defines several telecommunications terms.
- (316) Enactment of exemptions -- addresses the enactment of product-based, entity-based or use-based exemptions.
- (317) Administration of exemptions -- details the information the seller would obtain and administrative process that a seller shall complete to support and exemption.
- (318) Uniform tax returns -- requires only one tax return per seller.
- (319) Uniform rules for remittance of funds -- establishes requirements for remitting tax payments, and provides for electronic payment options.
- (320) Uniform rules for recovery of bad debts -- identifies the administrative procedures necessary for a seller to claim a bad debt deduction for sales tax purposes.
- (321) Confidentiality and privacy protections under model 1 -- establishes the rules that a model 1 "certified service provider" needs to adhere to insure the privacy of customer information is maintained. (Model 1 certified service provider is a third-party service provider that contracts with a seller to perform all of the seller's sales tax functions -- determines the amount of tax due on a sales transaction, pays the tax to the state, and files returns with the state.)
- (322) Sales tax holidays -- permits a state to initiate sales tax holidays on items that have been defined by the Agreement.
- (323) Caps and threshold -- eliminates the use of caps and thresholds that may apply on state and local sales and use taxes.

Yubereca J. Lee
Operator's Signature

10-16-03
Date

- (324) Rounding – to calculate tax, the seller would calculate the tax to the third decimal point, and round to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.
- (325) Customer refund procedures – identifies the procedures for a purchaser to seek a refund of over-collected sales taxes.
- (326) Direct pay permits – enables very large businesses having a very large quantity of purchases to purchase everything tax free, and then self-report the sales or use tax directly to the state.
- (327) Library of definitions – maintains a record of all definitions provided by the Agreement (Reference Appendix B of the Streamlined Sales and Use Tax Agreement for a complete listing of terms that have been defined and Appendix C to review the definitions.)
- (328) Taxability matrix – matrix that will be provided by the state that signifies whether a product is taxable or exempt.
- (329) Effective date of rate changes – defines the effective date of rate changes for services.

Section 2 of Senate Bill 2095 provides for an effective date after December 31, 2005.

Summary

The Streamlined Sales and Use Tax Agreement provides the guide for states and local taxing jurisdictions that apply sales and use taxes. As indicated previously, it is intended to provide a means of improving upon the reliability of the sales and use tax system as a major revenue source by creating a system that can be utilized by main-

street businesses in this state and remote sellers while incurring minimal compliance costs or at no costs. This provides the opportunity for remote sellers or out-of-state sellers to come forward voluntarily to collect sales tax on their sales. It is true that remote sellers that do not have a physical presence in this state cannot be required to collect and remit a state's sales and use taxes. And it is true that one of the primary concerns of remote sellers that do not have a physical presence is the issue of the compliance costs associated with the collection of taxes for not only forty-five states and the District of Columbia, but also the costs associated with the collection of taxes for over 7,500 local taxing jurisdictions. It is with this concern that the Streamlined Sales Tax Project was established and subsequently resulted in the Streamlined Sales and Use Tax Agreement.

The Agreement, if adopted, would represent the guide for creating uniformity among states. It would be reflective of a system that utilizes uniform definitions and administrative processes that would provide overall efficiencies to the sales tax system; it would be reflective of the simplification of sales tax laws; and simplification of the sales and use tax administration through the utilization of technology and third-party service providers, identified as certified service providers for calculating, collecting, reporting, and paying taxes on behalf of the sellers.

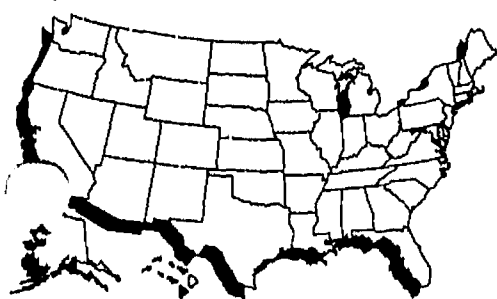
I would also like to note an additional aspect of the Streamlined Sales Tax Agreement is the development of a multistate compact that would be achieved once ten or more states are in compliance with the provisions of the Agreement. Once the multistate compact is in place, it would require that a remote seller wishing to

voluntarily register in one of the compact states to also register and collect sales taxes in all of the compact states.

It is important to note that the Streamlined Sales and Use Tax Agreement is not simply a product of many states working together. Instead it represents a culmination of three years of hard work and active participation from representatives of states, local taxing jurisdictions, national and regional retailers, trade associations, manufacturers, direct marketers, technology companies, and many other business associations.

The Agreement sets forth the requirements to participate and to develop a more simple, uniform, and fair system for the administration of state and local sales and use taxes, provides for a reduction in the compliance costs incurred by retailers, and preserves state and local sovereignty.

The first step in achieving this goal is the adoption of the Streamlined Sales and Use Tax Agreement by the State of North Dakota. That Tax Commissioner requests the committee's favorable consideration of this bill. Mr. Chairman, if the committee has any questions, I would be happy to respond to them at this time.



Streamlined Sales Tax System

Questions & Answers

The following Questions and Answers have been developed by the Streamlined Sales Tax Project for legislative sponsors and others involved in state legislation. For additional information, please refer to "A Lawmaker's Guide to the Streamlined Sales Tax Project: 2003, The Year of Decision." Also refer to the Streamlined Sales Tax Project web site at: www.streamlinedsalestax.org.

1. Will uniformity as proposed by the Streamlined Sales Tax Project reduce autonomy of states and their legislatures?

State legislatures still determine what is taxable or exempt and what the rate of tax in their state is. Uniformity in the Streamlined Sales Tax System requires uniform definitions and uniform administrative procedures—not uniform taxes. Some may perceive this uniformity as reduced autonomy. However, the U.S. Supreme Court (*Quill versus North Dakota*, 1992) has said that the complicated state and local sales tax systems across this country have created an undue burden on sellers. If states are unwilling to accept uniformity in definitions and administrative procedures to reduce or eliminate burdens on sellers, it is likely that Congress may impose far more stringent requirements on the states.

2. Do the simplifications go far enough to overcome past U.S. Supreme Court decisions (*Quill versus North Dakota*, 1992) which said that sales tax systems across the country are too complex to require collection from sellers with no physical presence in a state?

Only Congress can determine if the simplifications are enough for a mandate for collection. The Streamlined Sales Tax System includes dramatic simplifications in exemption processing, uniform definitions, state level administration of local taxes, a reduced number of sales tax rates, determining the appropriate tax rate, and reduced audit burdens for sellers using the state-certified technology. The System provides dramatic simplification in almost every aspect of sales and use tax collection and administration, especially for multi-state sellers.

3. Does the Streamlined Sales Tax System impede Internet development?

No. The Streamlined Sales Tax System is about simplifying the collection and administration of sales taxes for all types of sellers so that the burden of compliance is reduced for everyone. The Streamlined Sales Tax System provides an opportunity for all businesses—from Main Street to the Internet—to reduce the complexity associated with tax administration while at the same time providing an avenue for sellers to grow their businesses into new areas absent the concern that their new business structure could run afoul of state sales tax laws.

4. If Congress mandates collection of sales taxes on multi-state sellers with no physical presence in a state, is this taxation without representation.

No. The sales tax is a tax on consumers and not sellers. Also, Congress will not mandate collection unless a state has taken the necessary steps to reduce the sales tax collection burden on sellers.

5. Are states increasing taxes by taxing Internet transactions?

No. Purchases made over the Internet are taxable now—but most consumers don't know this and the current laws are almost impossible to enforce against individual consumers. Consumers must pay a complementary use tax when the seller does not collect a sales tax at the point of sale on a taxable transaction. The Streamlined Sales Tax System was created by government and businesses to enable sales tax collection with reduced compliance burdens on sellers. This is not about new taxes.

6. Will states expand their tax bases through the uniform definitions?

No. Business and government representatives jointly developed the uniform definitions to simplify tax collection and administration, not increase taxes. The definitions were designed to model current tax bases to the extent possible so that increased or decreased taxes would be minimized. To achieve the uniform definitions, some states may choose to make changes to their tax base, but the decision to do so lies solely in the hands of state legislatures.

7. How does the Streamlined Sales Tax System and related legislation help small businesses?

The Streamlined Sales Tax System and related legislation provides the following benefits to small businesses:

- Simplifies exemption processing with protection for sellers that accept exemption certificates.
- Provides one uniform tax return for all states with the elimination of local tax returns.
- Allows a small business the option to use state-certified software or a Certified Service Provider to reduce or eliminate sales tax administration burdens.
- Makes it easier for businesses to expand to markets in other states or via the Internet because all states will use the uniform definitions and administrative procedures.
- With Congressional action, levels the playing field between (1) small Main Street businesses who collect sales taxes and (2) large, multi-state businesses that are not required to collect sales taxes because they have no physical presence in a state.

8. Why don't some of the Streamlined Sales Tax System provisions take effect until January 1, 2006?

Sales tax is a significant revenue source for many states. Sales tax laws and systems are complex. Radical simplification requires time for state and local

governments to implement the changes and provide adequate notice to sellers. The Streamlined Sales Tax System allows states to simplify immediately and work toward the more difficult provisions that might affect their revenue sources.

9. Should business activity taxes be addressed at the same time as we are simplifying sales taxes?

Some are suggesting that states and Congress clarify business activity tax nexus standards (e.g., corporation income or franchise taxes) at the same time they are enacting sales tax simplifications. Business activity tax issues and sales tax simplification are separate and unrelated issues. Both taxes are complex and need more uniformity. The Streamlined Sales Tax System provides a model methodology that should be used in simplifying other taxes. This cooperative effort between multiple governments and businesses is unprecedented. Still, it would not be wise to hold up state and Congressional action on the Streamlined Sales Tax System to address business activity taxes. Business activity taxes require a deliberate effort similar to what has been done in streamlining sales taxes.

10. Should there be a federal judicial review of decisions made by the member states of the Streamlined Sales Tax System?

No. State courts have interpreted tax law for many years. The Streamlined Sales Tax Agreement between states provides adequate mechanisms to resolve disputes. Sales tax administration is a state issue. State sovereignty should be protected.

11. What are the costs to sellers if they use state certified software or a Certified Service Provider for their tax collection functions?

The Streamlined Sales Tax System provides new technology options to sellers for sales tax administration. A seller can use a Certified Service Provider (CSP) or acquire state certified software. If a seller uses a CSP, the states agree to work together to pay for the costs of the CSPs that will be selected through a combined contract. The CSPs are responsible for developing software that determines the tax application, rate and jurisdiction. The CSPs will provide the necessary software to integrate with the seller's order processing and accounting systems. The CSPs will file applicable tax returns for the sellers. A seller's tax collection burden is eliminated under this option.

The states will also collectively certify software for use by sellers. This is called a Certified Automated System (CAS). The seller obtains the CAS and will receive a compensation allowance from the states for two years for acquiring the CAS. The amount of the allowance will be based on the cost of the CSPs. The seller remains liable for filing returns and remitting the tax with a CAS.

12. What other technology features are included in the Streamlined Sales Tax System?

The Streamlined Sales Tax System includes new technology to make tax collection easier including:

- Uniform returns that can be filed electronically.

- Central registration system to provide one-stop service for voluntary collectors. The system will be eventually expanded to all businesses.
- State-approved data bases matching rates with jurisdictions. Sellers using the data bases will not be held responsible for errors in tax collection.
- A state-by-state taxability matrix that will list items and services and the taxability determination for each state. Sellers using the matrix will not be held responsible for errors in tax collection.

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Yvonne J. Lee
Operator's Signature

10-16-03
Date

2003 Streamlined Sales Tax Legislative Tracking
(Updated 01/28/03)

Alabama	2003	4,447,100	Drafting legislation	
Arkansas	2003	2,679,733	Drafting legislation	
Florida	2003	16,028,890	Drafting legislation	1-16-03 Senate Committee on Finance & Taxation Project Report recommending Florida come in to compliance
Idaho	2003	1,297,274	Sen. Andreason Drafting legislation	Legislative Hearing - Boise, 01/15/03
Illinois	2003	12,439,042	Sen. Rauschenberger	
Indiana	2003	6,090,782	Drafting legislation Sen. Borst	SB 0465 and HB 1815 have been introduced
Iowa	2003	2,926,300	Drafting legislation	
Kansas	2003	2,693,824	Drafting legislation Sen. Corbin	
Kentucky	2003	4,041,800	Drafting legislation	
Maine	2003	1,274,923	Drafting legislation	
Maryland	2004	5,307,886	Sen. Hogan & Del. Hixson	
Michigan	2003	9,955,829	Drafting legislation	
Missouri	2003	5,595,211	Drafting legislation	
Montana	2003	902,195	Sen. Kitzenberg	SB 224 to create a sales tax wing SSTIS Agreement
Nebraska	2003	1,715,369	Drafting legislation Sen. Landis	Introduced LB 282 Hearing on 01/24/03
Nevada	2003	1,998,257	Drafting legislation	

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New Jersey	2003	8,424,354	Drafting legislation	
North Carolina	2003	8,067,673	Drafting legislation	
North Dakota	2003	643,756	Drafting completed Office of State Tax Commissioner	Introduced in two bills
Ohio	2003	11,353,100	Drafting legislation	
Oklahoma	2003	3,458,819	Drafting legislation Sen. Monson, Rep. Pope	
Pennsylvania	2003	12,300,670	Drafting legislation Rep. Stell	
South Carolina	2003	4,025,061	Drafting legislation	
South Dakota	2003	756,874	Drafting legislation Sen. McCracken, Rep. Smidt	Leg. Hearing - Pierre - 01/16/03 Bill Introduced
Tennessee	2003	5,700,037	Drafting legislation Sen. Clabough	
Texas	2003	20,903,994	Drafting legislation Sen. Fraser, Sen. VandePutte	
Utah	2003	2,236,714	Drafting legislation Sen. Hillyard / Rep Harper	
Virginia	2004	7,100,702	Drafting legislation Sen. Hangar	Expected to pass resolution of intent for 2004
Washington	2003	5,908,684	Drafting Completed	
West Virginia	2003	1,813,077	Drafting legislation Del. Doyle	Leg. Hearing to educate Charleston - 01/28/03 (NCSL attending)
Wisconsin	2003	5,371,210	Drafting legislation Rep. Lehman / Sen. Panzer	

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Wyoming	2003	495,304	Drafting legislation Sen. Hines	
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Yvonne J. Lee

Date

10-16-03

Chairman Urlacher and Committee members

My name is Rep. Ron Iverson, I represent District 27 which is SW Fargo
Today I am here to testify against SB2095.

This bill would be a huge mistake for North Dakota to make. It would abdicate our sovereignty as a state to make decisions regarding how we formulate our own tax policy.

Numerous provisions in the latest draft of the SSTP limit state sovereignty in a manner that will erode these important constitutional protections:

- States have their ability to give local jurisdictions a modicum of sales tax flexibility curtailed, since the agreement provides that "...the tax base for local jurisdictions shall be identical to the state tax base, unless otherwise prohibited by federal law"
- Each state that joins SSTP must have only one rate of sales taxation, with the exception of food and drugs
- The SSTP agreement requires the adoption of uniform tax returns as well as uniform dates as to when the returns are due
- The agreement places restrictions on state and local sales tax holidays
- The agreement forbids states from having caps or thresholds on exemptions based on the value of the transaction
- Proposed language would force a state to adopt terms and definitions that comply with the agreement's "Library of Definitions"
- The agreement requires a state to levy sales and use tax on "all products or services included within each definition or exempt from sales and use tax all products or services within each definition"
- Amnesty must be offered to registered sellers in certain circumstances
- Each member state must annually certify compliance with the agreement

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- Administration of the agreement is through a governing board, which may take "any action necessary to fulfill the purposes" of the agreement, including allocating the costs of administration among the member states, and most actions taken by the board only require a simple majority
- If a single member state requires certain information to be protected from disclosure, the governing board can close its meetings to the public, regardless of law in other members states
- A closed session of the governing board can be convened on a majority vote of the board
- A member state's withdrawal cannot be effective until after 60 days have elapsed from notice given of withdrawal
- Optional language includes a restriction on a state's ability to determine whether a business has nexus in that state *after* the state exits the agreement
- Sanctions can be levied against members states upon a vote of three-fourths of participating member states, and the accused state cannot cast a vote
- Amendments and interpretations can be adopted by a vote of three-fourths of the members of the governing board
- The issue resolution process, including allocation of costs all "further details" deemed necessary, is completely unresolved in the current draft agreement, meaning the governing board could adopt rules significantly impacting a member state after the state joins the agreement
- Standing to sue a state agency or department, on the grounds that state action is consistent or inconsistent with the agreement, is flatly barred

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Using the excuse that they want to "streamline" and "simplify" retail sales taxes so that there will be a "level playing field" between Main Street merchants and e-commerce, state and local politicians are asking for unprecedented power to impose taxes on transactions that take place outside their borders.

The issue is not whether to tax Internet sales. Instead, the debate is about whether Congress should pass a law that allows taxation without representation. Should there be a national law, for example, allowing Utah to compel a Colorado business to collect and remit Utah taxes if that business sells something to a Utah resident?

The Constitution explicitly bars one state from regulating the commerce of another, which in this case means taxing retailers located across state lines. In the 1992 Quill decision, the Supreme Court affirmed this principle by ruling that a state can only collect sales tax from businesses that have a "nexus," or substantial physical presence, in that state.

Yet State and local politicians want to overturn this decision by getting Congress to approve a state sales tax cartel. Requests to establish this destination-based tax authority should be denied.

Such a regime would create an anti-consumer sales tax cartel for the benefit of profligate governments. It also would undermine privacy by requiring the collection of data on individual purchases and it would violate important constitutional principles by giving state and local governments the power to impose their own taxes on businesses in other states.

A Threat to Privacy

In addition to being bad tax policy, the destination-based regime, or SSTP, is a threat to privacy. The system envisioned by the NGA and NCSL, which is the model for this legislation, requires merchants to verify the residence of every customer and then impose the state and local taxes that apply in that locale. For this system to work, however, state and local bureaucrats would have the right to inspect records of transactions. At best, this approach means that personal financial information and buying patterns would cease to be private. On a more ominous note, this type of system would dramatically increase opportunities for such crimes as identity theft and credit card fraud. Proponents assert that "trusted third parties" could

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10-16-03
Date

act as intermediaries to guard against these problems, but cosmetic gestures will not deter hackers and others who misuse private information.

SSTP was developed to simplify and modernize sales and use tax collection and administration. In its place it provides a bureaucracy that dictates tax policy to member states at a cost of their state sovereignty and at the risk of the citizens of those same member states.

SSTP also creates a situation in which non-member states would reap the greatest benefit by providing nontax havens for companies to which they could relocate. Currently California, New York, Arizona, Virginia, Oregon, Idaho, Montana, Colorado, Utah, Georgia, Connecticut, Massachusetts and New Hampshire are not part of the SSTP cartel. They are classified as "Observer States" although the document does not define what that means. These states would be the beneficiaries of SSTP not the member states.

I would like to present a Memo that I received from the State Tax Department stating that SSTP is totally and completely unenforceable in non participating States. So if a retailer chooses not to participate and is located in a State that is not part of the cartel there is NOTHING that can be done about it.

Chairman Urlacher and members of the committee it is with a humble heart and a heavy conscience that I urge you in the strongest terms possible to give a DNP recommendation to SB 2095

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Gubereva J. Jee
Operator's Signature

10-16-03
Date

Interoffice Memo

To: Representative Ron Iverson, Jr.

From: Myles Vosberg *MVosberg*

RE: Streamlined Sales Tax Agreement

Date: Tuesday, January 28, 2003

This memo is a follow-up to our conversation this afternoon regarding the Streamlined sales tax agreement. You asked if a state that becomes a member of the agreement can require out-of-state businesses to collect its sales tax on goods delivered into the state.

Currently, if a business has no physical presence within North Dakota, we cannot require that business to collect our sales/use tax. Participation in the Streamlined sales tax agreement is voluntary for a business that does not have a physical presence within a state. Therefore, North Dakota could not require a retailer that has no physical presence within North Dakota and that does not volunteer to become part of the Streamlined sales project to collect our tax.

I hope this information is helpful. Please contact me if you have additional questions.

Confidential

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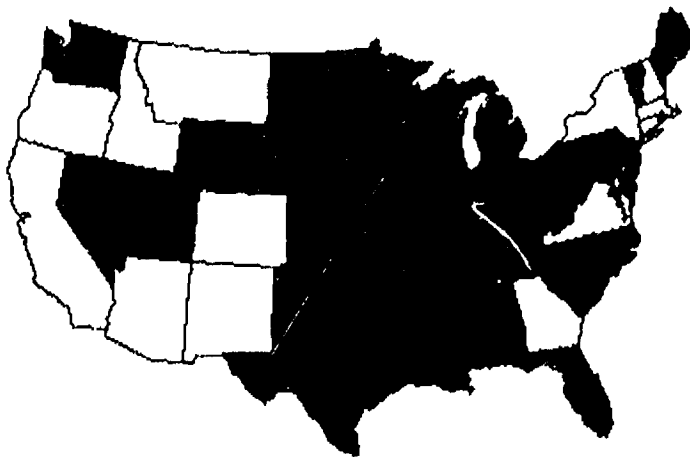
Y. Beres...
Operator's Signature

10-16-03
Date

List of Participating States

"Participating States" are those States that support the mission of the project and for which an elected official or body of elected officials has committed the State to participate in the Streamlined Sales Tax Project.

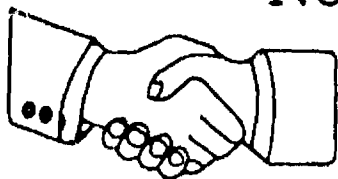
- Alabama
- Arkansas
- District of Columbia
- Florida
- Illinois
- Indiana
- Iowa
- Kansas
- Kentucky
- Louisiana
- Maine
- Maryland
- Michigan
- Minnesota
- Mississippi
- Missouri
- Nebraska
- New Jersey
- Nevada
- North Carolina
- North Dakota
- Ohio
- Oklahoma
- Pennsylvania
- Rhode Island
- South Carolina
- South Dakota
- Tennessee
- Texas
- Utah
- Vermont
- Washington
- West Virginia
- Wisconsin
- Wyoming



Other states represented in the Project are "Observer States".

[Back to Top](#) | [Home](#)

North Dakota



Ag Coalition

Chairman Urlacher, members of the Senate Finance and Tax Committee. I am Paul Thomas, administrator of the North Dakota Ag Coalition. I am here today to testify in opposition to SB 2095.

Members of the North Dakota Ag Coalition are concerned with provisions in this bill that may be detrimental to North Dakota Agriculture. Our greatest concern is with the uncertain effect it would have on our current machinery tax, and increases in the city special taxes by removing caps on each purchase. Many cities in North Dakota have adopted an additional 1% sales tax to aid in economic development. The tax is often capped at a certain dollar amount on large purchases. Under this bill that cap would no longer be in place. Because of production agriculture's large capital purchases this bill would result in a direct tax increase on the agriculture sector as well as many other capital intense industries such as construction.

Chairman Urlacher and members of the committee I urge a do not pass on Senate Bill 2095.

4007 State Street • Bismarck, North Dakota 58503 • Phone (701) 355-4330 • Fax (701) 223-4130

A nonpartisan group of organizations involved in all aspects of agriculture. Organized in April 1982, the Coalition has been successful in providing a unified "voice" on behalf of North Dakota agricultural interests.

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10-16-03
Date



Recreation Supply Company

P.O. Box 2757 Bismarck, ND 58502-2757

January 15, 2003

North Dakota Legislators

Re: Tax Department's Sales Tax Initiative

In 1987, then tax collector Heidi Heitkamp asked the legislature to pass HB 1195 to change the definition of "retailer" to include out of state mail order firms. She knew the statute she sought was in conflict with the U. S. Constitution, but needed it to form the basis of her lawsuit *Quill vs. North Dakota*.

Today, tax collector Rick Clayburgh is asking you to do it again; pass an unconstitutional statute to help further a larger agenda.

Article I, Section 10 of the Constitution states "No state shall, without the consent of Congress,...enter into any agreement or compact with another state...".

NCSL document attached clearly characterizes this agreement as something they hope will provide "justification for Congress to overturn the *Bellas Hess* and *Quill* decisions".


Clearly, Congress has not consented to this agreement! Senate Bill 2095, by its own terms, binds North Dakota in a multi-state agreement.

I have also attached some older materials on this issue to entertain you, and provide other perspectives on this issue.

The two pages from the article by Atkinson and Court reveal much about this issue. First, Atkinson is the director of the Progressive Policy Institute's Technology and New Economy Project (see www.ppionline.org and www.ndol.org) and largely responsible for the "New Economy" movement in this country. GNDA's New Economy Initiative is modeled after his works.

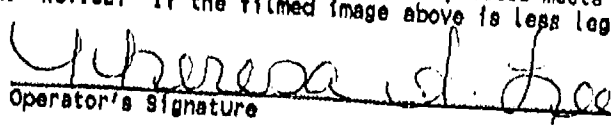
The second page from that article (page 4 of 6), provides us with the clues to what the "end game" of this initiative is in the paragraph "Beyond the Internet, Beyond the United States" last sentence.

Thank you very much for your consideration of these points. Please feel free to contact me at any time if you would like further information on this subject.


Curly Haugland
President

Phone: (701) 222-4860 • Toll free: (800) 437-8072 • Fax (701) 255-7895 • Email: sales@recsupply.com
www.recsupply.com

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UNITED STATES CONSTITUTION

Art. 2, § 1

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

§ 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

§ 10. No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligations of contracts or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No state shall, without the consent of Congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state or with a foreign power or engage in war unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE 2

THE EXECUTIVE

§ 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years.

Yubereca d. Lee
Operator's Signature

10-16-03
Date

- Requirements for Direct Pay Procedures
- Provisions for governance of the Agreement that ensure legislative participation, certainty for sellers and issue dispute resolution procedure with non-binding third party arbitration (NCSL Task Force recommendation)

Nothing in the Agreement binds any state to take any action, rather a state that wishes to participate will need to make the necessary statutory changes to comply with the terms of the Agreement.

When the federal moratorium on state and local taxes on Internet access expires in November 2003, Congress will likely address the issue of whether states will be granted the authority to require all sellers to collect the states' sales and use taxes. The Streamlined Sales and Use Tax Interstate Agreement provides the states with a blueprint to create a simplified sales and use tax collection system that removes the burden and cost from sellers and thus allows justification for Congress to overturn the *Bellas Hess* and *Quill* decisions.

Streamlined Sales Tax Implementing States September 2002

Alabama	New Jersey
Arizona	North Carolina
Arkansas	North Dakota
District of Columbia	Ohio
Florida	Oklahoma
Illinois	Rhode Island
Indiana	South Carolina
Iowa	South Dakota
Kansas	Tennessee
Kentucky	Texas
Louisiana	Utah
Maine	Vermont
Maryland	Virginia
Michigan	Washington
Minnesota	West Virginia
Missouri	Wisconsin
Nebraska	Wyoming
Nevada	

For More Information:

NCSL STAFF

Neal Osten, Senior Committee Director
202-624-8660

<http://www.ncsl.org/programs/fiscal/sstisupdate.htm>

1/11/03

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SYMPOSIUM 2000

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Internet Taxation: A Software Solution

Robert D. Atkinson[*]

Randolph H. Court[**]

Overview

1. The growth of Internet commerce has presented policy makers with a host of complex new issues over the last few years, from encryption to broadband access. One of the most vexing problems, however, is not a new issue, but an age-old one: taxation. On the one hand, free-market libertarians argue that online retail transactions should stay beyond the reach of the Tax Man (and if new technologies should sound the death knell for nearly all government, so much the better). On the other hand, state and local officials, in particular, view the Internet as a tide that will erode local and regional tax bases with devastating consequences as more and more sales move from the brick-and-mortar retailers on "Main Street" to the ether of Cyberspace.
2. Federal lawmakers have rightly taken a deliberate, go-slow approach to the problem. The Internet Tax Freedom Act of 1998 wisely imposed a three-year moratorium on new "discriminatory" taxes on the Internet,[1] and created the Advisory Commission on Electronic Commerce to study the Internet taxation issue.[2] The nineteen-member commission, which has three representatives from the federal government, eight from state and local government, and eight from the electronic commerce industry, will report its findings to Congress in the spring of 2000.
3. In the interim, several Internet tax bills have been introduced in Congress. In January of this year, Senator Bob Smith (R-NH) introduced S. 328,[3] a bill that would make the moratorium permanent. In July, Senator Ernest Hollings (D-SC) introduced S. 1433, which would impose a five percent national sales tax on all remote sales, including Internet, mail-order catalogues, and by phone.[4] The Smith bill has been referred to the Commerce Committee, while the Hollings bill was referred to the Finance Committee, but no other actions have been taken on either. We believe that neither bill adequately addresses the issue and that a third way is needed with regard to Internet taxation.
4. The Internet Tax Freedom Act prohibits the creation of new state, local, or federal taxes on Internet access or electronic commerce until October 2001.[5] Therefore, as the Advisory Commission works to fulfill its mandate, now is the time to move beyond simplistic rhetoric and dire warnings, and to explore workable solutions to what the Progressive Policy Institute (PPI) believes should be the obvious conclusion: states and municipalities should be able to tax Internet sales.

Principles

http://www.vjolt.net/vol5/symp2000/v5i1a1-Atkinson_Court.html

1/25/01

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19 One of the main benefits of a system like this is that it would allow state and local governments to maintain their independent discretion in determining tax rates. Obviously, this would mean that tax rates will continue to fluctuate over time. Therefore, for this system to work, state and local governments would have to be able to update the master system on an annual basis with their current tax rates. Retailers, in turn, will have to periodically download the latest versions of the software.

20 Contrary to the dire predictions of the other libertarian crowd, such a software system could actually add value for online consumers. For example, if the system were developed with open source code (that is, with the core programming instructions freely available to anyone), personal finance software developers could write compatible programs to help consumers keep track of their online spending, perhaps by automatically filing to receipt under appropriately defined categories on their home computers.

The Internet Tax Freedom Act directed the Advisory Commission on Electronic Commerce to ensure that any recommendation submitted to Congress apply to all forms of remote commerce, not just to e-commerce conducted over the Internet [10]. This is as it should be. A system that taxed e-commerce but not other remote transactions would be neither fair nor economically efficient. Such a system would essentially penalize the channel, giving consumers incentive to exploit the difference to find the best prices (e.g., finding the item to purchase online, and then ordering by phone to avoid paying a sales tax). Clearly, the same rules should apply to all remote sales. Therefore, in order for a software-driven system to work properly, there will need to be several versions of the software, allowing easy integration into any business back office computer system. Furthermore, for small businesses without complex order processing systems, a database of state and local sales tax rates will need to be available for use over the Internet. Small business owners should simply be able to go to a Web site, plug in an address, and find the appropriate tax rate for a sale to a customer in that location. Once this system is developed and effectively implemented in the United States, the U.S. government should work through the World Trade Organization, the Organization for Economic Cooperation and Development, and other appropriate bodies to reach world consensus on this sort of software mechanism for collecting and remitting local, regional, and national sales taxes.

<http://www.yzpoli.net/yol5/yol5-9604/2014-04-20/Arkan-on-6-count.html>

software that listed the state and local sales tax rates on all categories of items for all state and local tax districts in the nation. Retailers would download the free "shareware" software over the Internet. The system would be technologically neutral, designed to be incorporated easily into commercial web sites running on any computing platform. When a consumer makes an online purchase, the software would check the tax rates in the area to which the consumer has the product shipped. If the product is software or music that is downloaded instead of physically shipped, the tax would be determined according to the consumer's home or work address, as appropriate. The software would then display the tax rate along with all other charges, as on any standard receipt. When the consumer makes the purchase, he or she would simply pay the full amount (purchase price, sales tax, shipping and handling, etc.) electronically, most likely by credit card. The software would include routing numbers for each sales tax jurisdiction bank account, and the merchant's software would automatically transfer the sales tax funds via electronic funds transfers directly to the government bank account(s). For example, if a merchant collected \$600 in sales tax from residents in a particular county in a particular state, where the state sales tax is four percent and the local is two percent for a total tax of six percent, the software would remit \$400 to the state's bank account (along with an electronic form that lists the merchant's name and other pertinent information), and \$200 to the county bank account.

19. One of the main benefits of a system like this is that it would allow state and local governments to maintain their independent discretion in determining tax rates. Obviously, this would mean that tax rates will continue to fluctuate over time. Therefore, for this system to work, state and local governments would have to be able to update the master system on an annual basis with their current tax rates. Retailers, in turn, will have to regularly download the latest versions of the software.
20. Contrary to the dire predictions of the cyber-libertarian crowd, such a software system could actually add value for online consumers. For example, if the system were developed with open source code (that is, with the core programming instructions freely available to anyone), personal finance software developers could write compatible programs to help consumers keep track of their online spending, perhaps by automatically filing "e-receipts" under appropriately defined categories on their home computers.

Beyond the Internet, Beyond the United States

21. The Internet Tax Freedom Act directed the Advisory Commission on Electronic Commerce to ensure that any recommendation submitted to Congress apply to all forms of remote commerce, not just to e-commerce conducted over the Internet.^[10] This is as it should be. A system that taxed e-commerce but not other remote transactions would be neither fair nor economically efficient. Such a system would essentially penalize the channel, giving consumers incentive to exploit the differences to find the best prices (e.g., finding the item to purchase online, and then ordering by phone to avoid paying a sales tax). Clearly, the same rules should apply to all remote sales. Therefore, in order for a software-driven system to work properly, there will need to be several versions of the software, allowing easy integration into any business back office computer systems. Furthermore, for small businesses without complex order processing systems, a database of state and local sales tax rates will need to be available for use over the Internet. Small business owners should simply be able to go to a Web site, plug in an address, and find the appropriate tax rate for a sale to a customer in that location. Once this system is developed and effectively implemented in the United States, the U.S. government should work through the World Trade Organization, the Organization for Economic Cooperation and Development, and other appropriate bodies to reach world consensus on this sort of software mechanism for collecting and remitting local, regional, and national sales taxes.

Conclusion

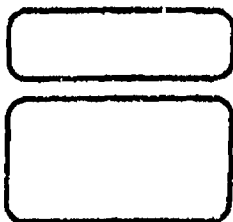
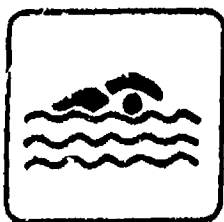
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Date



Recreation Supply Company

P.O. BOX 2757 • BISMARCK, ND 58502 • 701-222-4860

TO: All ND Legislators

January 14, 1992

Attached is a letter I recently received from the Ohio Tax Department as well as my reply, both a result of North Dakota Tax Commissioner Heidi Heitkamp's persecution of Quill Corporation.

Heitkamp has thus far successfully misdirected attention and created the illusion that somehow this nasty "out-of-state" corporation is taking unfair advantage of North Dakota and is "costing" the state "millions".

Sales tax is not a tax on corporations; it is a tax on consumers. Uncollected taxes due on mail-order purchases are owed to the state; but not by the business that made the sale.

Heitkamp knew when she asked the legislature to pass HB 1195 that its provisions were in conflict with the U.S. Constitution, yet she pressed on under the guise of "protecting main street".

The narrow view will surely see competition with business from "outside" as a threat; however, that same competition exerts downward pressure on prices consumers pay, thus saving North Dakotans many more "millions" than North Dakota "loses" in tax revenue.

In other words, Heitkamp would like to see North Dakotans in the "lose/lose" situation of higher prices and higher taxes.

One hundred "Growing North Dakotas" could not undo the damage done to the state's business image by this anti-business action. The world now knows North Dakota's business climate is as cold as its legendary winters.

What if North Dakota passed a law prohibiting membership in the Catholic Church? Lutherans, Baptists, Muslims, and others might like such a law to protect their "main street"; however, I think we all agree that the legislature would never pass such a law because it would violate the First Amendment to the U.S. Constitution.

Likewise, I believe that had legislators known, as Heitkamp did, that HB 1195 was in direct conflict with Article 1,

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Operator's Signature

10-16-03
Date

Section 8 of the U.S. Constitution, they would never have considered voting for it since to do so would be to violate their oath of office.

This Quill matter is the result of only one of many bad laws passed each session which begin as bills introduced directly by officials in the executive and judicial branches. Please support a change in the Legislative Rules to end this practice.

Sincerely,

Curly Haugland
Curly Haugland
President

78294.0100

Fiftieth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1195

Introduced by

Committee on Finance and Taxation

(At the request of the Tax Commissioner)

- 1 A BILL for an Act to amend
- 2 57-10 and subject
- 3

TESTIMONY BEFORE THE HOUSE FINANCE AND TAXATION COMMITTEE,
M. K. HEIDI HEITKAMP, STATE TAX COMMISSIONER
January 13, 1987

This clarification allows the State Tax Department to pursue mail orders without fear that a court will reject the claim because the tax is not based broad enough. Second, this Bill prepares the State for immediate implementation of any federal legislation.

held that the State of Illinois had no power to impose a use tax liability on an out-of-state mail order firm where the mail order is or so)

Minot, Ward County to still catalog shop

MINOT (AP) — Ward County and the city of Minot will continue to shop by catalog, despite a lawsuit by the state against one out-of-state catalog company.

Minot City Manager Robert Schempp said the city will not avoid buying from mail-order companies such as Quill Corp., which

the North Dakota Tax has sued in an attempt to state sales taxes on Dakota residents' purchases.

"We do business with the best price," Schempp said. "There have been times in the past when we have done business with Quill."

The state Tax Department has asked state agencies to stop buying from Quill.

And Gaffaney's, an in-state office supply company, recently sent a letter to Minot city officials, asking them to discontinue business with Quill.

(n 11)

Really?

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10-16-83
Date

Ohio

DEPARTMENT OF TAXATION

NOVEMBER 15, 1991

IMPORTANT NOTICE TO DIRECT MARKETERS

No doubt you have been contacted by Ohio or other states in the past and encouraged to register and collect use taxes. This is not merely another letter suggesting voluntary registration. The state and local tax environment is changing dramatically. Please take the time to review this information very carefully and give it your sincere consideration.

On October 7, 1991, the United States Supreme Court announced that it would hear the appeal of Quill Corp. v. North Dakota. In that case, the North Dakota Tax Commissioner assessed Quill Corp. (the large Illinois direct marketer of office supplies), contending that Quill had nexus with the state. The state supreme court affirmed the assessment, holding that National Bellas Hess was "obsolete" and need no longer be followed.


Many people on both "sides" of this issue believe that the Supreme Court's acceptance of Quill's appeal signals their intention to finally overrule their 1967 Bellas Hess decision. Of course, no one "knows" this for sure. However, should this in fact happen, the results for your company could be very serious.

Few court decisions are only "prospective" in their application. If the Court merely affirms the North Dakota decision and overrules Bellas Hess, states will be able to assess direct marketers on sales made over many years. Since 45 states and the District of Columbia levy sales and use taxes, this could be financially overwhelming to your business.

We believe it is in your company's best interest to begin collecting Ohio use tax now. By doing, so you will reduce your potential liability on sales made before the Court's decision, should the Court overturn Bellas Hess. The Department of Taxation intends to issue assessments for liability due as a result of that decision.

An application is enclosed for your use. If you have interest in registration, but have questions about prior liability, I encourage you to contact this office at (614) 466-7350.

Sincerely,


William D. Marshall, Acting Administrator
Sales and Use Tax Division

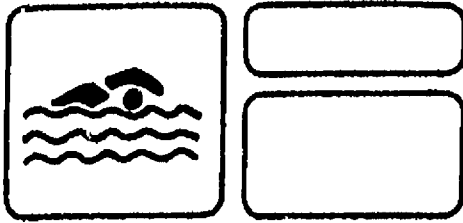


P.O. Box 530
Columbus, Ohio 43266-0030

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Recreation Supply Company

P.O. BOX 2757 • BISMARCK, ND 58502 • 701-222-4860

Mr. William D. Marshall, Acting Administrator
Sales and Use Tax Division
Ohio Department of Taxation
P.O. Box 530
Columbus, OH 43266-0030

January 13, 1992

RE: Intimidation
Letter to
Direct Sellers

Dear Mr. Marshall;

I am in receipt of your 11-15-91 letter threatening retroactive application of a non-existent legal requirement for my firm to collect and remit Ohio sales and use taxes.

Your attempt to intimidate and harass my firm, and apparently many other firms, is repugnant.

In your letter, you say that "states will be able to assess direct marketers on sales made over many years," and you ominously suggest "...this could be financially overwhelming to your business".

Well, sir, I think you're getting way ahead of yourself, and certainly way beyond the law.

You apparently don't believe that the Quill Corporation will withstand North Dakota's assault on their Constitutionally protected rights. I, however, think they will.

You see, prior to 1987, our state laws were in harmony with the U.S. Constitution and the determinations contained in National Bellas Hess.

In that year, HB 1195 changed the definition of "retailer" to include commercial activity protected from state interference by Bellas Hess with the obvious and stated intention of neutralizing that decision in North Dakota.

State Tax Commissioner Heidi Heitkamp and Attorney General Nicolas Spaeth successfully accomplished a "partial secession" from the Union by introducing and lobbying successfully for the passage of HB1195.

HB 1195 was introduced directly to the legislative assembly by Tax Commissioner Heitkamp, an executive branch official. It had no legislative sponsor.

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Heitkamp lied to the legislature in her testimony supporting HB 1195 saying that her only reason for seeking passage of the bill was to be prepared for the swift implementation of anticipated changes in federal law.

She knew all the while that HB 1195 was violative of the U.S. Constitution and, in fact, her apparent motive was to create the opportunity for her to use the resources of the state of North Dakota in the current attempt to overturn the Bellas Hess case.

North Dakota public officials' oath of office starts "I do solemnly swear that I will support the Constitution of the United States..."

Further, Article 1, Section 23 of the North Dakota Constitution states "The state of North Dakota is an inseparable part of the American Union and the Constitution of the United States is the Supreme Law of the Land."

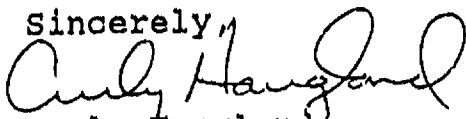
You state that "people on both 'sides' of this issue believe that the Supreme Court's acceptance of Quill's appeal signals their intention to finally overrule...Bellas Hess".

Well, I think not. I think the Court agreed to hear the case to defend and reaffirm Quill's Constitutional right to freely engage in interstate commerce and to scold North Dakota for attempting to enact and enforce state laws that are contrary to the U.S. Constitution.

As a North Dakota businessman, I am ashamed of the "business bashing" actions of my state officials in this case, and you, sir, should be ashamed of yourself for your bureaucratic "bushwhacking".

I am looking forward to no further communication from you or your department regarding this matter.

Sincerely,


Carly Haugland
President



Administration:
1101 1st Ave N
P.O. Box 2064
Fargo, ND 58107
701-298-2200 • 1-800-367-9888
Fax: 701-298-2210

State Headquarters:
4023 State St
P.O. Box 2793
Bismarck, ND 58502
701-224-0330 • 1-800-932-8869
Fax: 701-224-9485

North Dakota Farm Bureau

www.ndfb.org

Senate Finance and Tax Committee

January 29, 2003

Testimony presented by North Dakota Farm Bureau

presented by Sandy Clark, public policy team

Good morning, Mr. Chairman and members of the committee. For the record my name is Sandy Clark and I represent the 26,000 members of North Dakota Farm Bureau.

North Dakota Farm Bureau opposes SB2095 and SB2096 on several levels. Farm Bureau began studying this streamlined sales tax project last winter. We've read and asked questions.

Without question this is a complicated issue and until now not a lot of information has been distributed to the public. This is a major change in tax policy in this state and it certainly does impact industry, consumers and retailers. NDFB urges you to proceed with extreme caution.

First, we have concern that participation in the streamlined sales tax program will malign state sovereignty. The agreement requires that each state have only one sales tax base rate. That alone has taken away North Dakota's right to have the multiple tax rates we have now.

If it did not infringe on state's rights, you wouldn't have to be considering all the changes you are today. This would be a one-page bill rather than two bills totaling 50 pages.

Furthermore, you are being asked to adopt an agreement that hasn't even been completed. Definitions of all goods and services need to be written. That process is not complete and will take a great deal of time to conclude.

It also indicates that if you give a tax exemption, you must exempt everything within the definition of that product or none of it. You can't pick and choose within a definition

One future. One voice.

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10-16-03
Date

Currently, these bills only require changes in the way you handle sales of new machinery and alcohol. Can you guarantee that will be the case in the future or will other products be effected as the definitions are completed?

As time goes on, the governing body of states can make changes to the agreement, with $\frac{3}{4}$ of the states agreeing. With so many large states participating, we question how much clout North Dakota will have in that process.

Another major concern focuses on those home rule cities and counties that a local sales tax. Under this system, the caps on local sales tax would be removed. This will have a huge impact on those industries that have high inputs and big-ticket items, like agriculture. There will be several other industries negatively impacted, as well.

For instance, if you make a \$10,000 purchase, the sales tax might currently cap at \$25. Under this system, you would pay \$100. That will add up over time with all the purchases made by farmers and ranchers. The same will be true for **all** consumers on purchases of large ticket items.

We have read the Agreement between the states and have some concerns, as well.

NDFB is opposed to a section in the Agreement that states that purchasers of tax exempt products must be issued an identification number that shall be presented to the seller at the time of sale. I assume this means that all farmers and ranchers must have a personal ID#? This will be another form of cumbersome bureaucracy for ag producers. And then, sellers must provide records of tax exempt sales to the state when requested.

There are several references to the fact that sellers must collect personal information from purchasers, but it doesn't necessarily just indicate name and address. Granted the Agreement has several provisions for privacy of how that information is used and protected. But, what's to stop the government from keeping track of what individual citizens are buying, when they're buying it and from whom?

Finally, NDFB also has to question if once this system is established, could it easily lead to a national sales tax structure, by simply requiring states to all charge the same sales tax rate?

Again this is a major change in tax policy and North Dakota Farm Bureau urges a no vote on this bill. Thank you for your consideration. I would be happy to entertain any questions you might have

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STREAMLINED SALES AND USE TAX AGREEMENT

3

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Adopted November 12, 2002

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Yherosa J. Lee

Date

10-16-03

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Streamlined Agreement

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November 12, 2002

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ARTICLE I
PURPOSE AND PRINCIPLE

Section 101: TITLE

This multistate Agreement shall be referred to, cited, and known as the Streamlined Sales and Use Tax Agreement.

Section 102: FUNDAMENTAL PURPOSE

It is the purpose of this Agreement to simplify and modernize sales and use tax administration in the member states in order to substantially reduce the burden of tax compliance. The Agreement focuses on improving sales and use tax administration systems for all sellers and for all types of commerce through all of the following:

- A. State level administration of sales and use tax collections.
- B. Uniformity in the state and local tax bases.
- C. Uniformity of major tax base definitions.
- D. Central, electronic registration system for all member states.
- E. Simplification of state and local tax rates.
- F. Uniform sourcing rules for all taxable transactions.
- G. Simplified administration of exemptions.
- H. Simplified tax returns.
- I. Simplification of tax remittances.
- J. Protection of consumer privacy.

Section 103: TAXING AUTHORITY PRESERVED

This Agreement shall not be construed as intending to influence a member state to impose a tax on or provide an exemption from tax for any item or service. However, if a member state chooses to tax an item or exempt an item from tax, that state shall adhere to the provisions concerning definitions as set out in Article III of this Agreement.

1 **Section 104: DEFINED TERMS**

2 This Agreement defines terms for use within the Agreement and for application in the sales and
3 use tax laws of the member states. The definition of a term is not intended to influence the
4 interpretation or application of that term with respect to other tax types.

5

6 An alphabetical list of all the terms defined in the Agreement and their location in the Agreement
7 is found in Appendix B of this Agreement, the Index of Definitions. Terms defined for use
8 within this Agreement are set out in Article II of the Agreement. Many of the uniform definitions
9 for application in the sales and use tax laws of the member states are set out in Appendix C of
10 this Agreement, the Library of Definitions. Definitions that are not set out in Appendix C are
11 defined when applied in a particular section of the Agreement and are set out in that section of
12 the Agreement. The appendices have the same effect as the Articles in the Agreement.

13

14 **Section 105: TREATMENT OF VENDING MACHINES**

15 The provisions of the Agreement do not apply to vending machines sales. The Agreement does
16 not restrict how a member state taxes vending machine sales.

1 ARTICLE II
2 DEFINITIONS
3

4 The following definitions apply in this Agreement:

5 **Section 201: AGENT**

6 A person appointed by a seller to represent the seller before the member states.

7 **Section 202: CERTIFIED AUTOMATED SYSTEM (CAS)**

8 Software certified under the Agreement to calculate the tax imposed by each jurisdiction on a
9 transaction, determine the amount of tax to remit to the appropriate state, and maintain a record
10 of the transaction.

11 **Section 203: CERTIFIED SERVICE PROVIDER (CSP)**

12 An agent certified under the Agreement to perform all the seller's sales and use tax functions,
13 other than the seller's obligation to remit tax on its own purchases.

14 **Section 204: ENTITY-BASED EXEMPTION**

15 An exemption based on who purchases the product or who sells the product.

16 **Section 205: MODEL 1 SELLER**

17 A seller that has selected a CSP as its agent to perform all the seller's sales and use tax functions,
18 other than the seller's obligation to remit tax on its own purchases.

19 **Section 206: MODEL 2 SELLER**

20 A seller that has selected a CAS to perform part of its sales and use tax functions, but retains
21 responsibility for remitting the tax.

22 **Section 207: MODEL 3 SELLER**

23 A seller that has sales in at least five member states, has total annual sales revenue of at least five
24 hundred million dollars, has a proprietary system that calculates the amount of tax due each
25 jurisdiction, and has entered into a performance agreement with the member states that
26 establishes a tax performance standard for the seller. As used in this definition, a seller includes
27 an affiliated group of sellers using the same proprietary system.

28 **Section 208: PERSON**

29 An individual, trust, estate, fiduciary, partnership, limited liability company, limited liability
30 partnership, corporation, or any other legal entity.

- 1 **Section 209: PRODUCT-BASED EXEMPTION**
- 2 An exemption based on the description of the product and not based on who purchases the
- 3 product or how the purchaser intends to use the product.
- 4 **Section 210: PURCHASER**
- 5 A person to whom a sale of personal property is made or to whom a service is furnished.
- 6 **Section 211: REGISTERED UNDER THIS AGREEMENT**
- 7 Registration by a seller with the member states under the central registration system provided in
- 8 Article IV of this Agreement.
- 9 **Section 212: SELLER**
- 10 A person making sales, leases, or rentals of personal property or services.
- 11 **Section 213: STATE**
- 12 Any state of the United States and the District of Columbia.
- 13 **Section 214: USE-BASED EXEMPTION**
- 14 An exemption based on the purchaser's use of the product.

1 **ARTICLE III**
2 **REQUIREMENTS EACH STATE MUST ACCEPT TO PARTICIPATE**
3
4

5 **Section 301: STATE LEVEL ADMINISTRATION**

6 Each member state shall provide state level administration of sales and use taxes. The state level
7 administration may be performed by a member state's Tax Commission, Department of Revenue,
8 or any other single entity designated by state law. Sellers are only required to register with, file
9 returns with, and remit funds to the state level authority. Each member state shall provide for
10 collection of any local taxes and distribution of them to the appropriate taxing jurisdictions.
11 Each member state shall conduct, or authorize others to conduct on its behalf, all audits of the
12 sellers registered under the Agreement for that state's tax and the tax of its local jurisdictions,
13 and local jurisdictions shall not conduct independent sales or use tax audits of sellers registered
14 under the Agreement.
15

16 **Section 302: STATE AND LOCAL TAX BASES**

17 Through December 31, 2005, if a member state has local jurisdictions that levy a sales or use tax,
18 all local jurisdictions in the state shall have a common tax base. After December 31, 2005, the
19 tax base for local jurisdictions shall be identical to the state tax base unless otherwise prohibited
20 by federal law. This section does not apply to sales or use taxes levied on the retail sale or
21 transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile
22 homes.
23

24 **Section 303: SELLER REGISTRATION**

25 Each member state shall participate in an online sales and use tax registration system in
26 cooperation with the other member states. Under this system:

- 27 A. A seller registering under the Agreement is registered in each of the member states.
28 B. The member states agree not to require the payment of any registration fees or other
29 charges for a seller to register in a state in which the seller has no legal requirement to
30 register.

- 1 C. A written signature from the seller is not required.
- 2 D. An agent may register a seller under uniform procedures adopted by the member states.
- 3 E. A seller may cancel its registration under the system at any time under uniform
- 4 procedures adopted by the governing board. Cancellation does not relieve the seller of its
- 5 liability for remitting to the proper states any taxes collected.
- 6

7 **Section 304: NOTICE FOR STATE TAX CHANGES**

- 8 A. Each member state shall lessen the difficulties faced by sellers when there is a change in
- 9 a state sales or use tax rate or base by making a reasonable effort to do all of the
- 10 following:
 - 11 1. Provide sellers with as much advance notice as practicable of a rate change.
 - 12 2. Limit the effective date of a rate change to the first day of a calendar quarter.
 - 13 3. Notify sellers of legislative changes in the tax base and amendments to sales and use
 - 14 tax rules and regulations.
- 15 B. Failure of a seller to receive notice or failure of a member state to provide notice or limit
- 16 the effective date of a rate change shall not relieve the seller of its obligation to collect
- 17 sales or use taxes for that member state.
- 18

19 **Section 305: LOCAL RATE AND BOUNDARY CHANGES**

- 20 Each member state that has local jurisdictions that levy a sales or use tax shall:
 - 21 A. Provide that local rate changes will be effective only on the first day of a calendar
 - 22 quarter after a minimum of sixty days' notice to sellers.
 - 23 B. Apply local sales tax rate changes to purchases from printed catalogs wherein the
 - 24 purchaser computed the tax based upon local tax rates published in the catalog only on
 - 25 the first day of a calendar quarter after a minimum of one hundred twenty days' notice to
 - 26 sellers.
 - 27 C. For sales and use tax purposes only, apply local jurisdiction boundary changes only on
 - 28 the first day of a calendar quarter after a minimum of sixty days' notice to sellers.

- 1 D. Provide and maintain a database that describes boundary changes for all taxing
2 jurisdictions. This database shall include a description of the change and the effective
3 date of the change for sales and use tax purposes.
- 4 E. Provide and maintain a database of all sales and use tax rates for all of the jurisdictions
5 levying taxes within the state. For the identification of states, counties, cities, and
6 parishes, codes corresponding to the rates must be provided according to Federal
7 Information Processing Standards (FIPS) as developed by the National Institute of
8 Standards and Technology. For the identification of all other jurisdictions, codes
9 corresponding to the rates must be in the format determined by the governing board.
- 10 F. Provide and maintain a database that assigns each five digit and nine digit zip code
11 within a member state to the proper tax rates and jurisdictions. The state must apply the
12 lowest combined tax rate imposed in the zip code area if the area includes more than one
13 tax rate in any level of taxing jurisdictions. If a nine digit zip code designation is not
14 available for a street address or if a seller is unable to determine the nine digit zip code
15 designation of a purchaser after exercising due diligence to determine the designation,
16 the seller may apply the rate for the five digit zip code area. For the purposes of this
17 section, there is a rebuttable presumption that a seller has exercised due diligence if the
18 seller has attempted to determine the nine digit zip code designation by utilizing
19 software approved by the governing board that makes this designation from the street
20 address and the five digit zip code of the purchaser.
- 21 G. Participate with other member states in the development of an address-based system for
22 assigning taxing jurisdictions. The system must meet the requirements developed
23 pursuant to the federal Mobile Telecommunications Sourcing Act (4 U.S.C. Sec. 119).
24 The governing board may allow a member state to require sellers that register under this
25 Agreement to use an address-based system provided by that member state. If any
26 member state develops an address-based assignment system pursuant to the Mobile
27 Telecommunications Sourcing Act, a seller may use that system in place of the system
28 provided for in subsection (F) of this section.
29

1 Section 306: RELIEF FROM CERTAIN LIABILITY

2 Each member state shall relieve sellers and CSPs from liability to the member state and local
3 jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting
4 from the seller or CSP relying on erroneous data provided by a member state on tax rates,
5 boundaries, or taxing jurisdiction assignments. A member state that provides an address-based
6 system for assigning taxing jurisdictions pursuant to Section 305, subsection (G) or pursuant to
7 the federal Mobile Telecommunications Sourcing Act will not be required to provide liability
8 relief for errors resulting from the reliance on the information provided by the member state
9 under the provisions of Section 305, subsection (F).

10

11 Section 307: DATABASE REQUIREMENTS AND EXCEPTIONS

- 12 A. The electronic databases provided for in Section 305, subsections (D), (E), (F), and (G)
13 shall be in a downloadable format approved by the governing board.
14 B. The provisions of Section 305, subsections (F) and (G) do not apply when the purchased
15 product is received by the purchaser at the business location of the seller.
16 C. The databases provided by Section 305, subsections (D), (E), and (F) are not a
17 requirement of a state prior to entering into the Agreement. The governing board shall
18 establish the effective dates for availability and use of the databases.

19

20 Section 308: STATE AND LOCAL TAX RATES

- 21 A. No member state shall have multiple state sales and use tax rates on items of personal
22 property or services after December 31, 2005, except that a member state may impose a
23 single additional rate, which may be zero, on food and food ingredients and drugs as
24 defined by state law pursuant to the Agreement.
25 B. A member state that has local jurisdictions that levy a sales or use tax shall not have
26 more than one local sales tax rate or more than one local use tax rate per local
27 jurisdiction. If the local jurisdiction levies both a sales tax and use tax, the local rates
28 must be identical.
29 C. The provisions of this section do not apply to sales or use taxes levied on electricity,
30 piped natural or artificial gas, or other heating fuels delivered by the seller, or the retail

1 sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured
2 homes, or mobile homes.
3

4 **Section 309: APPLICATION OF GENERAL SOURCING RULES AND EXCLUSIONS**
5 **FROM THE RULES**

6 A. Each member state shall agree to require sellers to source the retail sale of a product in
7 accordance with Section 310. The provisions of Section 310 apply regardless of the
8 characterization of a product as tangible personal property, a digital good, or a service.
9 The provisions of Section 310 only apply to determine a seller's obligation to pay or
10 collect and remit a sales or use tax with respect to the seller's retail sale of a product.
11 These provisions do not affect the obligation of a purchaser or lessee to remit tax on the
12 use of the product to the taxing jurisdictions of that use.

13 B. Section 310 does not apply to sales or use taxes levied on the following:

- 14 1. The retail sale or transfer of watercraft, modular homes, manufactured homes, or
15 mobile homes. These items must be sourced according to the requirements of each
16 member state.
17 2. The retail sale, excluding lease or rental, of motor vehicles, trailers, semi-trailers, or
18 aircraft that do not qualify as transportation equipment, as defined in Section 310,
19 subsection (D). The retail sale of these items shall be sourced according to the
20 requirements of each member state, and the lease or rental of these items must be
21 sourced according to Section 310, subsection (C).
22 3. Telecommunications services, as set out in Section 315, shall be sourced in
23 accordance with Section 314.
24

25 **Section 310: GENERAL SOURCING RULES**

26 A. The retail sale, excluding lease or rental, of a product shall be sourced as follows:

- 27 1. When the product is received by the purchaser at a business location of the seller, the
28 sale is sourced to that business location.
29 2. When the product is not received by the purchaser at a business location of the seller,
30 the sale is sourced to the location where receipt by the purchaser (or the purchaser's

- 1 donee, designated as such by the purchaser) occurs, including the location indicated
2 by instructions for delivery to the purchaser (or donee), known to the seller.
- 3 3. When subsections (A)(1) and (A)(2) do not apply, the sale is sourced to the location
4 indicated by an address for the purchaser that is available from the business records of
5 the seller that are maintained in the ordinary course of the seller's business when use
6 of this address does not constitute bad faith.
- 7 4. When subsections (A)(1), (A)(2), and (A)(3) do not apply, the sale is sourced to the
8 location indicated by an address for the purchaser obtained during the consummation
9 of the sale, including the address of a purchaser's payment instrument, if no other
10 address is available, when use of this address does not constitute bad faith.
- 11 5. When none of the previous rules of subsections (A)(1), (A)(2), (A)(3), or (A)(4)
12 apply, including the circumstance in which the seller is without sufficient information
13 to apply the previous rules, then the location will be determined by the address from
14 which tangible personal property was shipped, from which the digital good or the
15 computer software delivered electronically was first available for transmission by the
16 seller, or from which the service was provided (disregarding for these purposes any
17 location that merely provided the digital transfer of the product sold).
- 18 B. The lease or rental of tangible personal property, other than property identified in
19 subsection (C) or subsection (D), shall be sourced as follows:
- 20 1. For a lease or rental that requires recurring periodic payments, the first periodic
21 payment is sourced the same as a retail sale in accordance with the provisions of
22 subsection (A). Periodic payments made subsequent to the first payment are sourced
23 to the primary property location for each period covered by the payment. The primary
24 property location shall be as indicated by an address for the property provided by the
25 lessee that is available to the lessor from its records maintained in the ordinary course
26 of business, when use of this address does not constitute bad faith. The property
27 location shall not be altered by intermittent use at different locations, such as use of
28 business property that accompanies employees on business trips and service calls.
- 29 2. For a lease or rental that does not require recurring periodic payments, the payment is
30 sourced the same as a retail sale in accordance with the provisions of subsection (A).

- 1 3. This subsection does not affect the imposition or computation of sales or use tax on
2 leases or rentals based on a lump sum or accelerated basis, or on the acquisition of
3 property for lease.
- 4 C. The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify
5 as transportation equipment, as defined in subsection (D), shall be sourced as follows:
- 6 1. For a lease or rental that requires recurring periodic payments, each periodic payment
7 is sourced to the primary property location. The primary property location shall be as
8 indicated by an address for the property provided by the lessee that is available to the
9 lessor from its records maintained in the ordinary course of business, when use of this
10 address does not constitute bad faith. This location shall not be altered by intermittent
11 use at different locations.
- 12 2. For a lease or rental that does not require recurring periodic payments, the payment is
13 sourced the same as a retail sale in accordance with the provisions of subsection (A).
- 14 3. This subsection does not affect the imposition or computation of sales or use tax on
15 leases or rentals based on a lump sum or accelerated basis, or on the acquisition of
16 property for lease.
- 17 D. The retail sale, including lease or rental, of transportation equipment shall be sourced the
18 same as a retail sale in accordance with the provisions of subsection (A),
19 notwithstanding the exclusion of lease or rental in subsection (A). "Transportation
20 equipment" means any of the following:
- 21 1. Locomotives and railcars that are utilized for the carriage of persons or property in
22 interstate commerce.
- 23 2. Trucks and truck-tractors with a Gross Vehicle Weight Rating (GVWR) of 10,001
24 pounds or greater, trailers, semi-trailers, or passenger buses that are:
- 25 a. Registered through the International Registration Plan; and
26 b. Operated under authority of a carrier authorized and certificated by the U.S.
27 Department of Transportation or another federal authority to engage in the
28 carriage of persons or property in interstate commerce.

- 1 3. Aircraft that are operated by air carriers authorized and certificated by the U.S.
2 Department of Transportation or another federal or a foreign authority to engage in
3 the carriage of persons or property in interstate or foreign commerce.
4 4. Containers designed for use on and component parts attached or secured on the items
5 set forth in subsections (D)(1) through (D)(3).
6

7 **Section 311: GENERAL SOURCING DEFINITIONS**

8 For the purposes of Section 310, subsection (A), the terms "receive" and "receipt" mean:

- 9 A. Taking possession of tangible personal property,
10 B. Making first use of services, or
11 C. Taking possession or making first use of digital goods, whichever comes first.

12 The terms "receive" and "receipt" do not include possession by a shipping company on behalf of
13 the purchaser.
14

15 **Section 312: MULTIPLE POINTS OF USE**

16 Notwithstanding the provisions of Section 310, a business purchaser that is not a holder of a
17 direct pay permit that knows at the time of its purchase of a digital good, computer software
18 delivered electronically, or a service that the digital good, computer software delivered
19 electronically, or service will be concurrently available for use in more than one jurisdiction shall
20 deliver to the seller in conjunction with its purchase a form disclosing this fact ("Multiple Points
21 of Use or MPU" Exemption Form).

- 22 A. Upon receipt of the MPU Exemption Form, the seller is relieved of all obligation to
23 collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect,
24 pay, or remit the applicable tax on a direct pay basis.
25 B. A purchaser delivering the MPU Exemption Form may use any reasonable, but
26 consistent and uniform, method of apportionment that is supported by the purchaser's
27 business records as they exist at the time of the consummation of the sale.
28 C. The MPU Exemption Form will remain in effect for all future sales by the seller to the
29 purchaser (except as to the subsequent sale's specific apportionment that is governed by

- 1 the principle of subsection (B) and the facts existing at the time of the sale) until it is
2 revoked in writing.
- 3 D. A holder of a direct pay permit shall not be required to deliver a MPU Exemption Form
4 to the seller. A direct pay permit holder shall follow the provisions of subsection (B) in
5 apportioning the tax due on a digital good or a service that will be concurrently available
6 for use in more than one jurisdiction.

7

8 **Section 313: DIRECT MAIL SOURCING**

- 9 A. Notwithstanding Section 310, a purchaser of direct mail that is not a holder of a direct
10 pay permit shall provide to the seller in conjunction with the purchase either a Direct
11 Mail Form or information to show the jurisdictions to which the direct mail is delivered
12 to recipients.
- 13 1. Upon receipt of the Direct Mail Form, the seller is relieved of all obligations to
14 collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit
15 the applicable tax on a direct pay basis. A Direct Mail Form shall remain in effect for
16 all future sales of direct mail by the seller to the purchaser until it is revoked in
17 writing.
- 18 2. Upon receipt of information from the purchaser showing the jurisdictions to which
19 the direct mail is delivered to recipients, the seller shall collect the tax according to
20 the delivery information provided by the purchaser. In the absence of bad faith, the
21 seller is relieved of any further obligation to collect tax on any transaction where the
22 seller has collected tax pursuant to the delivery information provided by the
23 purchaser.
- 24 B. If the purchaser of direct mail does not have a direct pay permit and does not provide the
25 seller with either a Direct Mail Form or delivery information, as required by subsection
26 (A) of this section, the seller shall collect the tax according to Section 310, subsection
27 (A)(5). Nothing in this paragraph shall limit a purchaser's obligation for sales or use tax
28 to any state to which the direct mail is delivered.

- 1 C. If a purchaser of direct mail provides the seller with documentation of direct pay
2 authority, the purchaser shall not be required to provide a Direct Mail Form or delivery
3 information to the seller.
4

5 **Section 314: TELECOMMUNICATION SOURCING RULE**

- 6 A. Except for the defined telecommunication services in subsection (C), the sale of
7 telecommunication service sold on a call-by-call basis shall be sourced to (i) each level
8 of taxing jurisdiction where the call originates and terminates in that jurisdiction or (ii)
9 each level of taxing jurisdiction where the call either originates or terminates and in
10 which the service address is also located.
- 11 B. Except for the defined telecommunication services in subsection (C), a sale of
12 telecommunications services sold on a basis other than a call-by-call basis, is sourced to
13 the customer's place of primary use.
- 14 C. The sale of the following telecommunication services shall be sourced to each level of
15 taxing jurisdiction as follows:
- 16 1. A sale of mobile telecommunications services other than air-to-ground radiotelephone
17 service and prepaid calling service, is sourced to the customer's place of primary use
18 as required by the Mobile Telecommunications Sourcing Act.
- 19 2. A sale of post-paid calling service is sourced to the origination point of the
20 telecommunications signal as first identified by either (i) the seller's
21 telecommunications system, or (ii) information received by the seller from its service
22 provider, where the system used to transport such signals is not that of the seller.
- 23 3. A sale of prepaid calling service is sourced in accordance with Section 310. Provided
24 however, in the case of a sale of mobile telecommunications service that is a prepaid
25 telecommunications service, the rule provided in Section 310, subsection (A)(5) shall
26 include as an option the location associated with the mobile telephone number.
- 27 4. A sale of a private communication service is sourced as follows:
- 28 a. Service for a separate charge related to a customer channel termination point is
29 sourced to each level of jurisdiction in which such customer channel termination
30 point is located.

- 1 b. Service where all customer termination points are located entirely within one
2 jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the
3 customer channel termination points are located.
4 c. Service for segments of a channel between two customer channel termination points
5 located in different jurisdictions and which segment of channel are separately charged
6 is sourced fifty percent in each level of jurisdiction in which the customer channel
7 termination points are located.
8 d. Service for segments of a channel located in more than one jurisdiction or levels of
9 jurisdiction and which segments are not separately billed is sourced in each
10 jurisdiction based on the percentage determined by dividing the number of customer
11 channel termination points in such jurisdiction by the total number of customer
12 channel termination points.
13

14 **Section 315: TELECOMMUNICATION SOURCING DEFINITIONS**

15 For the purpose of Section 314, the following definitions apply:

- 16 A. "Air-to-Ground Radiotelephone service" means a radio service, as that term is defined in
17 47 CFR 22.99, in which common carriers are authorized to offer and provide radio
18 telecommunications service for hire to subscribers in aircraft.
19 B. "Call-by-call Basis" means any method of charging for telecommunications services
20 where the price is measured by individual calls.
21 C. "Communications Channel" means a physical or virtual path of communications over
22 which signals are transmitted between or among customer channel termination points.
23 D. "Customer" means the person or entity that contracts with the seller of
24 telecommunications services. If the end user of telecommunications services is not the
25 contracting party, the end user of the telecommunications service is the customer of the
26 telecommunication service, but this sentence only applies for the purpose of sourcing
27 sales of telecommunications services under Section 314. "Customer" does not include a
28 reseller of telecommunications service or for mobile telecommunications service of a
29 serving carrier under an agreement to serve the customer outside the home service
30 provider's licensed service area.

Yubereca d. Lee
Operator's Signature

10-16-03
Date

- 1 E. "Customer Channel Termination Point" means the location where the customer either
2 inputs or receives the communications.
- 3 F. "End user" means the person who utilizes the telecommunication service. In the case of
4 an entity, "end user" means the individual who utilizes the service on behalf of the
5 entity.
- 6 G. "Home service provider" means the same as that term is defined in Section 124(5) of
7 Public Law 106-252 (Mobile Telecommunications Sourcing Act).
- 8 H. "Mobile telecommunications service" means the same as that term is defined in Section
9 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).
- 10 I. "Place of primary use" means the street address representative of where the customer's
11 use of the telecommunications service primarily occurs, which must be the residential
12 street address or the primary business street address of the customer. In the case of
13 mobile telecommunications services, "place of primary use" must be within the licensed
14 service area of the home service provider.
- 15 J. "Post-paid calling service" means the telecommunications service obtained by making a
16 payment on a call-by-call basis either through the use of a credit card or payment
17 mechanism such as a bank card, travel card, credit card, or debit card, or by charge made
18 to a telephone number which is not associated with the origination or termination of the
19 telecommunications service. A post-paid calling service includes a telecommunications
20 service that would be a prepaid calling service except it is not exclusively a
21 telecommunication service.
- 22 K. "Prepaid calling service" means the right to access exclusively telecommunications
23 services, which must be paid for in advance and which enables the origination of calls
24 using an access number or authorization code, whether manually or electronically dialed,
25 and that is sold in predetermined units or dollars of which the number declines with use
26 in a known amount.
- 27 L. "Private communication service" means a telecommunication service that entitles the
28 customer to exclusive or priority use of a communications channel or group of channels
29 between or among termination points, regardless of the manner in which such channel or
30 channels are connected, and includes switching capacity, extension lines, stations, and

any other associated services that are provided in connection with the use of such channel or channels.

M. "Service address" means:

1. The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.
2. If the location in subsection (M)(1) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.
3. If the location in subsection (M)(1) and subsection (M)(2) are not known, the service address means the location of the customer's place of primary use.

Section 316: ENACTMENT OF EXEMPTIONS

- A. A member state may enact a product-based exemption without restriction if the Agreement does not have a definition for the product or for a term that includes the product. If the Agreement has a definition for the product or for a term that includes the product, a member state may exempt all items included within the definition but shall not exempt only part of the items included within the definition unless the Agreement sets out the exemption for part of the items as an acceptable variation.
- B. A member state may enact an entity-based or a use-based exemption without restriction if the Agreement does not have a definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the Agreement has a definition for the product whose use or specific purchase is exempt, a member state may enact an entity-based or a use-based exemption that applies to that product as long as the exemption utilizes the Agreement definition of the product. If the Agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, a member state may enact an entity-based or a use-based exemption for the product without restriction.

Y. H. H. H. H.
Operator's Signature

10-16-03
Date

1 C. For purposes of complying with the requirements in this section, the inclusion of a
2 product within the definition of tangible personal property is disregarded.
3

4 **Section 317: ADMINISTRATION OF EXEMPTIONS**

5 A. Each member state shall observe the following provisions when a purchaser claims an
6 exemption:

7 1. The seller shall obtain identifying information of the purchaser and the reason for
8 claiming a tax exemption at the time of the purchase as determined by the governing
9 board.

10 2. A purchaser is not required to provide a signature to claim an exemption from tax
11 unless a paper exemption certificate is used.

12 3. The seller shall use the standard form for claiming an exemption electronically as
13 adopted by the governing board.

14 4. The seller shall obtain the same information for proof of a claimed exemption
15 regardless of the medium in which the transaction occurred.

16 5. A member state may utilize a system wherein the purchaser exempt from the payment
17 of the tax is issued an identification number that shall be presented to the seller at the
18 time of the sale.

19 6. The seller shall maintain proper records of exempt transactions and provide them to a
20 member state when requested.

21 7. A member state shall administer use-based and entity-based exemptions when
22 practicable through a direct pay permit, an exemption certificate, or another means
23 that does not burden sellers.

24 B. Each member state shall relieve sellers that follow the requirements of this section from
25 any tax otherwise applicable if it is determined that the purchaser improperly claimed an
26 exemption and to hold the purchaser liable for the nonpayment of tax. This relief from
27 liability does not apply to a seller who fraudulently fails to collect the tax or solicits
28 purchasers to participate in the unlawful claim of an exemption.
29

30 **Section 318: UNIFORM TAX RETURNS**

- 1 Each member state shall:
- 2 A. Require that only one tax return for each taxing period for each seller be filed for the
3 member state and all the taxing jurisdictions within the member state.
- 4 B. Require that returns be due no sooner than the twentieth day of the month following the
5 month in which the transaction occurred.
- 6 C. Allow any Model 1, Model 2, or Model 3 seller to submit its sales and use tax returns in
7 a simplified format that does not include more data fields than permitted by the
8 governing board. A member state may require additional informational returns to be
9 submitted not more frequently than every six months under a staggered system
10 developed by the governing board.
- 11 D. Allow any seller that is registered under the Agreement, which does not have a legal
12 requirement to register in the member state, and is not a Model 1, 2, or 3 seller, to submit
13 its sales and use tax returns as follows:
- 14 1. Upon registration, a member state shall provide to the seller the returns required by
15 that state.
- 16 2. A member state may require a seller to file a return anytime within one year of the
17 month of initial registration, and future returns may be required on an annual basis in
18 succeeding years.
- 19 3. In addition to the returns required in subsection (D)(2), a member state may require
20 sellers to submit returns in the month following any month in which they have
21 accumulated state and local tax funds for the state in the amount of one thousand
22 dollars or more.
- 23 E. Participate with other member states in developing a more uniform sales and use tax return
24 that, when completed, would be available to all sellers.
- 25 F. Require, at each member state's discretion, all Model 1, 2, and 3 sellers to file returns
26 electronically. It is the intent of the member states that all member states have the
27 capability of receiving electronically filed returns by January 1, 2004.
- 28

29 **Section 319: UNIFORM RULES FOR REMITTANCES OF FUNDS**

30 Each member state shall:

- 1 A. Require only one remittance for each return except as provided in this subsection. If any
2 additional remittance is required, it may only be required from sellers that collect more
3 than thirty thousand dollars in sales and use taxes in the member state during the
4 preceding calendar year as provided herein. The amount of the additional remittance
5 shall be determined through a calculation method rather than actual collections and shall
6 not require the filing of an additional return.
- 7 B. Require, at each member state's discretion, all remittances from sellers under Models 1,
8 2, and 3 to be remitted electronically.
- 9 C. Allow for electronic payments by both ACH Credit and ACH Debit.
- 10 D. Provide an alternative method for making "same day" payments if an electronic funds
11 transfer fails.
- 12 E. Provide that if a due date falls on a legal banking holiday in a member state, the taxes are
13 due to that state on the next succeeding business day.
- 14 F. Require that any data that accompanies a remittance be formatted using uniform tax type
15 and payment type codes approved by the governing board.

16
17 **Section 320: UNIFORM RULES FOR RECOVERY OF BAD DEBTS**

18 Each member state shall use the following to provide a deduction for bad debts to a seller. To
19 the extent a member state provides a bad debt deduction to any other party, the same procedures
20 will apply. Each member state shall:

- 21 A. Allow a deduction from taxable sales for bad debts. Any deduction taken that is
22 attributed to bad debts shall not include interest.
- 23 B. Utilize the federal definition of "bad debt" in 26 U.S.C. Sec. 166 as the basis for
24 calculating bad debt recovery. However, the amount calculated pursuant to 26 U.S.C.
25 Sec. 166 shall be adjusted to exclude: financing charges or interest; sales or use taxes
26 charged on the purchase price; uncollectable amounts on property that remain in the
27 possession of the seller until the full purchase price is paid; expenses incurred in
28 attempting to collect any debt, and repossessed property.
- 29 C. Allow bad debts to be deducted on the return for the period during which the bad debt is
30 written off as uncollectable in the claimant's books and records and is eligible to be

- 1 deducted for federal income tax purposes. For purposes of this subsection, a claimant
2 who is not required to file federal income tax returns may deduct a bad debt on a return
3 filed for the period in which the bad debt is written off as uncollectable in the claimant's
4 books and records and would be eligible for a bad debt deduction for federal income tax
5 purposes if the claimant was required to file a federal income tax return.
- 6 D. Require that, if a deduction is taken for a bad debt and the debt is subsequently collected
7 in whole or in part, the tax on the amount so collected must be paid and reported on the
8 return filed for the period in which the collection is made.
- 9 E. Provide that, when the amount of bad debt exceeds the amount of taxable sales for the
10 period during which the bad debt is written off, a refund claim may be filed within the
11 member state's otherwise applicable statute of limitations for refund claims; however,
12 the statute of limitations shall be measured from the due date of the return on which the
13 bad debt could first be claimed.
- 14 F. Where filing responsibilities have been assumed by a CSP, allow the service provider to
15 claim, on behalf of the seller, any bad debt allowance provided by this section. The CSP
16 must credit or refund the full amount of any bad debt allowance or refund received to the
17 seller.
- 18 G. Provide that, for the purposes of reporting a payment received on a previously claimed
19 bad debt, any payments made on a debt or account are applied first proportionally to the
20 taxable price of the property or service and the sales tax thereon, and secondly to
21 interest, service charges, and any other charges.
- 22 H. In situations where the books and records of the party claiming the bad debt allowance
23 support an allocation of the bad debts among the member states, permit the allocation.
24
- 25 **Section 321: CONFIDENTIALITY AND PRIVACY PROTECTIONS UNDER MODEL 1**
- 26 A. The purpose of this section is to set forth the member states' policy for the protection of
27 the confidentiality rights of all participants in the system and of the privacy interests of
28 consumers who deal with Model 1 sellers.
- 29 B. As used in this section, the term "confidential taxpayer information" means all
30 information that is protected under a member state's laws, regulations, and privileges; the

- 1 term "personally identifiable information" means information that identifies a person;
2 and the term "anonymous data" means information that does not identify a person.
- 3 C. The member states agree that a fundamental precept in Model 1 is to preserve the
4 privacy of consumers by protecting their anonymity. With very limited exceptions, a
5 CSP shall perform its tax calculation, remittance, and reporting functions without
6 retaining the personally identifiable information of consumers.
- 7 D. The governing board may certify a CSP only if that CSP certifies that:
- 8 1. Its system has been designed and tested to ensure that the fundamental precept of
9 anonymity is respected;
- 10 2. That personally identifiable information is only used and retained to the extent
11 necessary for the administration of Model 1 with respect to exempt purchasers;
- 12 3. It provides consumers clear and conspicuous notice of its information practices,
13 including what information it collects, how it collects the information, how it uses the
14 information, how long, if at all, it retains the information and whether it discloses the
15 information to member states. Such notice shall be satisfied by a written privacy
16 policy statement accessible by the public on the official web site of the CSP;
- 17 4. Its collection, use and retention of personally identifiable information will be limited
18 to that required by the member states to ensure the validity of exemptions from
19 taxation that are claimed by reason of a consumer's status or the intended use of the
20 goods or services purchased; and
- 21 5. It provides adequate technical, physical, and administrative safeguards so as to
22 protect personally identifiable information from unauthorized access and disclosure.
- 23 E. Each member state shall provide public notification to consumers, including their exempt
24 purchasers, of the state's practices relating to the collection, use and retention of
25 personally identifiable information.
- 26 F. When any personally identifiable information that has been collected and retained is no
27 longer required for the purposes set forth in subsection (D)(4), such information shall no
28 longer be retained by the member states.
- 29 G. When personally identifiable information regarding an individual is retained by or on
30 behalf of a member state, such state shall provide reasonable access by such individual to

- 1 his or her own information in the state's possession and a right to correct any inaccurately
2 recorded information.
- 3 H. If anyone other than a member state, or a person authorized by that state's law or the
4 Agreement, seeks to discover personally identifiable information, the state from whom
5 the information is sought should make a reasonable and timely effort to notify the
6 individual of such request.
- 7 I. This privacy policy is subject to enforcement by member states' attorneys general or other
8 appropriate state government authority.
- 9 J. Each member states' laws and regulations regarding the collection, use, and maintenance
10 of confidential taxpayer information remain fully applicable and binding. Without
11 limitation, the Agreement does not enlarge or limit the member states' authority to:
- 12 1. Conduct audits or other review as provided under the Agreement and state law.
13 2. Provide records pursuant to a member state's Freedom of Information Act, disclosure
14 laws with governmental agencies, or other regulations.
15 3. Prevent, consistent with state law, disclosures of confidential taxpayer information.
16 4. Prevent, consistent with federal law, disclosures or misuse of federal return
17 information obtained under a disclosure agreement with the Internal Revenue Service.
18 5. Collect, disclose, disseminate, or otherwise use anonymous data for governmental
19 purposes.
- 20 K. This privacy policy does not preclude the governing board from certifying a CSP whose
21 privacy policy is more protective of confidential taxpayer information or personally
22 identifiable information than is required by the Agreement.

23
24 **Section 322: SALES TAX HOLIDAYS**

- 25 A. If a member state allows for temporary exemption periods, commonly referred to as sales
26 tax holidays, the member state shall:
- 27 1. Not apply an exemption after December 31, 2003, unless the items to be exempted
28 are specifically defined in the Agreement and the exemptions are uniformly applied to
29 state and local sales and use taxes.

- 1 2. Provide notice of the exemption period at least sixty days' prior to the first day of the
2 calendar quarter in which the exemption period will begin.
- 3 B. A member state may establish a sales tax holiday that utilizes price thresholds set
4 by such state and the provisions of the Agreement on the use of thresholds shall
5 not apply to exemptions provided by a state during a sales tax holiday. In order to
6 provide uniformity, a price threshold established by a member state for exempt
7 items shall include only items priced below the threshold. A member state shall
8 not exempt only a portion of the price of an individual item during a sales tax
9 holiday.
- 10 C. The governing board shall establish procedures to provide uniformity for the
11 administrative issues involved with the implementation of a sales tax holiday. These
12 issues include, but are not limited to:
- 13 1. Treatment of layaway purchases;
14 2. Exempt and nonexempt items that are packaged together;
15 3. Treatment of coupons or discounts;
16 4. Splitting of items normally sold together;
17 5. Treatment of rainchecks;
18 6. Exchanges;
19 7. Shipping and handling charges;
20 8. Service charges;
21 9. Restocking fees; and
22 10. Order date/Back orders.

23
24 **Section 323: CAPS AND THRESHOLDS**

- 25 A. Each member state shall:
- 26 1. Not have caps or thresholds on the application of state sales or use tax rates or
27 exemptions that are based on the value of the transaction or item after December 31,
28 2005. A member state may continue to have caps and thresholds until that date.

- 1 2. Not have caps that are based on the application of the rates unless the member state
2 assumes the administrative responsibility in a manner that places no additional burden
3 on the retailer.
- 4 B. Each member state that has local jurisdictions that levy a sales or use tax shall not place
5 caps or thresholds on the application of local rates or use tax rates or exemptions that are
6 based on the value of the transaction or item after December 31, 2005. A member state
7 may continue to have caps and thresholds until that date.
- 8 C. The provisions of this section do not apply to sales or use taxes levied on the retail sale or
9 transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or
10 mobile homes or to instances where the burden of administration has been shifted from
11 the retailer.

12

13 **Section 324: ROUNDING RULE**

- 14 A. After December 31, 2005, each member state shall adopt a rounding algorithm that meets
15 the following criteria:
- 16 1. Tax computation must be carried to the third decimal place, and
17 2. The tax must be rounded to a whole cent using a method that rounds up to the next
18 cent whenever the third decimal place is greater than four.
- 19 B. Each state shall allow sellers to elect to compute the tax due on a transaction on an item
20 or an invoice basis, and shall allow the rounding rule to be applied to the aggregated state
21 and local taxes. No member state shall require a seller to collect tax based on a bracket
22 system.

23

24 **Section 325: CUSTOMER REFUND PROCEDURES**

- 25 A. These customer refund procedures are provided to apply when a state allows a purchaser
26 to seek a return of over-collected sales or use taxes from the seller.
- 27 B. Nothing in this section shall either require a state to provide, or prevent a state from
28 providing, a procedure by which a purchaser may seek a refund directly from the state
29 arising out of sales or use taxes collected in error by a seller from the purchaser.

1 Nothing in this section shall operate to extend any person's time to seek a refund of sales
2 or use taxes collected or remitted in error.

3 C. These customer refund procedures provide the first course of remedy available to
4 purchasers seeking a return of over-collected sales or use taxes from the seller. A cause
5 of action against the seller for the over-collected sales or use taxes does not accrue until
6 a purchaser has provided written notice to a seller and the seller has had sixty days to
7 respond. Such notice to the seller must contain the information necessary to determine
8 the validity of the request.

9 D. In connection with a purchaser's request from a seller of over-collected sales or use
10 taxes, a seller shall be presumed to have a reasonable business practice, if in the
11 collection of such sales or use taxes, the seller: i) uses either a provider or a system,
12 including a proprietary system, that is certified by the state; and ii) has remitted to the
13 state all taxes collected less any deductions, credits, or collection allowances.
14

15 **Section 326: DIRECT PAY PERMITS**

16 Each member state shall provide for a direct pay authority that allows the holder of a direct pay
17 permit to purchase otherwise taxable goods and services without payment of tax to the supplier
18 at the time of purchase. The holder of the direct pay permit will make a determination of the
19 taxability and then report and pay the applicable tax due directly to the tax jurisdiction. Each
20 state can set its own limits and requirements for the direct pay permit. The governing board shall
21 advise member states when setting state direct pay limits and requirements, and shall consider
22 use of the Model Direct Payment Permit Regulation as developed by the Task Force on EDI
23 Audit and Legal Issues for Tax Administration.
24

25 **Section 327: LIBRARY OF DEFINITIONS**

26 Each member state shall utilize common definitions as provided in this section. The terms
27 defined are set out in the Library of Definitions, in Appendix C of this Agreement. A member
28 state shall adhere to the following principles:

29 A. If a term defined in the Library of Definitions appears in a member state's sales
30 and use tax statutes or administrative rules or regulations, the member state shall

- 1 enact or adopt the Library definition of the term in its statutes or administrative
2 rules or regulations in substantially the same language as the Library definition.
3 B. A member state shall not use a Library definition in its sales or use tax statutes or
4 administrative rules or regulations that is contrary to the meaning of the Library
5 definition.
6 C. Except as specifically provided in Section 316 and the Library of Definitions, a
7 member state shall impose a sales or use tax on all products or services included
8 within each definition or exempt from sales or use tax all products or services
9 within each definition.
10

11 **Section 328: TAXABILITY MATRIX**

- 12 A. To ensure uniform application of terms defined in the Library of Definitions each
13 member state shall complete a taxability matrix adopted by the governing board.
14 The member state's entries in the matrix shall be provided and maintained in a
15 database that is in a downloadable format approved by the governing board. A
16 member state shall provide notice of changes in the taxability of the products or
17 services listed in the taxability matrix as required by the governing board.
18 B. A member state shall relieve sellers and CSPs from liability to the member state and
19 its local jurisdictions for having charged and collected the incorrect amount of sales
20 or use tax resulting from the seller or CSP relying on erroneous data provided by the
21 member state in the taxability matrix.
22

23 **Section 329: EFFECTIVE DATE FOR RATE CHANGES**

- 24 Each member state shall provide that the effective date of rate changes for services covering a
25 period starting before and ending after the statutory effective date shall be as follows:
26 A. For a rate increase, the new rate shall apply to the first billing period starting on or after
27 the effective date.
28 B. For a rate decrease, the new rate shall apply to bills rendered on or after the effective
29 date.
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ARTICLE IV
SELLER REGISTRATION

Section 401: SELLER PARTICIPATION

- A. The member states shall provide an online registration system that will allow sellers to register in all the member states.
- B. By registering, the seller agrees to collect and remit sales and use taxes for all taxable sales into the member states, including member states joining after the seller's registration. Withdrawal or revocation of a member state shall not relieve a seller of its responsibility to remit taxes previously or subsequently collected on behalf of the state.
- C. In member states where the seller has a requirement to register prior to registering under the Agreement, the seller may be required to provide additional information to complete the registration process or the seller may choose to register directly with those states.
- D. A member state or a state that has withdrawn or been expelled shall not use registration with the central registration system and the collection of sales and use taxes in the member states as a factor in determining whether the seller has nexus with that state for any tax at any time.

Section 402: AMNESTY FOR REGISTRATION

- A. Subject to the limitations in this section:
1. A member state shall provide amnesty for uncollected or unpaid sales or use tax to a seller who registers to pay or to collect and remit applicable sales or use tax on sales made to purchasers in the state in accordance with the terms of the Agreement, provided that the seller was not so registered in that state in the twelve-month period preceding the effective date of the state's participation in the Agreement.
 2. The amnesty will preclude assessment for uncollected or unpaid sales or use tax together with penalty or interest for sales made during the period the seller was not registered in the state, provided registration occurs within twelve months of the effective date of the state's participation in the Agreement.

1 3. Amnesty similarly shall be provided by any additional state that joins the Agreement
2 after the seller has registered.

3 B. The amnesty is not available to a seller with respect to any matter or matters for which
4 the seller received notice of the commencement of an audit and which audit is not yet
5 finally resolved including any related administrative and judicial processes.

6 C. The amnesty is not available for sales or use taxes already paid or remitted to the state or
7 to taxes collected by the seller.

8 D. The amnesty is fully effective, absent the seller's fraud or intentional misrepresentation of
9 a material fact, as long as the seller continues registration and continues payment or
10 collection and remittance of applicable sales or use taxes for a period of at least thirty-six
11 months. Each member state shall toll its statute of limitations applicable to asserting a tax
12 liability during this thirty-six month period.

13 E. The amnesty is applicable only to sales or use taxes due from a seller in its capacity as a
14 seller and not to sales or use taxes due from a seller in its capacity as a buyer.

15 F. A member state may allow amnesty on terms and conditions more favorable to a seller
16 than the terms required by this section.
17

18 **Section 403: METHOD OF REMITTANCE**

19 When registering, the seller may select one of the following methods of remittances or other
20 method allowed by state law to remit the taxes collected:

21 A. MODEL 1, wherein a seller selects a CSP as an agent to perform all the seller's sales or
22 use tax functions, other than the seller's obligation to remit tax on its own purchases.

23 B. MODEL 2, wherein a seller selects a CAS to use which calculates the amount of tax due
24 on a transaction.

25 C. MODEL 3, wherein a seller utilizes its own proprietary automated sales tax system that
26 has been certified as a CAS.
27

28 **Section 404: REGISTRATION BY AN AGENT**

29 A seller may be registered by an agent. Such appointment shall be in writing and submitted to a
30 member state if requested by the member state.

1 ARTICLE V

2 PROVIDER AND SYSTEM CERTIFICATION

3
4 Section 501: CERTIFICATION OF SERVICE PROVIDERS AND AUTOMATED
5 SYSTEMS

6 A. The governing board shall certify automated systems and service providers to aid in the
7 administration of sale and use tax collections.

8 B. The governing board may certify a person as a CSP if the person meets all of the
9 following requirements:

10 1. The person uses a CAS;

11 2. The person integrates its CAS with the system of a seller for whom the person
12 collects tax so that the tax due on a sale is determined at the time of the sale;

13 3. The person agrees to remit the taxes it collects at the time and in the manner specified
14 by the member states;

15 4. The person agrees to file returns on behalf of the sellers for whom it collects tax;

16 5. The person agrees to protect the privacy of tax information it obtains in accordance
17 with Section 321 of the Agreement; and

18 6. The person enters into a contract with the member states and agrees to comply with
19 the terms of the contract.

20 C. The governing board may certify a software program as a CAS if the governing board
21 determines that the program meets all of the following requirements:

22 1. It determines the applicable state and local sales and use tax rate for a transaction, in
23 accordance with Sections 309 to 315, inclusive;

24 2. It determines whether or not an item is exempt from tax;

25 3. It determines the amount of tax to be remitted for each taxpayer for a reporting
26 period;

27 4. It can generate reports and returns as required by the governing board; and

28 5. It can meet any other requirement set by the governing board.

29 D. The governing board may establish one or more sales tax performance standards for
30 Model 3 sellers that meet the eligibility criteria set by the governing board and that

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developed a proprietary system to determine the amount of sales and use tax due on transactions.

Streamlined Agreement

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November 12, 2002

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Yuhreca d. Lee
Operator's Signature

10-16-03
Date

1 ARTICLE VI
2 MONETARY ALLOWANCES FOR NEW TECHNOLOGICAL MODELS FOR SALES
3 TAX COLLECTION
4

5 **Section 601: MONETARY ALLOWANCE UNDER MODEL 1**

- 6 A. Each member state shall provide a monetary allowance to a CSP in Model 1 in
7 accordance with the terms of the contract between the governing board and the CSP. The
8 details of the monetary allowance will be provided through the contract process. The
9 governing board shall require that such allowance be funded entirely from money
10 collected in Model 1.
- 11 B. The contract between the governing board and a CSP may base the monetary allowance
12 to a CSP on one or more of the following:
- 13 1. A base rate that applies to taxable transactions processed by the CSP.
 - 14 2. For a period not to exceed twenty-four months following a voluntary seller's
15 registration through the Agreement's central registration process, a percentage of tax
16 revenue generated for a member state by the voluntary seller for each member state
17 for which the seller does not have a requirement to register to collect the tax.

18
19 **Section 602: MONETARY ALLOWANCE FOR MODEL 2 SELLERS**

20 The member states initially anticipate that they will provide a monetary allowance to sellers
21 under Model 2 based on the following:

- 22 A. All sellers shall receive a base rate for a period not to exceed twenty-four months
23 following the commencement of participation by a seller. The base rate will be set after
24 the base rate has been established for Model 1. This allowance will be in addition to any
25 discount afforded by each member state at the time.
- 26 B. The member states anticipate a monetary allowance to a Model 2 Seller based on the
27 following:
- 28 1. For a period not to exceed twenty-four months following a voluntary seller's
29 registration through the Agreement's central registration process, a percentage of tax

- 1 revenue generated for a member state by the voluntary seller for each member state
2 for which the seller does not have a requirement to register to collect the tax.
3 2. Following the conclusion of the twenty-four month period, a seller will only be
4 entitled to a vendor discount afforded under each member state's law at the time the
5 base rate expires.
6

7 **Section 603: MONETARY ALLOWANCE FOR MODEL 3 SELLERS AND ALL OTHER**
8 **SELLERS THAT ARE NOT UNDER MODELS 1 OR 2**

9 The member states anticipate that they will provide a monetary allowance to sellers under Model
10 3 and to all other sellers that are not under Models 1 or 2 based on the following:

- 11 A. For a period not to exceed twenty-four months following a voluntary seller's registration
12 through the Agreement's central registration process, a percentage of tax revenue
13 generated for a member state by the voluntary seller for each member state for which the
14 seller does not have a requirement to register to collect the tax.
15 B. Vendor discounts afforded under each member state's law.

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4 **ARTICLE VII**
5 **AGREEMENT ORGANIZATION**

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12 **Section 701: EFFECTIVE DATE**

13 The Agreement shall become binding and take effect when at least ten states comprising at least twenty
14 percent of the total population, as determined by the 2000 Federal census, of all states imposing a state
15 sales tax have petitioned for membership and have been found to be in compliance with the
16 requirements of the Agreement pursuant to Section 805. The Agreement shall take effect on the first
17 day of a calendar quarter at least sixty days after the tenth state is found in compliance, but cannot take
18 effect prior to July 1, 2003.

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25 **Section 702: APPROVAL OF INITIAL STATES**

26 Prior to the effective date of the Agreement, a state may seek membership by forwarding a petition for
27 membership and certificate of compliance to the Co-Chairs of the Streamlined Sales Tax Implementing
States. A petitioning state shall also provide a copy of its petition for membership and certificate of
compliance to each of the Streamlined Sales Tax Implementing States. A petitioning state shall also
post a copy of its petition for membership and certificate of compliance on that state's web site.

Upon receipt of the requisite number of petitions as provided in Section 701, the Co-Chairs shall
convene and preside over a meeting of the petitioning states for the purpose of determining if the
petitioning states are in compliance with the Agreement. An affirmative vote of three-fourths of the
other petitioning states is necessary for a petitioning state to be found in compliance with the
Agreement. A petitioning state shall not vote on its own petition for membership.

The Co-Chairs shall provide the public with an opportunity to comment prior to any vote on a state's
petition for membership.

1
2 ARTICLE VIII
3 STATE ENTRY AND WITHDRAWAL
4

5 **Section 801: ENTRY INTO AGREEMENT**

6 After the effective date of the Agreement, a state may apply to become a party to the Agreement by
7 submitting a petition for membership and certificate of compliance to the governing board. The petition
8 for membership shall include such state's proposed date of entry. The petitioning state's proposed date
9 of entry shall be on the first day of a calendar quarter. The proposed date of entry shall be a date on
10 which all provisions necessary for the state to be in compliance with the Agreement are in place and
11 effective.
12

13 The petitioning state shall provide a copy of its petition for membership and the certificate of
14 compliance to each member state when the petitioning state submits its petition for membership to the
15 governing board. A petitioning state shall also post a copy of its petition for membership and certificate
16 of compliance on that state's web site.
17

18 **Section 802: CERTIFICATE OF COMPLIANCE**

19 The certificate of compliance shall be signed by the chief executive of the state's tax agency. The
20 certificate of compliance shall document compliance with the provisions of the Agreement and cite
21 applicable statutes, rules, regulations, or other authorities evidencing such compliance.
22

23 **Section 803: ANNUAL RE-CERTIFICATION OF MEMBER STATES**

24 Each member state shall annually re-certify that such state is in compliance with the Agreement. Each
25 member state shall make a re-certification to the governing board on or before August 1 of each year
26 after the year of the state's entry. In its annual re-certification, the state shall include any changes in its
27 statutes, rules, regulations, or other authorities that could affect its compliance with the terms of the
28 Agreement. The re-certification shall be signed by the chief executive of the state's tax agency.
29

1 A member state that cannot re-certify its compliance with the Agreement shall submit a statement of
2 non-compliance to the governing board. The statement of non-compliance shall include any action or
3 decision that takes such state out of compliance with the Agreement and the steps it will take to return to
4 compliance. The governing board shall promulgate rules and procedures to respond to statements of
5 noncompliance in accordance with Section 809.

6
7 Each member state shall post its annual re-certification or statement of non-compliance on that state's
8 web site.

9
10 **Section 804: REQUIREMENTS FOR MEMBERSHIP APPROVAL**

11 The governing board shall determine if a petitioning state is in compliance with the Agreement. A three-
12 fourths vote of the entire governing board is required to approve a state's petition for membership. The
13 governing board shall provide public notice and opportunity for comment prior to voting on a state's
14 petition for membership. A state's membership is effective on the proposed date of entry in its petition
15 for membership or the first day of the calendar quarter after its petition is approved by the governing
16 board, whichever is later, and is at least sixty days after its petition is approved.

17
18 **Section 805: COMPLIANCE**

19 A state is in compliance with the Agreement if the effect of the state's laws, rules, regulations, and
20 policies is substantially compliant with each of the requirements set forth in the Agreement.

21
22 **Section 806: AGREEMENT ADMINISTRATION**

23 Authority to administer the Agreement shall rest with the governing board comprised of representatives
24 of each member state. Each member state may appoint up to four representatives to the governing
25 board. The representatives shall be members of the executive or legislative branches of the state. Each
26 member state shall be entitled to one vote on the governing board. Except as otherwise provided in the
27 Agreement, all actions taken by the governing board shall require an affirmative vote of a majority of
28 the governing board present and voting. The governing board shall determine its meeting schedule, but
29 shall meet at least once annually. The governing board shall provide a public comment period at each
30 meeting to provide members of the public an opportunity to address the board on matters relevant to the

1 administration or operation of the Agreement. The governing board shall provide public notice of its
2 meetings at least thirty days in advance of such meetings. The governing board shall promulgate rules
3 establishing the public notice requirements for holding emergency meetings on less than thirty day's
4 notice. The governing board may meet electronically.
5

6 The governing board is responsible for the administration and operation of the Agreement, including the
7 appointment of all manner of committees. The governing board may employ staff, advisors, consultants
8 or agents. The governing board may promulgate rules and procedures it deems necessary to carry out its
9 responsibilities. The governing board may take any action that is necessary and proper to fulfill the
10 purposes of the Agreement. The governing board may allocate the cost of administration of the
11 Agreement among the member states.
12

13 The governing board may assign committees certain duties, including, but not limited to:

- 14 A. Responding to questions regarding the administration of the Agreement;
 - 15 B. Preparing certification requirements and coordinating the certification process for CSPs;
 - 16 C. Coordinating joint audits;
 - 17 D. Issuing requests for proposals;
 - 18 E. Coordinating contracts with member states and providers; and
 - 19 F. Maintaining records for the governing board.
- 20

21 Section 807: OPEN MEETINGS

22 Each meeting of the governing board and the minutes thereof shall be open to the public except as
23 provided herein. Meetings of the governing board may be closed only for one or more of the following:

- 24 A. Personnel issues.
- 25 B. Information required by the laws of any member state to be protected from public disclosure. In
26 the meeting, the governing board shall excuse any attendee to whom confidential taxpayer
27 information cannot be disclosed under the law of any member state.
- 28 C. Proprietary information requested by any business to be protected from disclosure.

1 D. The consideration of issues incident to competitive bidding, requests for information, or
2 certification, the disclosure of which would defeat the public interest in a fair and competitive
3 process.

4 E. The consideration of pending litigation in a member state the discussion of which in a public
5 session would, in the judgment of the member state engaged in the litigation, adversely affect its
6 interests. In the meeting, the governing board shall excuse any attendee to whom confidential
7 taxpayer information cannot be disclosed under the law of any member state.

8 A closed session of the governing board may be convened by the chair or by a majority vote of the
9 governing board. When a closed session is convened, the reason for the closed session shall be noted in
10 a public session. Any actions taken in the closed session shall be reported immediately upon the
11 reconvening of a public session.

12

13 **Section 808: WITHDRAWAL OF MEMBERSHIP OR EXPULSION OF A MEMBER**

14 With respect to each member state, the Agreement shall continue in full force and effect until a member
15 state withdraws its membership or is expelled. A member state's withdrawal or expulsion cannot be
16 effective until the first day of a calendar quarter after a minimum of sixty days' notice. A member state
17 shall submit notice of its intent to withdraw from the Agreement to the governing board and the chief
18 executive of each member state's tax agency. The member state shall provide public notice of its intent
19 to withdraw and post its notice of intent to withdraw on its web site. The withdrawal by or expulsion of
20 a state does not affect the validity of the Agreement among other member states. A state that withdraws
21 or is expelled from the Agreement remains liable for its share of any financial or contractual obligations
22 that were incurred by the governing board prior to the effective date of that state's withdrawal or
23 expulsion. The appropriate share of any financial or contractual obligation shall be determined by the
24 state and the governing board in good faith based on the relative benefits received and burdens incurred
25 by the parties.

26

27 **Section 809: SANCTION OF MEMBER STATES**

28 If a member state is found to be out of compliance with the Agreement, the governing board may
29 consider sanctions against the state. The sanctions that the governing board may impose include

1 expulsion from the Agreement, or other penalties as determined by the governing board. The adoption of
2 a resolution to sanction a member state for noncompliance with the Agreement shall require the
3 affirmative vote of three-fourths of the entire governing board, excluding the state that is the subject of
4 the resolution. The member state that is the subject of the resolution shall not vote on such resolution.
5 Resolutions seeking sanctions shall be acted upon by the governing board within a reasonable period of
6 time as set forth in the governing board's rules. The governing board shall provide an opportunity for
7 public comment prior to action on a proposed sanction.
8

9 **Section 810: STATE AND LOCAL ADVISORY COUNCIL**

10 The governing board shall create a State and Local Government Advisory Council to advise the
11 governing board on matters pertaining to the administration of the Agreement. The membership shall
12 include at least one representative from each state that is a participating member of the Streamlined
13 Sales Tax Project pursuant to the Operating Rules of the Project as designated by that state. In addition,
14 the governing board shall appoint local government officials to the State and Local Government
15 Advisory Council. The governing board may appoint other state officials as it deems appropriate.
16 Matters pertaining to the administration of the Agreement shall include, but not be limited to, admission
17 of states into membership, noncompliance, and interpretations, revisions or additions to the Agreement.
18 The State and Local Government Advisory Council shall advise and assist the Business and Taxpayer
19 Advisory Council in the functions noted in Section 811.
20

21 **Section 811: BUSINESS AND TAXPAYER ADVISORY COUNCIL**

22 The governing board shall create a Business and Taxpayer Advisory Council from the private sector to
23 advise the governing board on matters pertaining to the administration of the Agreement. These matters
24 shall include, but not be limited to, admission of states into membership, noncompliance, and
25 interpretations, revisions or additions to the Agreement. The Business and Taxpayer Advisory Council
26 shall advise and assist the State and Local Government Advisory Council in the functions noted in
27 Section 810.
28

ARTICLE IX
AMENDMENTS AND INTERPRETATIONS

Section 901: AMENDMENTS TO AGREEMENT

Amendments to the Agreement may be brought before the governing board by any member state. The Agreement may be amended by a three-fourths vote of the entire governing board. The governing board shall give the Governor and presiding officer of each house of each member state notice of proposed amendments to the Agreement at least sixty days prior to consideration. The governing board shall give public notice of proposed amendments to the Agreement at least sixty days prior to consideration. The governing board shall provide an opportunity for public comment prior to action on an amendment to the Agreement.

Section 902: INTERPRETATIONS OF AGREEMENT

Matters involving interpretation of the Agreement may be brought before the governing board by any member state or by any other person. All interpretations shall require a three-fourths vote of the entire governing board. The governing board shall publish all interpretations issued under this section. Interpretations shall be considered part of the Agreement and shall have the same effect as the Agreement. The governing board shall act on requests for interpretation of the Agreement within a reasonable period of time and under guidelines and procedures as set forth in the governing board's rules. The governing board may determine that it will not issue an interpretation. The governing board shall provide an opportunity for public comment prior to issuing an interpretation of the Agreement.

Section 903: DEFINITION REQUESTS

Any member state or any other person may make requests for additional definitions or for interpretations on how an individual product or service fits within a definition. Requests shall be submitted in writing as determined by the governing board. Such requests shall be referred to the Advisory Council created in Section 810 or other group under guidelines and procedures as set forth in the governing board's rules. The entity to which the request was referred shall post notice of the request and provide for input from the public and the member states as directed by

1 the governing board. Within one hundred eighty days after receiving the request, they shall
2 report to the governing board one of the following recommendations:

- 3 A. That no action be taken on the request;
4 B. That a proposed amendment to the Library be submitted;
5 C. That an interpretation request be submitted; or
6 D. That additional time is needed to review the request.

7
8 If either an amendment or an interpretation is recommended, the entity to which the request was
9 referred shall provide the appropriate language as required by the governing board. The
10 governing board shall take action on the recommendation of the entity to which the request was
11 referred at the next meeting of the governing board pursuant to the notice requirements of
12 Section 806. Action by the governing board to approve a recommendation for no action shall be
13 considered the final disposition of the request. Nothing in this paragraph shall prohibit a state
14 from directly submitting a proposed amendment or an interpretation request to the governing
15 board pursuant to Section 901 or Section 902.

ARTICLE X
ISSUE RESOLUTION PROCESS

Section 1001: RULES AND PROCEDURES FOR ISSUE RESOLUTION

The governing board shall promulgate rules creating an issue resolution process. The rules shall govern the conduct of the process, including the participation by any petitioner, affected state, and other interested party, the disposition of a petition to invoke the process, the allocation of costs for participating in the process, the possible involvement of a neutral third party or non-binding arbitration, and such further details as the governing board determines necessary and appropriate.

Section 1002: PETITION FOR RESOLUTION

Any member state or person may petition the governing board to invoke the issue resolution process to resolve matters of:

- A. Membership of a state under Article VIII;
- B. Matters of compliance under Section 805;
- C. Possibilities of sanctions of a member state under Section 809;
- D. Amendments to the Agreement under Section 901;
- E. Interpretation issues, including differing interpretations among the member states, under Section 902; or
- F. Other matters at the discretion of the governing board.

Section 1003: FINAL DECISION OF GOVERNING BOARD

The governing board shall consider any recommendations resulting from the issue resolution process before making its decision, which decision shall, as with all other matters under the Agreement, be final and not subject to further review.

Section 1004: LIMITED SCOPE OF THIS ARTICLE

Nothing in this Article shall be construed to substitute for, stay or extend, limit, expand, or otherwise affect, in any manner, any right or duty that any person or governmental body has under the laws of any member state or local government body. This Article is specifically

- 1 subject to the terms of Article XI and shall not be construed as taking precedence over Article
- 2 XI.

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Yuberca J. Lee
Operator's Signature

10-16-03
Date

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ARTICLE XI
RELATIONSHIP OF AGREEMENT TO MEMBER STATES AND PERSONS

Section 1101: COOPERATING SOVEREIGNS

This Agreement is among individual cooperating sovereigns in furtherance of their governmental functions. The Agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

Section 1102: RELATIONSHIP TO STATE LAW

No provision of the Agreement in whole or part invalidates or amends any provision of the law of a member state. Adoption of the Agreement by a member state does not amend or modify any law of the state. Implementation of any condition of the Agreement in a member state, whether adopted before, at, or after membership of a state, must be by the action of the member state. All member states remain subject to Article VIII.

Section 1103: LIMITED BINDING AND BENEFICIAL EFFECT

- A. This Agreement binds and inures only to the benefit of the member states. No person, other than a member state, is an intended beneficiary of this Agreement. Any benefit to a person other than a state is established by the laws of the member states and not by the terms of this Agreement.
- B. Consistent with subsection (A), no person shall have any cause of action or defense under the Agreement or by virtue of a member state's approval of the Agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of any member state, or any political subdivision of a member state on the ground that the action or inaction is inconsistent with the Agreement.
- C. No law of a member state, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement.

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2 **Section 1104: FINAL DETERMINATIONS**

3 The determinations pertaining to the Agreement that are made by the member states are final
4 when rendered and are not subject to any protest, appeal, or review.

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Yherosa d. Lee
Operator's Signature

10-16-03
Date

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ARTICLE XII

2

REVIEW OF COSTS AND BENEFITS ASSOCIATED WITH THE AGREEMENT

3

4

Section 1201: REVIEW OF COSTS AND BENEFITS

5

The governing board will review costs and benefits of administration and collection of sales and

6

use taxes incurred by states and sellers under the existing sales and use tax laws at the time of

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adoption of the Agreement and the proposed Streamlined Sales Tax Agreement.

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APPENDIX A
STREAMLINED SALES AND USE TAX AGREEMENT
PETITION FOR MEMBERSHIP

WHEREAS, it is in the interest of the private sector and of state and local governments to simplify and modernize sales and use tax administration;

WHEREAS, such simplification and modernization will result in a substantial reduction in the costs and complexity for sellers of personal property and services in conducting their commercial enterprises;

WHEREAS, such simplification and modernization will also result in additional voluntary compliance with the sales and use tax laws;

WHEREAS, such simplification and modernization of sales and use tax administration is best conducted in cooperation and coordination with other states; and

WHEREAS, the State of _____ levies a sales tax and levies a use tax. "Sales tax" means the tax levied under (CITE SPECIFIC STATUTE) and "use tax" means the tax levied under (CITE SPECIFIC STATUTE).

NOW, the undersigned representative hereby petitions the governing board of the Streamlined Sales and Use Tax Agreement (or Co-Chairs of the Streamlined Sales Tax Implementing States) for membership into the Agreement.

NAME

TITLE

STATE OF _____

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Appendix B
INDEX OF DEFINITIONS

Term	Placement in Agreement
Alcoholic beverages	Appendix C, Part II, within food and food products category
Agent	Article II, Section 201
Air-to-ground radiotelephone service	Article III, Section 315
Call-by-call basis	Article III, Section 315
Candy	Appendix C, Part II, within food and food products category
Certified automated system	Article II, Section 202
Certified service provider	Article II, Section 203
Clothing	Appendix C, Part II, within clothing category
Clothing accessories or equipment	Appendix C, Part II, within clothing category
Computer	Appendix C, Part II, within computer related category
Computer software	Appendix C, Part II, within computer related category
Communications channel	Article III, Section 315
Confidential taxpayer information	Article III, Section 321
Customer	Article III, Section 315
Customer channel termination point	Article III, Section 315
Delivered electronically	Appendix C, Part II, within computer related category
Delivery charges	Appendix C, Part I, 1
Dietary supplement	Appendix C, Part II, within food and food products category
Direct mail	Appendix C, Part I, 2
Drug	Appendix C, Part II, within health care category
Durable medical equipment	Appendix C, Part II, within health care category
Electronic	Appendix C, Library, within computer related category
End user	Article III, Section 315

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Y. Herrera
Operator's Signature

10-16-03
Date

Term	Placement in Agreement
Entity-based exemption	Article II, Section 204
Food and food ingredients	Appendix C, Part II, within food and food products category
Food sold through vending machines	Appendix C, Part II, within food and food products category
Grooming and hygiene products	Appendix C, Part II, within health care category
Home service provider	Article III, Section 315
Lease	Appendix C, Part I, 3
Load and leave	Appendix C, Part II, within computer related category
Mobile telecommunications service	Article III, Section 315
Mobility enhancing equipment	Appendix C, Part II, within health care category
Model 1 Seller	Article II, Section 205
Model 2 Seller	Article II, Section 206
Model 3 Seller	Article II, Section 207
Over-the-counter drug	Appendix C, Part II, within health care category
Person	Article II, Section 208
Place of primary use	Article III, Section 315
Post-paid calling service	Article III, Section 315
Prepaid calling service	Article III, Section 315
Prepared food	Appendix C, Part II, within food and food products category
Prescription	Appendix C, Part II, within health care category
Prewritten computer software	Appendix C, Part II, within computer related category
Private communication service	Article III, Section 315
Product-based exemption	Article II, Section 209
Prosthetic device	Appendix C, Part II, within health care category
Protective equipment	Appendix C, Part II, within clothing category
Purchase price	Appendix C, Part I, 4
Purchaser	Article II, Section 210
Receive and receipt	Article III, Section 311
Registered under this agreement	Article II, Section 211
Rental	Appendix C, Part I, 3

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Y. Theresa J. Lee
Operator's Signature

10-16-03
Date

Term	Placement in Agreement
Retail sale	Appendix C, Part I, 5
Sale at retail	Appendix C, Part I, 5
Sales price	Appendix C, Part I, 6
Seller	Article II, Section 212
Service address	Article III, Section 315
Soft drinks	Appendix C, Part II, within food and food products category
Sport or recreational equipment	Appendix C, Part II, within clothing category
State	Article II, Section 213
Tangible personal property	Appendix C, Part I, 7
Tobacco	Appendix C, Part II, within food and food products category
Transportation equipment	Article III, Section 310
Use-based exemption	Article II, Section 214

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Yubereca J. Lee
Operator's Signature

10-16-03
Date

1 Appendix C
2 LIBRARY OF DEFINITIONS
3

4 **Part I** Administrative definitions including tangible personal property. Terms included
5 in this Part are core terms that apply in imposing and administering sales and use taxes.
6

7 **Part II** Product definitions. Terms included in this Part are used to exempt items from
8 sales and use taxes or to impose tax on items by narrowing an exemption that otherwise includes
9 these items.
10

11 **Part III** Reserved for sales tax holiday definitions.
12

13 PART I
14

15 Administrative Definitions
16

17 1. "Delivery charges" means charges by the seller of personal property or services for
18 preparation and delivery to a location designated by the purchaser of personal property or
19 services including, but not limited to, transportation, shipping, postage, handling, crating, and
20 packing.

21 A member state may exclude from "delivery charges" the charges for delivery of "direct
22 mail" if the charges are separately stated on an invoice or similar billing document given to
23 the purchaser.
24

25 2. "Direct mail" means printed material delivered or distributed by United States mail or other
26 delivery service to a mass audience or to addressees on a mailing list provided by the
27 purchaser or at the direction of the purchaser when the cost of the items are not billed directly
28 to the recipients. "Direct mail" includes tangible personal property supplied directly or
29 indirectly by the purchaser to the direct mail seller for inclusion in the package containing the

- 1 printed material. "Direct mail" does not include multiple items of printed material delivered
2 to a single address.
3
- 4 3. "Lease or rental" means any transfer of possession or control of tangible personal property
5 for a fixed or indeterminate term for consideration. A lease or rental may include future
6 options to purchase or extend.
- 7 A. Lease or rental does not include:
- 8 1. A transfer of possession or control of property under a security agreement or deferred
9 payment plan that requires the transfer of title upon completion of the required
10 payments;
- 11 2. A transfer or possession or control of property under an agreement that requires the
12 transfer of title upon completion of required payments and payment of an option price
13 does not exceed the greater of one hundred dollars or one percent of the total required
14 payments; or
- 15 3. Providing tangible personal property along with an operator for a fixed or
16 indeterminate period of time. A condition of this exclusion is that the operator is
17 necessary for the equipment to perform as designed. For the purpose of this
18 subsection, an operator must do more than maintain, inspect, or set-up the tangible
19 personal property.
- 20 B. Lease or rental does include agreements covering motor vehicles and trailers where the
21 amount of consideration may be increased or decreased by reference to the amount
22 realized upon sale or disposition of the property as defined in 26 USC 7701(h)(1).
- 23 C. This definition shall be used for sales and use tax purposes regardless if a transaction is
24 characterized as a lease or rental under generally accepted accounting principles, the
25 Internal Revenue Code, the [state commercial code], or other provisions of federal, state
26 or local law.
- 27 D. This definition will be applied only prospectively from the date of adoption and will
28 have no retroactive impact on existing leases or rentals. This definition shall neither
29 impact any existing sale-leaseback exemption or exclusions that a state may have, nor

- 1 preclude a state from adopting a sale-leaseback exemption or exclusion after the
2 effective date of the Agreement.
3
4 4. "Purchase price" applies to the measure subject to use tax and has the same meaning as
5 sales price.
6
7 5. "Retail sale or Sale at retail" means any sale, lease, or rental for any purpose other than for
8 resale, sublease, or subrent.
9
10 6. "Sales price" applies to the measure subject to sales tax and means the total amount of
11 consideration, including cash, credit, property, and services, for which personal property or
12 services are sold, leased, or rented, valued in money, whether received in money or
13 otherwise, without any deduction for the following:
14 A. The seller's cost of the property sold;
15 B. The cost of materials used, labor or service cost, interest, losses, all costs of
16 transportation to the seller, all taxes imposed on the seller, and any other expense
17 of the seller;
18 C. Charges by the seller for any services necessary to complete the sale, other than
19 delivery and installation charges;
20 D. Delivery charges;
21 E. Installation charges;
22 F. The value of exempt personal property given to the purchaser where taxable and
23 exempt personal property have been bundled together and sold by the seller as a
24 single product or piece of merchandise; and
25 G. Credit for any trade-in, as determined by state law.
26 States may exclude from "sales price" the amounts received for charges included in paragraphs
27 (C) through (G) above, if they are separately stated on the invoice, billing, or similar document
28 given to the purchaser.
29 "Sales price" shall not include:

- 1 A. Discounts, including cash, term, or coupons that are not reimbursed by a third
2 party that are allowed by a seller and taken by a purchaser on a sale;
3 B. Interest, financing, and carrying charges from credit extended on the sale of
4 personal property or services, if the amount is separately stated on the invoice,
5 bill of sale or similar document given to the purchaser; and
6 C. Any taxes legally imposed directly on the consumer that are separately stated on
7 the invoice, bill of sale or similar document given to the purchaser.
8
9 7. "Tangible personal property" means personal property that can be seen, weighed,
10 measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible
11 personal property" includes electricity, water, gas, steam, and prewritten computer software.

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PART II
Product Definitions

CLOTHING

"Clothing" means all human wearing apparel suitable for general use. The following list contains examples and is not intended to be an all-inclusive list.

A. "Clothing" shall include:

1. Aprons, household and shop;
2. Athletic supporters;
3. Baby receiving blankets;
4. Bathing suits and caps;
5. Beach capes and coats;
6. Belts and suspenders;
7. Boots;
8. Coats and jackets;
9. Costumes;
10. Diapers, children and adult, including disposable diapers;
11. Ear muffs;
12. Footlets;
13. Formal wear;
14. Garters and garter belts;
15. Girdles;
16. Gloves and mittens for general use;
17. Hats and caps;
18. Hosiery;
19. Insoles for shoes;
20. Lab coats;
21. Neckties;
22. Overshoes;
23. Pantyhose;

- 1 24. Rainwear;
- 2 25. Rubber pants;
- 3 26. Sandals;
- 4 27. Scarves;
- 5 28. Shoes and shoe laces;
- 6 29. Slippers;
- 7 30. Sneakers;
- 8 31. Socks and stockings;
- 9 32. Steel toed shoes;
- 10 33. Underwear;
- 11 34. Uniforms, athletic and non-athletic; and
- 12 35. Wedding apparel.
- 13 B. "Clothing" shall not include:
- 14 1. Belt buckles sold separately;
- 15 2. Costume masks sold separately;
- 16 3. Patches and emblems sold separately;
- 17 4. Sewing equipment and supplies including, but not limited to, knitting needles,
- 18 patterns, pins, scissors, sewing machines, sewing needles, tape measures, and
- 19 thimbles; and
- 20 5. Sewing materials that become part of "clothing" including, but not limited to, buttons,
- 21 fabric, lace, thread, yarn, and zippers.
- 22 "Clothing accessories or equipment" means incidental items worn on the person or in
- 23 conjunction with "clothing." "Clothing accessories or equipment" are mutually exclusive of and
- 24 may be taxed differently than apparel within the definition of "clothing," "sport or recreational
- 25 equipment," and "protective equipment." The following list contains examples and is not
- 26 intended to be an all-inclusive list. "Clothing accessories or equipment" shall include:
- 27 A. Briefcases;
- 28 B. Cosmetics;
- 29 C. Hair notions, including, but not limited to, barrettes, hair bows, and hair nets;
- 30 D. Handbags;

- 1 E. Handkerchiefs;
2 F. Jewelry;
3 G. Sun glasses, non-prescription;
4 H. Umbrellas;
5 I. Wallets;
6 J. Watches; and
7 K. Wigs and hair pieces.
- 8 "Protective equipment" means items for human wear and designed as protection of the wearer
9 against injury or disease or as protections against damage or injury of other persons or property
10 but not suitable for general use. "Protective equipment" are mutually exclusive of and may be
11 taxed differently than apparel within the definition of "clothing," "clothing accessories or
12 equipment," and "sport or recreational equipment." The following list contains examples and is
13 not intended to be an all-inclusive list. "Protective equipment" shall include:
- 14 A. Breathing masks;
15 B. Clean room apparel and equipment;
16 C. Ear and hearing protectors;
17 D. Face shields;
18 E. Hard hats;
19 F. Helmets;
20 G. Paint or dust respirators;
21 H. Protective gloves;
22 I. Safety glasses and goggles;
23 J. Safety belts;
24 K. Tool belts; and
25 L. Welders gloves and masks.
- 26 "Sport or recreational equipment" means items designed for human use and worn in
27 conjunction with an athletic or recreational activity that are not suitable for general use. "Sport
28 or recreational equipment" are mutually exclusive of and may be taxed differently than apparel
29 within the definition of "clothing," "clothing accessories or equipment," and "protective

- 1 equipment." The following list contains examples and is not intended to be an all-inclusive list.
2 "Sport or recreational equipment" shall include:
3 A. Ballet and tap shoes;
4 B. Cleated or spiked athletic shoes;
5 C. Gloves, including, but not limited to, baseball, bowling, boxing, hockey, and golf;
6 D. Goggles;
7 E. Hand and elbow guards;
8 F. Life preservers and vests;
9 G. Mouth guards;
10 H. Roller and ice skates;
11 I. Shin guards;
12 J. Shoulder pads;
13 K. Ski boots;
14 L. Waders; and
15 M. Wetsuits and fins.

16
17 **COMPUTER RELATED**

- 18 "Computer" means an electronic device that accepts information in digital or similar form and
19 manipulates it for a result based on a sequence of instructions.
20 "Computer software" means a set of coded instructions designed to cause a "computer" or
21 automatic data processing equipment to perform a task.
22 "Delivered electronically" means delivered to the purchaser by means other than tangible
23 storage media.
24 "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical,
25 electromagnetic, or similar capabilities.
26 "Load and leave" means delivery to the purchaser by use of a tangible storage media where the
27 tangible storage media is not physically transferred to the purchaser.
28 "Prewritten computer software" means "computer software," including prewritten upgrades,
29 which is not designed and developed by the author or other creator to the specifications of a
30 specific purchaser. The combining of two or more "prewritten computer software" programs or

1 prewritten portions thereof does not cause the combination to be other than "prewritten computer
2 software." "Prewritten computer software" includes software designed and developed by the
3 author or other creator to the specifications of a specific purchaser when it is sold to a person
4 other than the specific purchaser. Where a person modifies or enhances "computer software" of
5 which the person is not the author or creator, the person shall be deemed to be the author or
6 creator only of such person's modifications or enhancements. "Prewritten computer software" or
7 a prewritten portion thereof that is modified or enhanced to any degree, where such modification
8 or enhancement is designed and developed to the specifications of a specific purchaser, remains
9 "prewritten computer software;" provided, however, that where there is a reasonable, separately
10 stated charge or an invoice or other statement of the price given to the purchaser for such
11 modification or enhancement, such modification or enhancement shall not constitute "prewritten
12 computer software."

13 A member state may exempt "prewritten computer software" "delivered electronically" or by
14 "load and leave."
15

16 FOOD AND FOOD PRODUCTS

17 "Alcoholic Beverages" means beverages that are suitable for human consumption and contain
18 one-half of one percent or more of alcohol by volume.

19 "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in
20 combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars,
21 drops, or pieces. "Candy" shall not include any preparation containing flour and shall require no
22 refrigeration.

23 "Dietary supplement" means any product, other than "tobacco," intended to supplement the
24 diet that:

25 A. Contains one or more of the following dietary ingredients:

- 26 1. A vitamin;
- 27 2. A mineral;
- 28 3. An herb or other botanical;
- 29 4. An amino acid;
- 30 5. A dietary substance for use by humans to supplement the diet by increasing the total
31 dietary intake; or

- 1 6. A concentrate, metabolite, constituent, extract, or combination of any ingredient
2 described in above; and
- 3 B. Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not
4 intended for ingestion in such a form, is not represented as conventional food and is not
5 represented for use as a sole item of a meal or of the diet; and
- 6 C. Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts"
7 box found on the label and as required pursuant to 21 C.F.R § 101.36.
- 8 "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen,
9 dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed
10 for their taste or nutritional value. "Food and food ingredients" does not include "alcoholic
11 beverages" or "tobacco." A member state may exclude "candy," "dietary supplements" and
12 "soft drinks" from this definition, which items are mutually exclusive of each other.
- 13 Notwithstanding the foregoing requirements of this definition or any other provision of the
14 Agreement, a member state may maintain its tax treatment of food in a manner that differs from
15 the definitions provided herein, provided its taxation or exemption of food is based on a
16 prohibition or requirement of that state's Constitution that exists on the effective date of the
17 Agreement.
- 18 "Food sold through vending machines" means food dispensed from a machine or other
19 mechanical device that accepts payment.
- 20 "Prepared food" means:
- 21 A. Food sold in a heated state or heated by the seller;
- 22 B. Two or more food ingredients mixed or combined by the seller for sale as a single item;
23 or
- 24 C. Food sold with eating utensils provided by the seller, including plates, knives, forks,
25 spoons, glasses, cups, napkins, or straws. A plate does not include a container or
26 packaging used to transport the food.
- 27 "Prepared food" in B does not include food that is only cut, repackaged, or pasteurized by the
28 seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring
29 cooking by the consumer as recommended by the Food and Drug Administration in chapter 3,
30 part 401.11 of its Food Code so as to prevent food borne illnesses.

1
2 The following items may be taxed differently than "prepared food" and each other, if sold
3 without eating utensils provided by the seller, but may not be taxed differently than the same
4 item when classified under "food and food ingredients."

5 1. Food sold by a seller whose proper primary NAICS classification is manufacturing in
6 sector 311, except subsector 3118 (bakeries).

7 2. Food sold in an unheated state by weight or volume as a single item.

8 3. Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries,
9 donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas.

10 Substances within "food and food ingredients" may be taxed differently if sold as "prepared
11 food." A state shall tax or exempt from taxation "candy," dietary supplements," and "soft
12 drinks" that are sold as "prepared food" in the same manner as it treats other substances that are
13 sold as "prepared food."

14 "Soft drinks" means non-alcoholic beverages that contain natural or artificial sweeteners. "Soft
15 drinks" do not include beverages that contain milk or milk products, soy, rice or similar milk
16 substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

17 "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains
18 tobacco.

19
20 **HEALTH-CARE**

21 "Drug" means a compound, substance or preparation, and any component of a compound,
22 substance or preparation, other than "food and food ingredients," "dietary supplements" or
23 "alcoholic beverages:"

24 A. Recognized in the official United State Pharmacopoeia, official Homeopathic
25 Pharmacopoeia of the United States, or official National Formulary, and supplement to
26 any of them; or

27 B. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

28 C. Intended to affect the structure or any function of the body.

29 A member state may independently:

- 1 A. Limit the definition of "drug" to human use (as opposed to both human and animal use)
2 in the administration of its exemption;
- 3 B. Draft its exemption for "drug" to specifically add insulin and/or medical oxygen so that
4 no prescription is required, even if a state requires a prescription under its exemption for
5 drugs;
- 6 C. Determine the taxability of the sales of drugs and prescription drugs to hospitals and
7 other medical facilities;
- 8 D. Determine the taxability of free samples of drugs; and
- 9 E. Determine the taxability of bundling taxable and nontaxable drug, if uniform treatment
10 of bundled transactions is not otherwise defined in the Agreement.
- 11 **"Durable medical equipment"** means equipment including repair and replacement parts for
12 same, but does not include "mobility enhancing equipment," which:
- 13 A. Can withstand repeated use; and
14 B. Is primarily and customarily used to serve a medical purpose; and
15 C. Generally is not useful to a person in the absence of illness or injury; and
16 D. Is not worn in or on the body.
- 17 A member state may limit its exemption to "durable medical equipment" used for home use only.
18 A member state may limit the application of this definition by requiring a "prescription," or limit
19 an exemption based on Medicare or Medicaid payments or reimbursements.
- 20 **"Grooming and hygiene products"** are soaps and cleaning solutions, shampoo, toothpaste,
21 mouthwash, antiperspirants, and sun tan lotions and screens, regardless of whether the items
22 meet the definition of "over-the-counter-drugs."
- 23 **"Mobility enhancing equipment"** means equipment including repair and replacement parts to
24 same, but does not include "durable medical equipment," which:
- 25 A. Is primarily and customarily used to provide or increase the ability to move from one
26 place to another and which is appropriate for use either in a home or a motor vehicle;
27 and
28 B. Is not generally used by persons with normal mobility; and
29 C. Does not include any motor vehicle or equipment on a motor vehicle normally provided
30 by a motor vehicle manufacturer.

- 1 A member state may limit the application of this definition by requiring a "prescription," or limit
2 an exemption based on Medicare or Medicaid payments or reimbursements.
- 3 "Over-the-counter-drug" means a drug that contains a label that identifies the product as a drug
4 as required by 21 C.F.R. § 201.66. A member state may exclude "grooming and hygiene
5 products" from this definition. The "over-the-counter-drug" label includes:
- 6 A. A "Drug Facts" panel; or
7 B. A statement of the "active ingredient(s)" with a list of those ingredients contained in the
8 compound, substance or preparation.
- 9 "Prescription" means an order, formula or recipe issued in any form of oral, written, electronic,
10 or other means of transmission by a duly licensed practitioner authorized by the laws of the
11 member state.
- 12 "Prosthetic device" means a replacement, corrective, or supportive device including repair and
13 replacement parts for same worn on or in the body to:
- 14 A. Artificially replace a missing portion of the body;
15 B. Prevent or correct physical deformity or malfunction; or
16 C. Support a weak or deformed portion of the body.
- 17 A member state may exclude any or all of the following from the definition of "prosthetic
18 device:"
- 19 A. Corrective eyeglasses;
20 B. Contact lenses;
21 C. Hearing aids; and
22 D. Dental prosthesis.
- 23 A member state may limit the application of this definition by requiring a "prescription," or limit
24 an exemption based on Medicare or Medicaid payments or reimbursements.
25

1

2

PART III

3

4

Reserved for Sales Tax Holiday Definitions

5

6

7

Streamlined Agreement

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November 12, 2002

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Yvonne J. Lee
Operator's Signature

10-16-03
Date

**Testimony before the House Finance and Taxation Committee
Senate Bill 2095**

March 11, 2003

Prepared by Gary Anderson, Division Director of Sales & Special Taxes
North Dakota Office of State Tax Commissioner
Phone: 328-3471
E-mail: ganderson@state.nd.us

Good morning Chairman Belter and Members of the House Finance and Taxation Committee.

Introduction

My name is Gary Anderson. I am the Division Director for Sales and Special Taxes, and I am here representing the Office of State Tax Commissioner. Senate Bill 2095 relates to the adoption of the Streamlined Sales and Use Tax Agreement, as previously adopted by member states of the Streamlined Sales Tax Project on November 12, 2002 and is introduced at the Tax Commissioner's request.

Purpose of Bill

The Streamlined Sales and Use Tax Agreement speaks to the criteria that participating states must comply in order to become part of a multistate tax compact whose purpose is to simplify the sales and use tax system utilized by sellers to collect and report taxes, and in turn, provide states an opportunity to legally collect taxes on remote sales.

The Agreement represents the work of 40 states and the District of Columbia. 36 of these states were voting participants that had previously received authorization from their legislature or their Governor to participate in multistate discussions leading to the development of the Streamlined Sales and Use Tax Agreement. North Dakota received legislative authority during the 2001 Legislative Session through the creation of North Dakota Century Code chapter 57-39.4. 5 additional states participated in these discussions as non-voting states, and were identified as "observer states." (There are a total of 45 states and the District of Columbia that currently impose sales and use taxes.)

Senate Bill 2095 does not, in itself, amend North Dakota's existing sales and use tax laws. The changes that are necessary to bring North Dakota's tax laws into compliance with the Streamlined Sales and Use Tax Agreement's criteria are addressed in Senate Bill 2096, a companion bill to Senate Bill 2095. Senate Bill 2095 should be regarded as a template, in that it would be used as a guide in defining the simplifications that would be necessary to achieve and maintain streamlined sales and use tax system consistent with other participating states.

Bill's Provisions

Section 1 of the bill provides for the adoption of the Streamlined Sales and Use Tax Agreement, as referenced by Lines 7 through 10 on Page 1. The remainder of this section identifies the conditions that the state must accept for sales and use tax purposes to participate under the provisions of this agreement, and include using uniform definitions, sourcing, and rounding rules, providing sixty days notice to all state and local changes in rate or base, and recognizing out-of-state companies that register for collection through the agreements. The attachment to my testimony addresses each of the sales and use tax requirements.

Section 2 of Senate Bill 2095 repeals the code references to the Simplified Sales and Use Tax Administrative Act, and replaces by reference and with language from the Streamline Sales and Use Tax Agreement, as covered by Section 1 of this bill.

Section 3 of Senate Bill 2095 provides for an effective date after December 31, 2005.

I would also like to bring to your attention the attachment prepared by the Streamlined Sales Tax Project Group entitled *Streamlined Sales Tax System Question & Answers*.

Summary

As stated previously, the Streamlined Sales and Use Tax Agreement provides a guide for states and local taxing jurisdictions that apply sales and use taxes. Adopting the Agreement does not in itself change North Dakota's sales and use tax laws.

The Agreement is intended to provide a means of improving upon the reliability of the sales and use tax system as a major revenue source by creating a system that can be utilized by main-street businesses in this state and remote sellers while incurring minimal compliance costs or no costs. It provides the opportunity for remote sellers or out-of-state sellers to come forward voluntarily to collect sales tax on their sales.

Remote sales can be made through catalogs, telephone solicitation, and the Internet. Catalog sales have impacted our state's budget, but not to the same degree experienced as a result of the growth of the Internet. The United States General Accounting Office issued a report in June 2000 entitled *Sales Taxes - Electronic Commerce Growth Presents Challenges; Revenue Losses Are Uncertain*. In this Congressional report it was estimated the total state and local sales and use tax losses for Internet Sales in North Dakota in the year 2003 would range from \$2 million to \$22 million, and for all remote sales to range from \$17 million to \$50 million. Even if we accepted the low end of this estimated revenue loss, it is evident that we are experiencing a recognizable impact to our state budget that is a result of remote sales being made by remote sellers that do not have a responsibility to register and collect for sales taxes. U.S. Supreme Court cases, including North Dakota's case against Quill in 1993, determined that remote sellers not having a physical presence in this state cannot be required to collect and remit a state's sales and use taxes.

One of the primary concerns identified by remote sellers that do not have a physical presence and who do not collect sales tax is the issue of the compliance costs associated with the collection of taxes for not only forty-five states and the District of Columbia, but also the costs associated with the collection of taxes for over 7,500 local taxing jurisdictions. It is with this concern that the Streamlined Sales Tax Project was established and subsequently resulted in the Streamlined Sales and Use Tax Agreement.

The Agreement, if adopted, will represent the guide for creating uniformity among states as reflected by a sales and use tax system that utilizes uniform definitions and administrative processes that would provide overall efficiencies to the sales tax system, and would be reflective of the simplification of sales tax laws and simplification of the sales and use tax administration through the utilization of technology and third-party service providers, identified as certified service providers for calculating, collecting, reporting, and paying taxes on behalf of the sellers. This effort to create a more simple, uniform, and fair system for the administration of state and local sales and use taxes, which provides for a reduction in the compliance costs incurred by retailers, and yet preserves state and local sovereignty provides the opportunity for remote sellers to step forward to collect and report sales taxes voluntarily.

Recently a group of remote sellers did indicate their intent to voluntarily collect sales tax on Internet sales in many of the states participating in the Streamlined Sales Tax Project. The group's spokesperson indicated that the decision to begin collection of state's sales taxes was intended to reflect support for the streamlining efforts being initiated by states such as North Dakota. The group of companies that agreed to collect taxes on remote sales were reported to have combined annual sales of \$450 million to \$500 million. Although the number of companies and the amount of revenue that may apply to North Dakota is not immediately known, the fact that some of these companies will be coming forward will provide a positive revenue impact to the state. A member of the National Governors' Association was recently quoted in a recent *State Tax Notes* article as saying "This is a vote of confidence from major retailers that this a better system than the current one."

The Streamlined Sales Tax Agreement goal is the development of a multistate compact that will be achieved after 10 states representing 20% of the nation's population are in compliance with the provisions of the Agreement. Once the multistate compact is in place, it would require that a remote seller wishing to voluntarily register in one of the compact states to also register and collect sales taxes in all of the compact states.

South Dakota's Governor recently signed into law streamlined sales tax legislation that brings their state into compliance effective next year, Utah, West Virginia and Nebraska's legislatures have approved streamlined sales tax legislation for their governor's signature. Other states having legislation or have proposals to adopt streamlined legislation include Florida, Hawaii, Indiana, Iowa, Kansas, Kansas, and Oklahoma. Of interest is the fact that California, which was one of the five states that did not participate as a member of the Streamlined Sales Tax Project has now introduced

legislation that would require California to join the Streamlined Sales Tax Implementing States, similar to action that North Dakota took during the last legislative session.

The development of the Streamlined Sales and Use Tax Agreement was not simply a product of many states working together. It actually represents a culmination of three years of hard work and active participation from representatives of states; local taxing jurisdictions; national, regional and local retailers; trade associations; manufacturers; direct marketers; technology companies; and many other business associations.

In summary, the Streamlined Sales and Use Tax Agreement sets forth the requirements to participate and to develop a more simple, uniform, and fair system for the administration of state and local sales and use taxes, provides for a reduction in the compliance costs incurred by retailers, and preserves state and local sovereignty. The Streamlined Sales and Use Tax Agreement responds to the concerns continually brought to our department by North Dakota's main street businesses, in that it provides an opportunity for these businesses to compete with remote sellers.

The first step in achieving this goal is the adoption of the Streamlined Sales and Use Tax Agreement by the State of North Dakota. The passage of Senate Bill 2095 does not, in itself, change North Dakota's current sales and use tax laws. Changes to the sales and use tax laws will continue to rest with the North Dakota Legislature. The Tax Commissioner requests the committee's favorable consideration of this bill. Mr. Chairman, if the committee has any questions, I would be happy to respond to them at this time.

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Yvonne J. Lee
Operator's Signature

10-16-03
Date

**Testimony before the House Finance and Taxation Committee
ATTACHMENT – Senate Bill 2095**

March 11, 2003

Prepared by Gary Anderson, Division Director of Sales & Special Taxes
North Dakota Office of State Tax Commissioner
Phone: 328-3471

SECTION 1:

Section 1 of the bill provides for the adoption of the Streamlined Sales and Use Tax Agreement, as referenced by 57-39.4-01 (Page 1, Lines 7 through 10). A complete copy of the Agreement is being provided with my testimony.

Following 57-39.4-01, which provides for the adoption of the Agreement, the remainder of Senate Bill 2095 specifically sets out the requirements that a state must accept for sales and use tax purposes to participate under the provisions of this Agreement. The requirements include:

- (301) *State level administration*
State administration of local sales and use taxes
- (302) *State and local tax bases*
The tax base for local sales and use taxes must be identical to the state tax base, with exception of items reflected on page 2, lines 1 and 2
- (303) *Seller registration*
Requires the availability of an online sales and use tax registration system
- (304) *Notice of state tax changes*
As practical, provide sellers with adequate notification of rate and tax base changes and limit effective date on rate changes to first day of calendar quarter
- (305) *Local rate and boundary changes*
Provide sellers with adequate notification of rate and boundary changes, and establish a database that uses an address or zip code for determining a purchaser's taxing jurisdiction (state and applicable local tax rates)
- (306) *Relief from certain liability*
Relieves sellers from liability for incorrect collection of sales taxes when the sellers rely on erroneous data provided by states or local taxing jurisdictions
- (307) *Data base requirements and exceptions*

Electronic data bases provided for in the Agreement are to be available in a downloadable format

- (308) *State and local tax rates*
The state may not have multiple sales and use tax rate, except on food and food ingredients and drugs; and also excludes natural gas (currently 2%) and new mobile homes (currently 3%). Local taxing jurisdictions may not have multiple sales and use tax rates (currently only one of the local taxing jurisdictions impose more than one sales and use tax rate)
- (309) *Application of general sourcing rules and exclusions from the rules*
Sourcing rules are the same for tangible personal property, digital goods, and services when the seller is determining responsibilities to collect sales and use taxes
- (310) *General sourcing rules*
Provide uniform sourcing rules
- A product received at the seller's business location is sourced to the business location.
 - A product received by the purchaser at a location other than the seller's business location is taxable at the delivery location.
 - If (a) or (b) does not apply, the product received by the purchaser is sourced to the purchaser's address.
 - If (a), (b), or (c) does not apply, the product received by the purchaser is sourced to the location indicated by the address of the purchaser's payment instrument.
 - When none of the previous rules apply, the product received by the purchaser is sourced to the address from which the property was shipped from or originated from.
- (311) *General sourcing definitions*
Defines "receive" and "receipt"
- (312) *Multiple points of use*
A purchaser who is not a direct permit holder may purchase items tax-free and instead self report the sales or use tax on items that are purchased as one transaction but delivered to multiple taxing jurisdictions
- (313) *Direct mail sourcing*
A purchaser who is not a direct permit holder shall provide to the seller (often times a printer) the direct mail information detailing the taxing jurisdictions where the direct mail is mailed
- (314) *Telecommunications sourcing*
Defines the sourcing rules applying to call-by-call telecommunications charges, as well as charges sold on a basis other than call-by-call

- (315) *Telecommunications sourcing definitions*
Defines several telecommunications terms
- (316) *Enactment of exemptions*
Addresses the enactment of product-based, entity-based or use-based exemptions
- (317) *Administration of exemptions*
Details the information the seller would obtain and administrative process that a seller shall complete to support and exemption
- (318) *Uniform tax returns*
Requires only one tax return per seller
- (319) *Uniform rules for remittance of funds*
Establishes requirements for remitting tax payments, and provides for electronic payment options
- (320) *Uniform rules for recovery of bad debts*
Identifies the administrative procedures necessary for a seller to claim a bad debt deduction for sales tax purposes
- (321) *Confidentiality and privacy protections under model 1*
Establishes the rules that a model 1 "certified service provider" needs to adhere to insure the privacy of customer information is maintained. (Model 1 certified service provider is a third-party service provider that contracts with a seller to perform all of the seller's sales tax functions – determines the amount of tax due on a sales transaction, pays the tax to the state, and files returns with the state.)
- (322) *Sales tax holidays*
Permits a state to initiate sales tax holidays on items that have been defined by the Agreement
- (323) *Caps and threshold*
Eliminates the use of caps and thresholds that may apply on state and local sales and use taxes
- (324) *Rounding*
To calculate tax, the seller would calculate the tax to the third decimal point, and round to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four
- (325) *Customer refund procedures*
Identifies the procedures for a purchaser to seek a refund of over-collected sales taxes

(326) *Direct pay permits*

Enables very large businesses having a very large quantity of purchases to purchase everything tax free, and then self-report the sales or use tax directly to the state

(327) *Library of definitions*

Maintains a record of all definitions provided by the Agreement (Reference Appendix B of the Streamlined Sales and Use Tax Agreement for a complete listing of terms that have been defined and Appendix C to review the definitions)

(328) *Taxability matrix*

Matrix that will be provided by the state that signifies whether a product is taxable or exempt

(329) *Effective date of rate changes*

Defines the effective date of rate changes for services

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Y. Theresa J. Lee
Operator's Signature

10-16-03
Date

TESTIMONY

BY
CALVIN N. ROLFSON
ON BEHALF OF
NORTH DAKOTA RETAIL ASSOCIATION
IN SUPPORT OF
SENATE BILL NO. 2095 & 2096

My name is Cal Rolfson, I am an attorney in Bismarck. I represent the North Dakota Retail Association, and I appear on their behalf in support of Senate Bill 2095 and its companion, Senate Bill 2096.

There are thousands of retailers in North Dakota. They provide a significant part of the sales tax revenue that funds state, county, city and other political subdivisions of this state. As you know, the significant majority of tax revenue for North Dakota (about 40%) comes from sales tax revenues collected by your state's retailers.

The North Dakota Retail Association was founded in 1965 and is a part of The National Retail Federation. Members of the North Dakota Retail Association come from small mom and pop stores in your cities and include large retail entities like Sears, Penney s and Scheels. They employ tens of thousands of employees from across the state.

Page No. 1

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Operator's Signature

10-16-03
Date

I have heard it said by prominent national retailers that in untaxed internet sales, we have a horse and buggy tax system in which significant revenue is lost. Those losses began remote catalog sales and has now leaped frogged into multi-billion dollar taxable e-commerce sales that is essentially owed, but never paid. This tax-free internet sales system places North Dakota retailers at a significant competitive disadvantage to internet sales retailers outside of the state and cheats the state and its taxpayers. Your North Dakota retailers see Senate Bill 2095 & 2096 as creating simplicity and uniformity in the sales tax system.

There are 7,500 different state and local tax systems around the United States. That number alone demonstrates a significant lack of uniformity. That system has been described as "a mess" and creates significant competitive disadvantages throughout.

In a 5% retail tax state, a \$200 coat that is \$10 cheaper when purchased over the internet rather than in a North Dakota retail clothing store, creates a real sales advantage to the internet seller. And as you know, under the North Dakota Supreme Court's Quill case, only retailers can currently collect sales tax because their "presence" is in North Dakota under current North Dakota law.

All of this becomes more than a minor leak in the tax base of North Dakota. Senate Bills 2095 and 2096 seek to plug that leak to create a level playing field for

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Operator's Signature

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North Dakota's retailers, but more importantly, to reduce the current hemorrhaging of the state's tax base that affects every taxpayer in North Dakota. Why should North Dakota retailers and all North Dakota taxpayers help fund the hole that has been created by e-commerce?

The Institute for State Studies has analyzed each state and the negative tax impact that e-commerce has created for them. Here are North Dakota's numbers:

1. The projected state and local revenue tax losses as a result of e-commerce in North Dakota is:

2001 - \$26.4 million

2006 - \$87.6 million (estimate)

2011 - \$103.9 million (estimate)

2. Revenue losses through North Dakota because of e-commerce, as a percent of total state taxes:

2001 - 2.1%

2006 - 5.73% (estimate)

2011 - 5.54% (estimate)

3. Revenue losses through North Dakota because of e-commerce, as a percent of total local taxes:

2001 - .48%

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Yvonne J. Lee

Date

10-16-03

2006 - 1.3% (estimate)

2011 - 1.26% (estimate)

4. North Dakota state and local sales taxes in 2001 and the increase in taxes necessary to replace loss revenue from e-commerce:

2001 - 5.59 %

2006 - 6.78 % (estimate)

2011 - 7.96 % (estimate)

We in North Dakota are forward thinking in our public policy through our computer enhancements in state and local government. We significantly and appropriately fund modernization of our state's data processing centers. However, we are currently behind - way behind - in using e-commerce to level the taxing playing field.

A new study by the Institute for State Studies has concluded that sales tax revenue losses from e-commerce is 41% higher than previous estimates. I am attaching a copy of the news release by the Institute for State Studies that reach that conclusion. I am also attaching a fact sheet describing the Institute's study conducted by Forrester Research, Inc. and the University of Tennessee's Center for Business and Economic Research. If the Committee wishes, I can provide a copy of the full 18 - page study for you.

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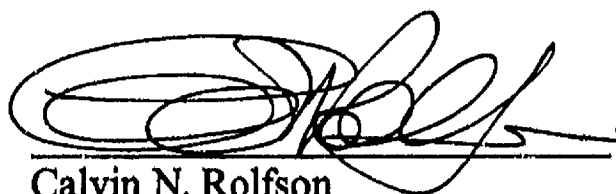
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This Committee had representatives on a 33 - state sales tax project to streamline sales tax in the United States. It was a joint effort of state and local governments and the private sector. Representatives of over 40 states and the District of Columbia were involved in discussions. Senate Bills 2095 and 2096 are the result of this multi-state sales tax streamlining project. The Bills will not become effective until at least 10 states comprising 20% of the population from sales tax states have passed it. Even if it is enacted, though, the multi-state agreement will not initially require out-of-state remote sellers to collect and remit taxes on e-commerce sales in North Dakota. It will remain a voluntary system until the United States Congress passes legislation.

These Bills have both passed the Senate by significant margins (30 - 9). I urge this committee to recommend the same favorable consideration to the House.

On behalf of all of North Dakota's retailers, and personally as a tax payer, I urge a "DO PASS" on these crucial Bills.



Calvin N. Rolfson
Legislative Counsel
North Dakota Retailers Association
(Lobbyist No. 144)

Page No. 5

Executive Summary

The sales tax base for state and local government is shrinking because of the expanded use of services that are not subject to sales tax and continued legislatively-granted exemptions. The erosion is also due to growth of remote sales including those made through e-commerce (Internet), the telephone and catalogs.

The extent to which e-commerce reduces state and local sales tax collections continues to be an important issue. As in our earlier work in this area, we focus on the e-commerce losses, recognizing them as furthering the trend erosion. In this brief, we present an update of our earlier revenue loss forecasts (Bruce and Fox, 2000). Sales tax losses by state are given for 2001, 2006, and 2011. The estimates reported here are based on the most recent forecasts of e-commerce sales for 2001 through 2011, provided by Forrester Research, Inc. The previous Bruce/Fox study provided projections through 2003.

For 2001, the dollars lost are 41 percent more than our previous report had indicated due to higher business-to-business (B2B) transactions forecast by Forrester. In 2001, e-commerce is likely to cause a *total* state and local government revenue loss of \$13.3 billion. By 2006, the loss will more than triple to \$45.2 billion and in 2011, the loss will be \$54.8 billion. The *total* e-commerce loss is the sales tax loss on all sales over the Internet. Part of the loss would have occurred anyway even without e-commerce on sales, for example, which might have otherwise been made by purchasers using the telephone and catalogs.

The *new* e-commerce loss is from sales made through the Internet both on goods that would have otherwise been purchased from the over-the-counter method and projected new goods that will be purchased over the Internet. In 2001, the new e-commerce loss is \$7 billion, in 2006 it grows to \$24.2 billion, and in 2011 it is \$29.2 billion.

Measuring the states' e-commerce revenue losses against their total state tax revenues also shows significant impact. In 2011, states will lose anywhere from 2.6 percent to 9.92 percent of their total state tax collections to total e-commerce losses.

A final measurement of the impact of e-commerce losses is the needed increase in the sales tax rate to replace the lost revenue. In 2011, rates will have to rise by between 0.83 and 1.72 percentage points to replace the total e-commerce losses.

The revenue impacts are significant.

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FACT SHEET

State and Local Tax Revenue Losses from E-Commerce

ABOUT THE STUDY

- Using forecasts of e-commerce sales for 2001 through 2011 provided by Forrester Research, Inc., the University of Tennessee's Center for Business and Economic Research has estimated the amount of sales tax revenue state and local governments will lose because the tax is not collected on remote online purchases.
- The September 2001 study was commissioned by the Institute for State Studies, a nonprofit center for public policy research focused on the viability of the states in the 21st century. The Institute is based at Western Governors University in Salt Lake City.
- State and local revenue losses from e-commerce sales are measured by estimating the reductions in the sales tax base and then multiplying the lost tax base by the state-specific effective state and local sales tax rate. Key inputs to estimating the tax base loss for e-commerce transactions are forecasts of e-commerce sales, identification of the sales taxable components of these sales, assumptions about what share of taxable sales could be collected in the absence of e-commerce and estimates of the share of taxes due that can be collected.

OVERALL FINDINGS

- In 2001, state and local governments are estimated to lose \$13.3 billion in sales tax revenue due to the inability to collect taxes from remote online purchases. This is 41 percent higher than the \$9.4 billion projected for 2001 in an April 2000 study by the same researchers. The increase is largely the result of higher business-to-business e-commerce transactions projected by Forrester Research.
- In 2006, the estimated loss is \$45.2 billion.
- In 2011, the estimated loss is \$54.8 billion.

STATE-BY-STATE FINDINGS

- Sales taxes are funding sources for critical public services (education, public safety, public works) in 45 states and the District of Columbia. In 32 of those states, sales taxes are funding sources for local governments (cities, counties and special districts). About a quarter of all state and local tax revenue comes from the sales tax.
- The effect on individual states is dramatic. State revenue losses in 2001 range from a low of \$21.0 million in Vermont to a high of \$1.75 billion in California.
 - In 2006 and 2011, these two states will also mark the high and low points of revenue losses. In Vermont, the 2006 revenue loss is estimated at \$71.7 million; in 2011 it grows to \$87.2 million. In California, the 2006 revenue loss is estimated at \$5.95 billion; in 2011 it grows to \$7.23 billion.

— more —

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- Expressed as a percentage of total state taxes, some states will see a disproportionately high revenue loss. In Texas, for example, the e-commerce revenue loss is 3.8 percent of total state taxes in 2001, rising to 10.3 percent in 2006. In Nevada, the loss equals 3.65 percent of total state taxes in 2001 and 9.86 percent in 2006.
- Local governments in some states depend heavily on sales tax revenue. Figures for Louisiana show that in 2001 3.27 percent of total local tax revenue is lost due to e-commerce transactions. That figure rises to 8.91 percent in 2006. Similar numbers for Oklahoma are 2.67 percent revenue loss in 2001, 7.27 percent in 2006.
- The losses from e-commerce exacerbate a broader trend in declining sales tax revenue for states caused by other remote sales on which sales tax is not routinely collected (e.g. catalog and telephone sales), by a growing shift to a service-based economy from a taxable goods-based economy, and by legislated exemptions from sales tax.

ABOUT THE ISSUE

- Under the Supreme Court's 1992 *Quill v North Dakota* decision, remote sellers, such as Internet retailers, are not required to collect sales and use taxes on sales made to buyers located in states where the seller does not have a physical presence or "nexus."
 - *Quill* created a situation in which sales taxes on a product are collected by a Main Street retailer, but not by a remote online retailer selling the same product.
 - While individuals are legally obligated to pay use taxes on all purchases, regardless of how and where they are bought, few people do so and no effective mechanism exists to collect the revenue.
- Congress enacted legislation in 1998 to impose a three-year moratorium on new Internet-access taxes. This legislation did not address the vital issue of how to collect sales taxes on remote sales. This moratorium is scheduled to expire in October 2001 and Congress is considering several options to address the issue.
- Simplifying the nation's sales tax laws is an ongoing effort that will make it easier for all retailers - online and Main Street - to collect sales taxes. There are some 7,500 different taxing jurisdictions in the U.S., each with different rates and different definitions of various taxable products.
 - The Streamlined Sales Tax Project, organized by several government associations and led by the National Governors Association, has resulted in 19 states so far passing simplification legislation, with another 10 considering legislation.

ABOUT THE INSTITUTE FOR STATE STUDIES

- The Institute for State Studies is a nonprofit center for public policy research and education located at Western Governors University in Salt Lake City. The foundation focuses on three areas: public policy and governance issues created by new technology, advancing competency-based measurement and certification in education, and increasing speed and decreasing cost in environmental progress.

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Wilkinson Ferrari & Varela for Institute for State Studies
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The Numbers Add Up To A Lack of Fairness

How inequity in taxing remote sales costs states billions every year

Questions and Answers ...

About state and local governments' revenue losses

Why is collecting sales taxes on remote purchases such a big issue?

The number of sales made over the Internet is growing at a phenomenal rate. E-commerce sales are projected to grow eight-fold in just 10 years from \$754.6 billion in 2001 to an astounding \$6.09 trillion in 2011. The success of the New Economy is important, but increasing online sales – on which sales taxes are not uniformly paid – nonetheless create an unfair disadvantage for Main Street retailers – where sales taxes are paid – the same Main Street retailers who support our communities in a variety of ways. Furthermore, a significant loss of sales tax revenue creates a huge predicament for state and local governments. Sales tax revenue funds one-quarter to one-half of these governments' services, ranging from parks and recreation to police and fire, and from education to transportation. Without access to this revenue, governments will have no option but to cut services, perhaps significantly, increase other taxes, such as property and income taxes, to compensate, or some combination of both.

Just how big an issue is this for state and local government?

The Institute for State Studies recently commissioned a study that shows state and local governments lost out on \$13.3 billion in revenue in 2001 due to e-commerce activity. If the problem is not addressed, the loss will grow to \$45.2 billion in 2006 and a staggering \$54.8 billion in 2011. These are huge losses on an individual state level, as well. For example, in just one state, Texas, the 2001 loss is \$1.2 billion, growing to \$4.8 billion in 2011 – that's almost 10 percent of the Lone Star State's expected tax collections.

How much will individual states lose?

The Institute's study, prepared by researchers at the University of Tennessee, found that state revenue losses in 2001 range from a low of \$21.0 million in Vermont to a high of \$1.75 billion in California. In 2006, Vermont's revenue loss will grow to \$71.7 million; California's to \$5.95 billion. In 2011, the revenue loss in Vermont is estimated at \$87.2 million; in California at \$7.23 billion. Revenue loss estimates for all states are available on this CD and at the Institute's web site, www.statestudies.org.

How did this situation come to be?

The Internet has created an unprecedented shift in how goods can be purchased. The ease and convenience of buying online is a tremendous advantage, particularly for business-to-business transactions, which make up more than 90 percent of all online sales. This change in the economy, combined with a U.S. Supreme Court decision affecting how sales tax is collected or not collected on remote sales (*Quill vs. North Dakota*, 1992), has created a situation in which an Industrial Era tax, the sales tax, must be revised to function efficiently in the 21st century.

How was the sales tax revenue loss study done?

Using forecasts of online sales for 2001 through 2011 provided by Forrester Research, Inc., the University of Tennessee's Center for Business and Economic Research estimated the amount of sales tax revenue state and local governments will lose because the tax is not collected on remote online purchases. State and local revenue losses from these sales were measured by estimating the reductions in the sales tax base and then multiplying the lost tax base by the state-specific effective state and local sales tax rate.

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Key inputs to estimating the tax base loss for e-commerce transactions are forecasts of online sales, identification of the sales-taxable components of these sales, assumptions about what share of taxable sales could be collected in the absence of remote sales and estimates of the share of taxes due that can be collected.

About sales and use taxes

What are sales and use taxes?

A sales tax is a levy placed on goods or services when purchased from a company that has a physical presence – whether it is a store or distribution center – in the same state as the consumer. When a consumer buys goods or services from a retailer that is outside of his or her state, a use tax is owed at the same rate as the sales tax. Use taxes are collected directly from consumers, usually reported on income tax returns. Sales and use taxes in America began as an emergency revenue measure during the Great Depression in the 1930s.

How does the current tax system work?

Forty-five states and the District of Columbia have sales and use taxes (In addition, while it doesn't have a state sales tax, Alaska allows local jurisdictions to levy sales taxes.) Current law says that retailers selling in a state in which they have a physical presence – called nexus – are required to collect and remit sales taxes. Businesses that sell to consumers in states in which they do not have nexus, the U.S. Supreme Court has ruled, are not required to collect and remit use taxes. In these cases, however, consumers still have the legal responsibility to calculate and pay the use tax directly to their own state. Under the streamlined approach, businesses would assume that responsibility.

Do sales and use tax laws really need to be changed?

Yes. With some 7,500 state and local taxing jurisdictions across the nation, America's sales and use tax system is antiquated, complex and cumbersome to administer. One of the problems with so many taxing jurisdictions is the variety of definitions of what is taxable. For example, a marshmallow might be defined as a food in one state – and therefore not taxed – but as a taxable candy in another state. That arrangement makes it difficult for online sellers and other remote retailers, such as mail-order companies, to know, calculate, collect and remit sales taxes at varying rates based on a customer's location to different state and local governments.

About solutions to the problem

What can be done to address this issue?

The most straight-forward solutions are for states to dramatically simplify and harmonize their sales tax structures and for Congress to clarify the issue of nexus so that equity can be restored between online and Main Street retailers. Forty states have banded together in the Streamlined Sales Tax Project to accomplish the first task. Congress has debated the second issue but has taken no action.

What is the Streamlined Sales Tax Project?

The Project is a proactive approach by states, with input from local governments and the private sector, to design, test and implement a radically simplified sales and use tax system for the 21st century. The goal of the Project is to substantially reduce or eliminate the costs and burdens of sales tax compliance for businesses through a combination of simplified laws and administrative policies and the implementation of a system that would be paid for by states. Project participants embarked on their mission to create a new, improved and simpler system in February 2000. Reforming sales and use tax policies will provide online and other retailers that do business in multiple states an easier way to calculate, collect, and remit existing use taxes.

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Which states are participating in the Streamlined Sales Tax Project?

Of the 50 United States, 35 are participants in the Streamlined Sales Tax Project, five are observers (California, Colorado, Connecticut, Georgia and Idaho), five have no sales tax (Alaska, Delaware, Montana, New Hampshire and Oregon) and five have sales taxes but aren't participating in the Project (Arizona, Hawaii, New Mexico, New York and Virginia).

How will the new, simplified system work?

Retailers and states will voluntarily elect to participate. To take part, states will be required to adopt authorizing legislation and enact certain simplification measures, including adopting uniform product codes and sourcing rules, developing uniform definitions of state tax laws, creating a central, one-stop registration system, and limiting the frequency local governments can change their tax rates. Under the new system, small and medium sized multistate retailers would be able to use state-certified, specially designed software (at no expense to them) to calculate, collect and remit use taxes for transactions in states in which they do not have a physical presence. Larger multistate businesses, like Target and Circuit City, would likely ask states to certify their existing tax software.

There are other reasons why the sales tax base is eroding -- the growth of the service economy at the expense of goods, and a whole host of legislative tax exemptions. Why focus just on losses from e-commerce?

The erosion of the sales tax base in general is indeed cause for alarm. The growth of the service economy and legislative exemptions are significant reasons for this erosion. The growth in e-commerce, however, has quickly become the largest single reason for sales tax base erosion, and it appears to be the fast-growing by far. For 2001, the state and local government revenue lost is 41 percent higher than previously estimated (in October 2000). This is almost entirely due to higher business-to-business e-commerce transactions forecast by Forrester Research.

About taxes on the Internet:

Didn't Congress pass a law that specifically prohibits states from taxing purchases made on the Internet?

No. The Internet Tax Freedom Act (ITFA), passed by Congress in 1998, set no restrictions on whether states can tax sales over the Internet. Instead, ITFA only prohibited states and local governments -- during a three-year moratorium from October 1, 1998, to October 1, 2001 -- from adopting new taxes on Internet access charges (like those consumers pay to AOL and other Internet Service Providers). This moratorium was extended in late October 2001 for two more years, giving states ample time to work toward sales tax simplification.

Doesn't applying the sales tax to online purchases constitute a new tax?

No. Requiring on-line merchants to collect sales tax does not create a new tax. Forty-five states currently impose sales and use taxes on the purchase of products and goods. Main Street retailers are required to collect these taxes on behalf of the states. However, a tax loophole exempts some out-of-state remote sellers from this tax collection obligation. In this instance, consumers are supposed to pay, or remit, a comparable use tax directly to his or her state. These use taxes currently exist in all 45 states that impose sales tax. Unfortunately, many consumers are unaware of or often ignore this use tax requirement.

Aren't states interested in this issue because they're just trying to get their hands on as much as revenue as they can?

It's simply an issue of fairness, not just for state and local governments, but for the local businesses and citizens who are the bedrock of our communities. Money not spent in a Main Street business means less tax revenue for vital community services -- a huge issue since the number of citizens using those services

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every day isn't declining. And fewer purchases on Main Street threatens the viability of those retailers to stay in business. What's more, lower-income consumers who often don't have easy access to the Internet and must buy from Main Street, where sales tax is collected, are left carrying a disproportionate share of the tax burden. Fewer Main Street purchases and exempt online purchases force state and local governments to either cut services like education, fire and police, and public works, perhaps dramatically, or make up for the lost revenue by raising sales taxes, property taxes and/or income taxes. However, increasing the sales tax may simply lead to fewer Main Street purchases, which lead to higher sales taxes, and so on - the so-called "sales tax death spiral".

Are consumers who purchase goods online subject to the same policies as consumers who shop in a store?

Although sellers are not obligated to collect a sales tax on the transaction in states where the seller does not have a store, consumers are obligated to pay an equivalent use tax to their home taxing jurisdiction when the retailer does not collect the sales tax. While consumers are required to pay a use tax, many are unaware or often ignore this requirement. On the other hand, consumers who purchase an item at a local retailer or at a store in the mall must pay sales tax.

Does the current policy on collecting sales tax on purchases made online place an unfair tax burden on some American, but not on others?

Yes, according to the U.S. Department of Commerce, personal computers are present in 80 percent of homes in which families make \$75,000 a year or more, but in fewer than 16 percent in which families make less than \$20,000. Higher-income Americans who can avoid the sales tax by shopping online benefit at the expense of lower-income residents who lack access to computers and the tax-free online sales. Instead of tax breaks, lower-income residents will face higher or fewer services to offset the lost revenues from online sales.

How will consumers benefit by a level playing field between online and brick-and-mortar retailers?

Definitely. A level playing field is what's best for the new economy. Internet sales, which have grown at a phenomenal rate, will continue to grow and benefit the U.S. economy. If we're going to have sales taxes, they should be applied fairly to all transactions. This allows consumers to be treated the same, regardless of whether they choose to shop in a store or online. It also ensures that states will not have to find other ways to supplant the revenues they receive from sales tax to fund essential community services. Additionally, fair and healthy competition in the marketplace offers added value to consumers. With an equitable tax policy consistently applied to online and traditional retailers, consumers will benefit from competitive pricing, better offers and better customer service. Operating in a fair climate allows consumers to enjoy the freedom of shopping choices without tax preferences and communities to continue to see the many benefits that revenues from sales tax provide.

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NEWS RELEASE
FOR RELEASE OCTOBER 2, 2001

**New Study Shows Sales Tax Revenue Losses From
E-Commerce 41 Percent Higher Than Previous Estimates**
States, Localities Projected to Lose \$54.8 Billion a Year by 2011

WASHINGTON – New figures released here today show that state and local governments will lose \$13.3 billion in revenue this year – 41 percent higher than previously estimated – because taxes are not paid on remote online purchases as they are on "Main Street" purchases. Projected annual revenue losses jump to \$45.2 billion in 2006 and a staggering \$54.8 billion by 2011 as a result of skyrocketing business-to-business e-commerce activity.

This continued loss of revenue highlights fairness issues for Main Street retailers, taxpayers and state and local governments. It creates difficult choices for the 45 states and the District of Columbia that rely on sales tax revenue: raise sales, income and/or property tax rates to compensate; cut services like education and public safety; or a combination of both.

The study was prepared by the Center for Business and Economic Research at the University of Tennessee, the pioneers in research on the subject. Data was collected by Forrester Research, Inc., the recognized leader in e-commerce research. The study was commissioned by the Institute for State Studies, a nonprofit public policy group. The study quantifies the amount of sales tax revenue states and local governments stand to lose in 2001, 2006 and 2011 because remote Internet-based retailers are not required to collect and remit sales tax. The U.S. Congress is currently debating how to address this inequity. The report is available online at www.statestudies.org.

A broad coalition of retailers, shopping center owners, state and local government leaders and national associations has for some time maintained that current tax policy as it applies to e-commerce isn't fair. They argue that the lack of a "level playing field" in collecting sales taxes leads to significant fairness issues for consumers and businesses. It also creates huge revenue losses for states and local governments, affecting their ability to provide citizens with quality education, effective public safety and other basic services. This research supports those assertions.

For example, Texas will lose \$1.2 billion to e-commerce sales tax erosion this year. In Florida, the number is \$932.2 million. Illinois will lose out on \$532.9 million, Michigan will lose \$502.9, Tennessee will lose \$362.3 million, Maryland, \$194.4 million. In the smallest states, the revenue erosion is large as well. Wyoming will lose \$26.1 million; Rhode Island, \$36.8 million; North Dakota, \$26.4 million; and the District of Columbia, \$36.7 million.

In a decade, the revenue losses grow tremendously, according to Donald Bruce, assistant professor at the University of Tennessee and the study's co-author. "By 2011, the potential revenue loss in Texas alone will be \$4.8 billion – that's almost 10 percent of the state's total

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expected tax collections. To make up for this revenue, Texas's current statewide sales tax rate of 6.25 percent would have to rise to 7.86 percent."

Historically, states and localities have responded to this erosion in sales tax revenue by raising tax rates, Bruce pointed out. In 1970, the median sales tax rate in the U.S. was 3.25 percent. This rose to 4.0 percent in 1980 and 5.0 percent in 1990. Fifteen states now have rates at or above 6.0 percent.

"We determined that, to make up for revenue losses due to e-commerce, states and local governments would have to raise their sales tax rates between 0.83 and 1.73 percentage points by 2011," said William F. Fox, study co-author and University of Tennessee professor. "When other factors causing sales tax revenue to shrink are added in, the projected tax increases are even higher."

In addition to erosion from remote sales, states and local governments are facing a loss of sales tax revenue from two other major trends: 1) a greater consumption of generally non-taxable services rather than taxable goods; and 2) a continual practice of state-legislated exemptions that are narrowing the tax base.

Steps are being taken to simplify the sales tax system, such as streamlining the rules and regulations of the 7,500 taxing jurisdictions in the U.S. This Streamlined Sales Tax Project is sponsored by a consortium of government associations led by the National Governors Association. So far, 32 states are participating in the effort to simplify tax rates and definitions of taxable goods, and to certify software that will make it easier for retailers, both on Main Street and on the Internet, to collect sales taxes. Nineteen states have enacted simplification legislation; another 10 have introduced legislation for consideration.

As part of the ongoing e-commerce sales tax debate, the Institute for State Studies will use this research data to educate state, local and national officials about the magnitude of the issue. The Institute for State Studies is a nonprofit center for public policy research and education located at Western Governors University. The foundation focuses on three areas: public policy and governance issues created by new technology, advancing competency-based measurement and certification in education, and increasing speed and decreasing cost in environmental progress.

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A Blueprint for **STREAMLINING**

SALES TAX

An agreement on how to simplify sales taxes across state lines has been reached. Now it's up to legislatures to concur.

By Carol Tubbesing

"We'd been in so many hotels over the past two or three years," remembers Oklahoma Senator Angela Monson. "The same people, the same hollow square table, the same milling around, the same hallway conversations."



Senator
Angela Monson
Oklahoma

"Then, that morning last November, we took the vote and it was over. For me, at least, it took a few minutes to sink in. All of these people, from all of these states had just agreed to reform their sales tax systems. No one had ever done that before. Wholesale tax reform even in one state is rare. Doing it in 10 or 20 or more states at the same time is absolutely unprecedented. But we had done it—or, at least, had taken a gigantic step in that direction," she says.

What Monson and 99 other state legislators, legislative staff, state revenue officials

* Tubbesing is NCSE's deputy executive director. Neal, NCSE's expert on the Streamlined Sales Tax Agreement, contributed to this story.

and representatives of the private sector did was to vote to approve the Streamlined Sales and Use Tax Agreement. This action of the group known as the Streamlined Sales Tax Implementing States culminated a critical phase in a three-year project to allow states to collect taxes on remote sales—for example, Internet sales. Their decision sets the stage for consideration of the streamlined sales tax agreement during the 2003 legislative sessions.

"I was rushing through the Chicago airport following the meeting," continues Senator Monson, who now co-chairs the implementing states group, "and the enormity of what we had accomplished hit me. State officials had just approved a drastic reform of state sales tax systems."

"After a few seconds of euphoria, though, I realized that the first three years were easy. Now comes the really hard part—actually implementing the agreement in state legislatures," she says.

Forty-five states and the District of Columbia use sales taxes. No two systems, though, are exactly alike. They are, in fact, quite complex. The most obvious variation is in

rates. The sales tax rate in Hawaii and several other states is 4.0 percent. In Missouri, though, the state rate is 4.225 percent. Rhode Island and Mississippi have a 7 percent rate. In a dozen states, there is only one rate. In the others, there are local sales taxes in addition to the state rate.

Some states tax food and drugs; others don't. In some states, snacks—like pretzels and potato chips—are not considered food, so they are taxed. In others, snacks are defined as food, so they are exempt. Some states have used sales tax holidays, for example, on children's clothing for a week or two before school begins in the fall. States also use many different sales tax return forms and employ various audit procedures for retailers.

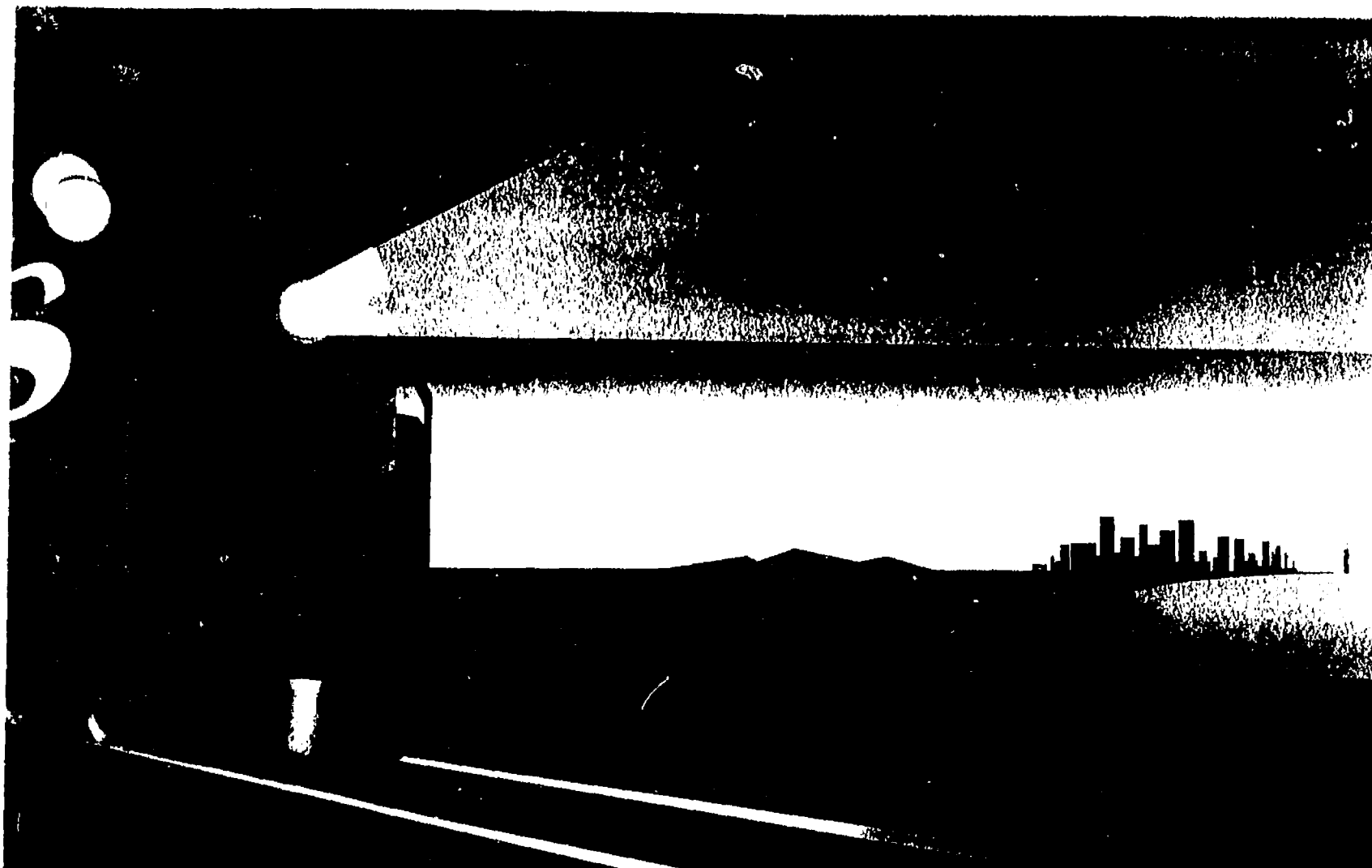
SUPREME COURT CASES

It is this complexity that caused the U.S. Supreme Court, in two important cases, to rule that a state cannot require an out-of-state retailer to collect the sales tax on an item sold to one of its residents. Utah cannot force L.L. Bean, a catalogue and Internet seller based in Maine, to collect the

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n sales tax when a Utah resident buys a pair of boots online. The consumer owes the tax, according to the Court, but the Utah revenue department cannot force L.L. Bean to collect it and send it to the state. University of Tennessee economist Bill Fox estimates that, by 2006, states will lose \$45 billion a year in uncollected taxes on Internet sales.

The National Conference of State Legislatures and other state and local organizations have worked since the late 1980s to reverse or mitigate the effects of the two Supreme Court decisions—first, *National Bellas Hess vs. Illinois* and later *Quill vs. North Dakota*.

These joint efforts initially, but unsuccessfully, sought relief in Congress. More recently, they have focused on interstate cooperation in simplifying state sales taxes.

NCSL formed a task force on taxation of electronic commerce in November 1998, co-chaired by Illinois



Senator
Steve Rauschenberger
Illinois

Senator Steve Rauschenberger and Tennessee Representative Matt Kisber, the task force developed the model legislation in January 2000 that led to creation of the Streamlined Sales Tax Implementing States.

The group is composed of representatives from 34 states and the District of Columbia that passed model legislation during their 2001 and 2002 sessions. The implementing states met monthly for a year to hammer out a comprehensive proposal for simplifying state and local sales taxes. Legislatures began considering this agreement last month.

VOLUNTARY SYSTEM

"The key to the Interstate agreement," says Senator Rauschenberger, "is that it is voluntary. States will voluntarily join by adjusting their sales tax laws. Remote sellers—companies that make sales over the Internet or through catalogues—will volunteer to collect the sales tax for the states that have simplified their sales tax systems."

To participate, state sales tax statutes must conform with the provisions of the agreement. The hallmark of the agreement is its emphasis on uniformity, standardization

and simplification.

"Sales tax systems vary because states vary," says Texas Senator Leticia Van de Putte, new co-chair of NCSL's task force. "When legislatures define food in a certain way or set the rate at a certain level, it's a decision not made

in a vacuum. They are reflecting the political forces and the political cultures in their states. What we have to do now—to respond to technology, and to the national and international marketplace—is forgo this complexity and make our sales taxes more uniform and simpler."



Senator
Leticia Van de Putte
Texas

30 STANDARDS

The agreement includes at least 30 standards that states will have to meet to participate in the system. These provisions cover the major elements of state sales tax laws.

Some of the greatest complexities in sales tax laws occur in how they define items subject to the tax. When, for example, is a candy

WHAT THE CRITICS SAY

Illinois Senator Steve Rauschenberger has been co-chair of NCSL's task force on taxation of electronic commerce since it was created in 1998. Although he is one of the country's staunchest advocates for the streamlined sales tax agreement, he also recognizes that it has critics who have raised important arguments against it. Senator Rauschenberger responds here to some of the major concerns.

Q. How do you respond to critics who say this state effort to collect sales and use taxes on Internet sales is really just a way of imposing a new tax on consumers?

A. Of course, it isn't a new tax. The U.S. Supreme Court acknowledges that consumers owe the tax whether they walk down the street to buy something or purchase it from an out-of-state company. What the Court says is that states cannot force the out-of-state retailer to collect the tax for them, because the cost of doing that is simply too high. The streamlined agreement takes that as a cue. We've drastically reduced the complexity in sales tax systems and, therefore, have minimized the burden on the sellers.

Q. Is it possible that the agreement will encourage states to expand their sales tax base?

A. There is language in the agreement saying that it should not be interpreted as endorsing taxation of a particular item. It doesn't say you have to tax food. It just says if you do, do it this way. That could mean a slight expansion of the base in some states. But the intention is not to expand the base or create revenue. The intention is to make these sales tax systems simpler. It is one of countless trade-offs the implementing states agreed on.

Q. Some economists note there is a value in tax competition among states. Won't the agreement's emphasis on uniformity eliminate this competition?

A. The most important part of tax competition among states is about rates. If my state raises the sales tax rate, does that mean consumers will go to Wisconsin to buy a DVD player? Would a company view that as contributing to an unfriendly business climate? Those are legitimate concerns, but the streamlined agreement should not have an effect on that. It doesn't say that sales tax rates have to be uniform from state to state. The agreement has on-off switches. There's no reason to think that a state that has had a switch off for decades suddenly will turn it on. The lobbyists who worked to turn it off before will work to keep it off when the legislature approves the agreement.

Q. Will the agreement hurt the five states that do not have a sales tax?

A. No. According to the agreement, an out-of-state company collects the tax of the state of the consumer. If someone in Oregon, which does not have a sales tax, buys that proverbial pair of boots from L.L. Bean, the company would not collect a tax. A business in Oregon, however, that sells on-line would have to collect the tax for Missouri, say, if a Missourian bought something from that Oregon company.

bar not food? Thirty states have chosen not to tax food. However, many of those states tax candy. These states currently use different definitions of candy. Some tax Twix bars, which contain flour; others do not. The proposed agreement says what candy is—and, by the way, excludes Twix bars from the definition. The agreement does not tell states they must or must not tax candy. In fact, it goes out of its way to say that the agreement "shall not be construed as intending to influence a member state to impose a tax on or provide an exemption from tax for any item or service." However, if a state chooses to tax an item—say, candy—then it must use the agreement's definition of candy.

The agreement does not say whether a state should tax drugs. If the state elects to tax drugs, then it must use the agreement's definition. It does not say clothing should be taxed, but it lists what is to be considered clothing. Belts, for example, are clothes, but belt buckles, sold separately, are not.

Several of the agreement's provisions have this "on-off" feature. The agreement does not tell a state it can or cannot use sales tax holidays. If a state elects to use sales tax holidays, though, it must comply with several requirements established in the agreement. For example, it must provide notice to retailers at least 60 days before the first day of the quarter in which the holiday will take place.

SOME REQUIREMENTS STRICTER

Many of the agreement's requirements are not so permissive. For example, a state and its local jurisdictions must tax the same things. In tax talk, that means they must have the same base. (The exception to this is an allowance the agreement makes for states, such as Illinois and Missouri that currently allow local jurisdictions to tax food, even though the state does not.) Sales tax administration will have to be done by a state body.

The agreement establishes requirements for uniform tax returns and for remitting funds to the state from sellers. It provides for greater notice to sellers concerning rate changes and changes in local tax jurisdiction boundaries. It has a clearly defined set of requirements for sourcing a purchase—in other words, for determining which state or local sales tax applies. It has a detailed section on deducting for bad debts and another on protecting privacy and confidentiality.

Tennessee Senator Bill Clabough, a member of NCSL's task force and of the implementing states, says that the agreement is the "result of many large and small compromises."

"Much of the time," he says, "the tensions were between state revenue officials and legislators. The tax administrators, to their credit, were trying to construct an ideal system. The legislators were constantly thinking about how the system would work in their state and what it would take to get it passed."

The lawmakers who helped develop the agreement are strong advocates for it and are working to get it passed, Rauschenberger says. "NCSL just completed a survey of the legislators on its task force and those involved with the implementing states. All of them said they were introducing the agreement in their states and were working to get it approved."



Senator
Bill Clabough
Tennessee

IT'S THE MONEY

The agreement's advocates offer different reasons for their support. Some start with the money. "It's really as simple and as complex as money," says former Ohio Senate President Richard Elnan. "We estimate that Ohio lost \$448 million in sales tax revenue last year because of Internet sales. We are a fiscally conservative state with a fiscally conservative legislature. But we also have services to provide, and we have to balance our budget. Losing \$448 million in taxes that are legally owed means we either have to cut services—education, health care, child care, economic development—or find the revenues somewhere else."

Rauschenberger puts the money argument into federalism terms. "For 45 states, the sales tax is a substantial portion of the revenue mix. The erosion of the sales tax because of remote sales weakens state governments and threatens their sovereignty. The consequence of letting a major revenue source become obsolete is that the states will revert to being dependents of the federal government."

Oklahoma Senator Monson adds that devolution makes the need for resources even more imperative. "Throughout the 1990s, state governments assumed responsibilities for many programs, such as welfare and children's health. Most state legislators felt this was the right thing to do—the right thing for federalism and the right thing for our constituents. Those responsibilities take resources. For many of us, the sales tax is a significant source of revenue—one we need to protect to make devolution successful."

FAIRNESS FOR MERCHANTS

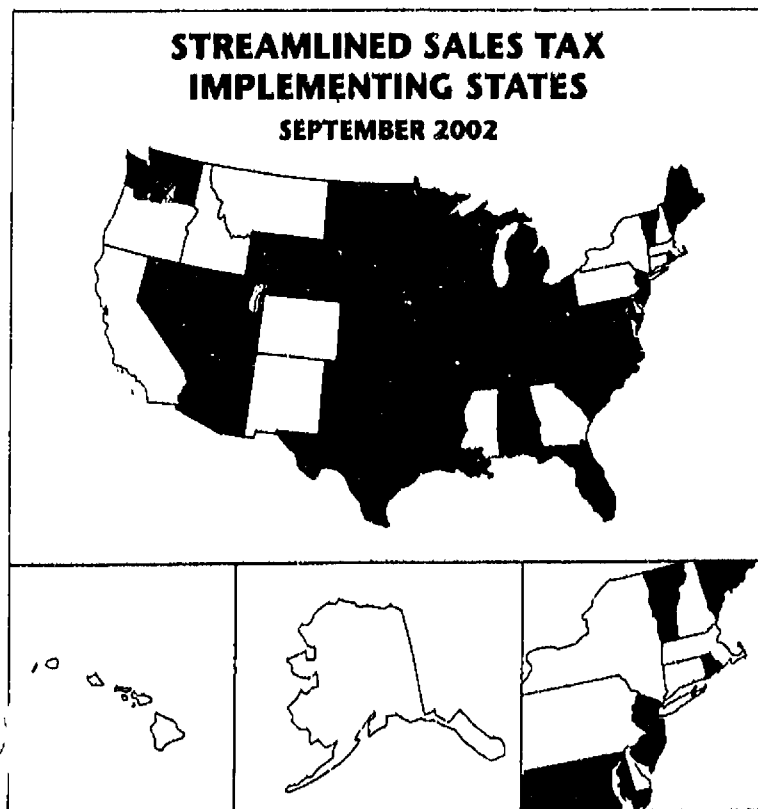
Some supporters of the agreement point also to fairness. They argue that Main Street retailers are at a disadvantage because they are required to collect sales taxes and remote sellers are not.

Maureen Riehl, vice president for the National Retail Federation, says the Supreme Court decisions require retailers with stores in a

OUTLINE OF THE STREAMLINED SALES AND USE TAX AGREEMENT

The interstate agreement that has been sent to legislatures for consideration is a comprehensive and detailed approach for achieving uniformity and simplification in state sales taxes. The agreement is not a model act. Rather, it is a set of standards and provisions with which a state must comply to enter the voluntary system. Its major provisions are:

- ◆ Central administration of state and local sales and use taxes.
- ◆ Limits on state and local rates and rate changes.
- ◆ Limits on state and local rates after Dec. 31, 2005.
- ◆ Local jurisdictions limited to a single rate.
- ◆ States limited to a single general rate with an option of a single additional rate that could be zero on food and drugs.
- ◆ Central seller registration.
- ◆ Uniform sourcing rules.
- ◆ Telecommunications sourcing.
- ◆ Uniform procedures for exemptions.
- ◆ Uniform tax returns.
- ◆ Uniform definition of food and related items.
- ◆ Uniform definition for clothing.
- ◆ Uniform administrative definitions.
- ◆ Uniform definition for tangible personal property.
- ◆ Uniform definition for software.
- ◆ Uniform definition for drugs.
- ◆ Uniform definition for medical equipment.
- ◆ Uniform definition for leasing.
- ◆ Standardization of sales tax holidays.
- ◆ Elimination of caps and thresholds after Dec. 31, 2005.
- ◆ Privacy clarifications.
- ◆ Privacy protections.
- ◆ Amnesty for participating voluntary sellers.
- ◆ Outline of models for participation through technology.
- ◆ Outline for monetary allowances based on technology models.
- ◆ Uniform rounding rule.
- ◆ Customer remedy procedures.
- ◆ Requirements for direct pay procedures.
- ◆ Provisions for governance of the agreement that ensure legislative participation, certainty for sellers and procedures for resolving disputes with nonbinding, third-party arbitration.



state to collect the tax. "That means," she says, "that big retailers like Sears and Target—as well as mom-and-pop stores—have the playing field tilted against them. They're collecting sales taxes, and Internet sellers are not. The so-called brick and mortar stores don't have anything against Internet sellers. In fact, many have their own Internet operations. It's just a question of being treated fairly."

Consideration of the agreement in state legislatures is generating attention from various interests on both sides of the question. Among the supporters are local governments, traditional retailers, telecommunications companies, shopping centers and realtors. Lined up in opposition are anti-tax groups and Internet sellers.

YOU CAN'T TELL THE PLAYERS WITHOUT A SCORECARD

Numerous public and private groups have been involved in development of the Streamlined Sales and Use Tax Agreement. A thumbnail description of them and a listing of their Web sites are:

- ◆ **Streamlined Sales Tax Implementing States.** Thirty-four states and the District of Columbia passed model legislation that authorized them to develop an interstate agreement to simplify state sales taxes. State legislators, revenue officials and private sector representatives were appointed to the implementing states. Thirty states and the District of Columbia voted unanimously to approve the Streamlined Sales and Use Tax Agreement in November 2002. (Two of the implementing states did not send representatives to the meeting and officials from two other states abstained.)

- ◆ **NCSL Task Force On State and Local Taxation of Telecommunications and Electronic Commerce.** NCSL's Executive Committee created this task force at the end of 1998 to provide a forum for legislators and staff interested in the issues associated with sales and telecommunications taxes. It has overseen NCSL's work on these issues ever since. www.ncsl.org/programs/fiscal/tctelcom.htm

- ◆ **Streamlined Sales Tax Project (SSTP).** NCSL's task force endorsed model legislation in January 2000 that directed state revenue departments to enter into multistate discussions to simplify sales taxes. Thirty-two states joined SSTP. The project's product—and a similar one developed by NCSL's task force—led to additional model legislation that created the implementing states group. www.geocities.com/streamlined2000/

- ◆ **National Retail Federation.** An association of major retailers, including Sears, Target, Target, JC Penney and Staples, that has supported development of the streamlined agreement. www.salestaxfairness.com/index.htm

- ◆ **Council on State Taxation.** Created in 1969 through the Council of State Chambers of Commerce, COST comprises more than 500 companies that do business across state lines. A COST staff member serves on the implementing state's group as a representative of the District of Columbia. www.statetax.org/index.html

- ◆ **E-Fairness Coalition.** This coalition includes other trade associations, such as the International Council of Shopping Centers and the National Realtors Association, and certain companies, including WalMart and Radio Shack. www.e-fairness.org

- ◆ **Federation of Tax Administrators.** An association of state revenue department officials. It has provided staff support to the Streamlined Sales Tax Project and the implementing states. www.taxadmin.org/

- ◆ **Multistate Tax Commission.** An organization of state tax officials that has provided staff resources to the Streamlined Sales Tax Project and the implementing states. www.mtc.gov/

VARIED SUPPORTERS

Mayors, county executives and other local officials support the agreement because, like the states, local governments have seen sales tax revenues eroded by remote sales. They believe declining revenues force them to reduce services or become more reliant on property taxes, the public's least favorite tax. Traditional retailers—family companies selling shoes on Main Street or office supply chain stores such

as Staples—are among the agreement's strongest advocates, says the retail federation's Riehl. They see it leading to fairer competition between companies that collect the sales tax and those that, so far, have not. Shopping center owners want to make sure the retailers who rent space are healthy and are not put out of business by unfair competition from Internet sellers. Realtors have the same motivation. They want to make sure there are retailers to rent or buy shop space along Main Street, Broadway or Park Avenue. Telecommunications companies, including AT&T, Verizon and Bell South, are in favor of the agreement, primarily because it simplifies certain kinds of telecommunications taxes.

OPPOSITION FROM THE NET

Opponents in the private sector primarily are so-called "pure" Internet retailers—companies that sell only over the Internet and have a physical presence in only one state. (The Supreme Court rulings require sellers to collect sales taxes in states where they have "nexus.") Although Amazon.com, a large retailer that sells only over the Internet, has not opposed the agreement, many other pure Internet retailers do. They worry about losing a competitive advantage. Some, especially smaller companies, are concerned about the cost of software they would need to calculate sales taxes owed.

The antagonism of anti-tax groups, such as the National Taxpayers Union, is consistent with their philosophical opposition to taxes. They express concern about the burden placed on Internet sellers to collect the tax and the potential for loss of tax competition among states.

10 STATES MUST ADOPT

"No one expected the states to succeed in developing a streamlined system," says Rauschenberger. Like Monson, though, he notes that the hard work is just beginning. The agreement does not take effect until 10 states representing 20 percent of the population have adopted it. "A few states need to make only minor adjustments to comply," he says. "They should be fairly easy. It's some of the bigger states, with complex sales tax systems, that will struggle with this."

He's not sure how the current fiscal crises will affect consideration of the streamlined agreement. "Our budget problems could make many legislators and governors more supportive of these reforms. On the other hand, because the system is voluntary, no one is going to see a lot of immediate revenue from this. I also worry that the budget crises are so severe that legislatures will not really have time to focus on anything else this year."

What happens when the agreement begins to operate? Senator Monson outlines three scenarios. "One is that the interstate agreement proves to be successful as a voluntary system. Over time, more states would join and more companies would volunteer to participate. A second is that Congress would use the streamlined agreement as the basis for federal legislation that would authorize states to collect taxes on out-of-state sales. And some folks believe that the agreement, by reducing the burden on interstate commerce, could persuade the Supreme Court to overturn its rulings in *Bellas Hess* and *Quill*.

"Those options are all down the road a bit," she says. "Right now, the important thing is to make sure that this critical experiment in cooperative federalism continues and that legislatures and governors give it fair and thorough consideration over the coming months."

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

The Rise of Cartel Federalism

5B2095

by Michael Flynn

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On December 1st, officials in France and Germany announced plans to push for tax harmonization within the European Union. The French and Germans are a bit miffed that several European countries—notably Ireland, feel that the road to economic growth lies in lower taxes and less onerous regulations. Even worse for the Franco-Prussians, these growth policies have worked and Ireland and others enjoy high levels of economic growth, while the French and German economies—saddled with high taxes, rigid labor markets and generous social welfare policies, struggle.

As George Carlin said, "If you can't beat them, arrange to have them beaten." Unwilling to compete for business and investment by reforming their economies, France and Germany have opted to, in a sense, export their own policies to other nations. By forcing other nations to raise their tax levies to better match their own, France and Germany can avoid the hard choices.

Now, it's not unusual for politicians to complain about "unfair" competition from other governments. Throughout the eighties and nineties, many officials in this country complained about states aggressively recruiting businesses through tax incentives. There was lots of talk about the 'race to the bottom' and such, but it was mostly just that, talk. After all, ordinarily there isn't much one government can do to effect the policies of another.

These are not ordinary times in Europe, however. In early November, the Praesidium of the European Parliament released a draft constitution for a 'United States of Europe'. The report, chaired by former French President Valery Giscard d'Estaing lays out a framework for creating a European federalism. (Giscard d'Estaing even compared favorably their efforts to our founders' Constitutional Convention of 1789, marking the

first time in recent memory that a French politician has said something favorable about America.) That this development was followed so closely by an effort to end tax competition among European states suggests that this is not 'your Founding Fathers federalism'. Rather than setting up an American-style 'competitive federalism'—where states have wide latitude to set their own policies, the French and Germans seemed intent on establishing a 'cartel federalism'—where the individual states (nations) simply implement the policies of the national (centralized) government. In other words, if one wants to be a member of the union, they must 'harmonize' their policies with the largest members, so there are no 'distortions' in the single market.

Although it is tempting to shake our heads and chuckle at this latest Euro-silliness—indeed, this is a favorite parlor game in conservative circles—we shouldn't be too smug. It seems a number of US elected officials are trying to 'out-Brussels' Europe and are racing to establish an enormous tax cartel of our own.

Just a month ago, officials from 31 states met in Chicago to finalize the Streamlined Sales Tax Project (SSTP). The goal of the project, ostensibly, is to allow a state to force an out-of-state retailer to collect sales taxes on purchases made by that state's citizens. Put simply, if a resident of Illinois made a purchase from a catalogue or internet retailer in Maine, that business would have to collect the Illinois sales tax and send it back to the state.

Currently, states can't force an out-of-state company to do this. In 1992, the Supreme Court ruled that, partly because of the undue burden of potentially having to comply with every state and local sales tax system, states could not force out of state retailers to collect

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for the American Legislative Exchange Council

se taxes. The Court said that only companies with a 'physical presence', i.e. a warehouse, an office, a distribution center, in a state could be forced to collect these taxes.

This decision led to much hand-wringing among state revenue officials, concerned about lost sales taxes on every catalogue purchase. This hand-wringing turned to shrill cries when the Internet exploded onto the scene and revenue officials convinced themselves that hundreds of millions of potential sales tax dollars lay uncollected. Drastic times—internet sales—called for drastic measures. Thus, the SSTP was born.

The goal of the SSTP seems simple enough. State sales tax systems are notoriously complex. In one state, for example, boots purchased for work are tax exempt, boots purchased for 'pleasure' are taxable. In another state, a certain candy bar is defined as a cookie and is taxable and another candy bar is not a cookie and so is tax exempt. Neither the Supreme Court nor Congress would authorize the states to export their tax systems to companies outside their jurisdictions without some simplification, or, in keeping with our theme, harmonization.

The SSTP sought to bring state officials together and work out common definitions of taxable items and explore the idea of common rates. (In most states, the state sales tax is augmented by local option sales taxes, creating numerous sales tax rates within an individual state.) Members of the SSTP would agree 'in concert' what was taxable and what was not. They would adopt the same definitions. They would code any unique, state-specific considerations as to what tax policy should be in their state. Under SSTP, each state would also subject itself to an 'oversight board' that would police each state and be able to assess sanctions on states found to be 'non-compliant'.

Now, the main problem with the SSTP actually has very little to do with the issue of internet or catalogue taxation. Indeed, it's hard to argue that a certain transaction—by just the very nature of the transaction—automatically should be exempt from the sales tax. This is a legitimate policy debate. But, the SSTP asks us to go much further. It requires us to upend our entire federalist system, in order to possibly collect a few hundred million in tax revenue. This isn't just 'throwing out the baby with the bathwater', this is 'throwing out the baby and, for good measure, uprooting-the-baby's-family-tree-chopping-it-up-into-little-bits-and-watching-it-go-down-the-drain, with the bathwater'.

Now, let me state, for the record, that most supporters of the SSTP feel they are acting to preserve federalism. They argue that the SSTP is a 'state-based' response to the question of internet and remote sellers, obviating the need for congressional action. In their minds, the SSTP is an example of states acting in concert to deal with a national problem (the inability of states to legally force collection obligations on out-of-state sellers) without having to rely on congressional action.

But, let's consider what the SSTP requires of state lawmakers:

1. Under SSTP, individual state lawmakers would have very little authority over that state's sales tax system;
2. Decisions about what is and isn't taxable are made by a collective body of states, not by individual states or an individual state's elected lawmakers;
3. An individual state must cede some of its taxing authority to an extra-legal entity made up of a group of states that would determine whether an individual state was 'in compliance';
4. This extra-legal entity would have the authority to sanction individual states if it was not 'in compliance' with the majority of the other states;
5. State lawmakers would not be able to amend or alter their sales tax code—even to deal with specific economic situations—without getting the approval of officials from other states;
6. Small business owners in an SSTP state would be forced—if they tried to expand their markets through the internet or catalogues—to comply with the tax laws of all other SSTP states.

Like the earlier European example, this is not your Founding-Father's federalism. Quite simply, American federalism was about delegating a few powers to the federal government, while preserving the bulk of governance to the individual states. There is nothing in the Constitution that says that states "collectively" should undertake a certain action. To the

founder fathers, states 'acting in concert' and the federal government acting were two faces of the same coin. There's a simple reason that even agreements—or compacts—among states must be ratified by the federal congress; and that is that the founders were wary of all centralized decision making.

Competitive Federalism

The founders preserved a great deal of autonomy for state governments. It was not because they felt that state governments, vis a vis the federal government were more in tune with the citizens, or were somehow 'better' than federal lawmakers. Alexander Hamilton put it best when he said "(i)t is difficult to assign any good reason why Congress should be more liable to abuse the powers with which they are intrusted than the state-assemblies." They were simply skeptical of centralized authority.

The states—to the extent that they would be acting independently of the federal power or the demands of other states—were envisioned as the check on the centralizing tendencies of government. It must be remembered that the Constitutional Convention was convened because of a crisis that arose under the Articles of Confederation where states had banded together against other states. This conflict was most clearly seen between the northern "carrier" states which traded with Great Britain, and the southern "planter" states which relied on the imported goods for agriculture. The Articles were unable to contain this trade conflict, and the need for a central government to regulate commerce among the states was the major impetus for the conventions of Annapolis and Philadelphia, which ultimately replaced the Articles with the Constitution.

Federalism is not so much a question of states against the federal government as it is individual states against centralized government, whether exercised by the federal government or states acting 'in compact'. It is unfortunate that supporters of the SSTP cloak their arguments in federalism. Their arguments rend the concept to the point of meaninglessness. They foresee a time that state governments are simply branch offices of a central governing power. Again, it makes little difference whether it is the federal government that has authority over the states or a collection of states that exercise authority over individual states.

America's federalist system could be called a competitive federalism. Ideally, states are free to develop their own unique policies. This is no small distinction. Competitive federalism provides three important features:

1. **Accountability.** If a citizen believes a certain policy is wrong-headed, they know exactly whom to blame, their state lawmakers. Under cartel federalism, policy decisions are made by a central authority or a collection of states. The individual citizen has very little power over these.
2. **Choice.** To some extent, admittedly at the margins, a competitive federalist system allows a citizen to choose their government. For example, I live in Virginia, because I prefer a more modest government. However, I know several people who enjoy living in Maryland and paying higher taxes, because they place greater value in having a more activist government. To the extent that cartel federalism harmonizes policies among the states, citizens lose this choice. (And why is it that they always harmonize towards larger government?)
3. **Experimentation.** It has become cliché to say that the states are 'laboratories of democracy'. This is certainly true, but only to the point that states have a certain 'freedom of action'. The more states are bound by uniform rules and regulations, the less they can experiment with policy options. Without this experimentation among the states, we would very likely still be left with a broken and dysfunctional welfare system.

The SSTP is what could be called a 'gut check' issue for state legislators. Endorse it and you might pick up a couple million dollars in uncollected sales tax revenue. But, in doing so, you will cede much of your authority over your states sales tax system. You will ensure that your constituents no longer have any say over your state's tax system. You will also drive a stake through American "competitive federalism" in favor of the European 'cartel federalism'. Is this why you ran for office?



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North Dakota Farm Bureau

www.ndfb.org

House Finance & Tax Committee

March 11, 2003

North Dakota Farm Bureau Testimony on SB 2095 & SB 2096 presented by Brian Kramer

Good morning, Mr. Chairman and members of the committee. For the record my name is Brian Kramer and I represent the 26,000 family members of North Dakota Farm Bureau.

North Dakota Farm Bureau opposes SB 2095 and SB2096 on several levels. Farm Bureau began studying this streamlined sales tax project last winter. We've read and asked questions.

Undoubtedly, this is a complicated issue and until now not a lot of information has been distributed to the public. This is a major change in tax policy in this state and it certainly does impact industry, consumers and retailers. NDFB urges you to proceed with extreme caution.

We understand and have no problem with collecting sales tax on internet and catalog sales. We also understand and agree that these types of sales are most likely going to increase and the state is losing revenues. But there must be a way to do that without endangering state sovereignty.

We have concern that participation in the streamlined sales tax program will malign state sovereignty. The agreement requires that each state have only one sales tax base rate. That alone has taken away North Dakota's right to have the multiple tax rates we have employ.

Furthermore, you are being asked to adopt an agreement that hasn't even been completed. Definitions of all goods and services are not yet written and it will take a great deal of time to conclude. It also indicates that if you give a tax exemption, you must exempt everything within the definition of that product or none of it. You can't pick and choose within a definition.

One future. One voice.

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Yvonne J. Lee
Operator's Signature

10-16-03
Date

Periodically, the governing body of the coalition of participating states can make changes to the agreement, with $\frac{3}{4}$ of the states agreeing. With so many large states participating, we question how much clout North Dakota will have in that process.

Another major concern focuses on those home rule cities and counties that have a local sales tax. Under this system, the caps on local sales tax would be removed. This will have a huge impact on those industries, like agriculture, that have high input costs or purchase big-ticket items. There will be several industries that could be negatively impacted.

For instance, if you make a \$10,000 purchase, the sales tax might currently cap at \$25. Under this system, you would pay \$100 (one percent home rule tax). That will add up over time with all the purchases made by farmers and ranchers. The same will be true for all consumers on purchases of large ticket items.

Finally, NDFB also has to question if once this system is established, could it easily lead to a national sales tax structure, by simply requiring states to all charge the same sales tax rate?

Again this is a major change in tax policy and North Dakota Farm Bureau urges the House Finance and Tax Committee to proceed with caution. Thank you for your consideration. I would be happy to entertain any questions you might have.

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Yvonne A. Lee
Operator's Signature

10-16-03
Date



Recreation Supply Company

P.O. Box 2757 Bismarck, ND 58502-2757

March 11, 2003

Members, North Dakota House of Representatives

Re: SB 2095-Streamlined Sales and Use Tax

In 1987, then tax collector Heidi Heitkamp asked the legislature to pass HB 1195 to change the definition of "retailer" to include out of state mail order firms. She knew the statute she sought was in conflict with the U.S. Constitution, but needed it to form the basis of her lawsuit *Quill vs. North Dakota*.

Today, tax collector Rick Clayburgh is asking you to do it again; **pass an unconstitutional statute** to help further a larger agenda.

Article 1, Section 10 of the Constitution states, "No state shall, without the consent of Congress, ... enter into any agreement or compact with another state ...".

NCSL document attached clearly characterizes this agreement as something they hope will provide "justification for Congress to overturn the *Bellas Hess* and *Quill* decisions".

Notwithstanding any statement by anyone to the contrary, **Congress has not consented to this agreement!** Senate Bill 2095, by its own terms, binds North Dakota in a multi-state agreement, and is therefore, on its face, unconstitutional!

What is driving this issue? The two pages from the article by Atkinson and Court tell the story. Atkinson is the director of the Progressive Policy Institute's Technology and New Economy Project (see www.ppionline.org and www.ndol.org) and largely responsible for the "New Economy" movement in this country. GNDA's New Economy Initiative is modeled after his works.

The second page from that article (page 4 of 6), provides us with the clues as to what the "end game" of this initiative is in the paragraph "Beyond the Internet, Beyond the United States" last sentence, "Once this system is developed and effectively implemented in the United States, the U.S. government should work through the World Trade Organization, the Organization for Economic Cooperation and Development, and other appropriate bodies to reach world consensus on this sort of software mechanism for collecting and remitting local, regional, and national sales taxes."

Do the words, "read my lips" resonate? By any other name, this is a tax increase for North Dakota Taxpayers. Please vote **NO** on SB 2095.

Thank you,

Carly Haugland
President

Phone: (701) 222-4880 • Toll free: (800) 437-8072 • Fax (701) 255-7895 • Email: sales@recsupply.com
www.recsupply.com

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Tuesday, February 11, 2003

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ALEC and NCSL: A Timely ComparisonBy Emily Sedgwick
esedgwick@atr.org

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Two thousand state legislators, business leaders, and think tank representatives convened in Orlando, Florida August 7-9 for the 29th American Legislative Exchange Council (ALEC) annual meeting. Two weeks prior, the National Conference of State Legislatures (NCLS) held its annual meeting in Denver, Colorado. The differences between the two conferences and host organizations are striking and indicative of the choices that face state governments during difficult economic times.

Both ALEC and NCSL offer model legislation, in-depth policy analysis, database resources, and the all-important annual meeting where politicos of many stripes can debate the topics of the year. This year, the main topic at both conferences was spending: on anti-terrorism, Medicaid, transportation, the environment, and the result of spending too much: budget deficits.

At NCSL, conference participants with the appropriate pass could attend three workshops on the Streamlined Sales Tax Project (SSTP), an attempt to "simplify" state tax codes to include Internet taxation and a uniform sales tax code. Two workshops addressed obesity and ways that states can spend more to curtail the problem. Another policy session examined the "tax pressure" on state revenue coffers apparently resulting from recent federal tax cuts as well as the revenue-boosting benefits of decoupling state death and income taxes from their federal cousins.

On July 25, an NCSL committee discussed the federal budget: "A process originally designed for deficit reduction was meaningless during a period of surpluses. Now that the deficits have returned, the rules are still ignored." No mention was made of ballooning state deficits, except to blame them on the federal government. Later that afternoon, a committee examined the use of rainy day funds to balance state budgets (spending cuts were hardly mentioned). Another committee recommended gaming revenues as a means of "patching budget holes."

Meanwhile, ALEC hosted a refreshing policy discussion section during NCSL at a hotel nearby. The topics for discussion were drawn from a recently published paper titled "Show Me the Money" that details spending and

<http://www.americasfuture.org/viewBrainwash.cfm?pubid=155>

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inefficiency reduction strategies. Recommendations like state hiring freezes and the elimination of phantom positions, across-the-board spending cuts, market-based and consumer-choice Medicaid reform, selling or leasing government assets and enterprises, and consolidating small agencies were just a few of the pro-taxpayer budget management solutions discussed by the panel and audience that morning. What a breath of fresh air.

Governor Bill Owens of Colorado spoke to a meeting of the National Republican Legislators Association, also concurrent to NCSL, about his state's Taxpayers Bill of Rights, Colorado's positive business and income climate, and his opposition to SSTP. More fresh air.

On just the first day of the ALEC annual meeting, various panels addressed the "regulation through litigation" problem in the courts, the "Crisis in State Spending," "Cost-Effective Medicaid," and the "New War on Drugs: the Pharmaceutical Debate." Even the titles of these discussions indicate a more moderate approach to the issues of the day, and all conference attendees can attend -- no "pass" required.

Furthermore, ALEC speakers are markedly more in touch with reality than NCSL's speakers. ALEC hosted Secretaries Elaine Chao, Ron Palge, and Mel Martinez, U.S. Representative Mark Green (R-Wis.), and author Bjorn Lomborg. NCSL keynote speakers included Mike McCurry (who "served as White House press secretary during some of the most challenging times faced by the Clinton administration") and John Sweeney, President of AFL-CIO, who made the serious mistake of attacking ALEC in his speech to an NCSL breakfast audience on July 25.

According to Sweeney, ALEC "positions itself as a non-partisan grassroots organization, but in reality it is a Washington-based group of corporations and wealthy right-wing reactionaries who are spending millions of dollars to usurp state legislatures." Legislators and numerous others in attendance walked out in protest. NCSL executive director Bill Pound later called ALEC executive director Duane Parde to apologize for Sweeney's comments.

Sweeney did bring up an interesting point about NCSL and ALEC's respective membership, although he got the point wrong. Taxpayer dollars enable state delegations of legislators to attend NCSL meetings and to afford the cost of membership and online services. ALEC members, including 2,400 state legislators -- 65% republican, 35% democratic -- pay out-of-pocket to afford registration, hotel accommodations, and travel arrangements. This would indicate that ALEC is hardly a heavy-handed reactionary with millions to toss around.

Furthermore, not only are ALEC membership dues cheaper than NCSL's, but ALEC membership costs taxpayers nothing. A one-year voluntary membership to ALEC costs an individual legislator \$25. A one-year membership to NCSL, estimated using population and revenue data, costs the California legislature \$900,000. Each legislature's dues are different, but if there are 120 legislators (house and senate) in California, individual NCSL membership works out to be \$7,500. If Governor Davis and his Democrat-controlled Legislature are serious about their budget shortfall, I've got a great recommendation for making a dent. ALEC is simply a better alternative to NCSL.

Thousands of state legislators attend NCSL and ALEC annual meetings every summer. They are the next generation of Governors, Congressmen, and Cabinet officials: Robert Kasten, Tommy Thompson, John Engler, Terry Branstad, and John Kasich are all ALEC alumni. The differences between NCSL and ALEC aren't surprising, necessarily, but taxpayers bankrolling involvement in either organization should raise eyebrows. The next generation shouldn't get too comfortable spending our tax dollars.

Emily Sedgwick is State Projects Manager for Americans for Tax Reform.

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Chairman Belter and Committee members

My name is Rep. Ron Iverson, I represent District 27 which is SW Fargo
Today I am here to testify against SB2095.

This bill would be a huge mistake for North Dakota to make. It would abdicate our sovereignty as a state to make decisions regarding how we formulate our own tax policy.

Numerous provisions in the latest draft of the SSTP limit state sovereignty in a manner that will erode these important constitutional protections:

- States have their ability to give local jurisdictions a modicum of sales tax flexibility curtailed, since the agreement provides that "the tax base for local jurisdictions shall be identical to the state tax base, unless otherwise prohibited by federal law"
- Each state that joins SSTP must have only one rate of sales taxation, with the exception of food and drugs
- The SSTP agreement requires the adoption of uniform tax returns as well as uniform dates as to when the returns are due
- The agreement places restrictions on state and local sales tax holidays
- The agreement forbids states from having caps or thresholds on exemptions based on the value of the transaction
- Proposed language would force a state to adopt terms and definitions that comply with the agreement's "Library of Definitions"
- The agreement requires a state to levy sales and use tax on "all products or services included within each definition or exempt from sales and use tax all products or services within each definition"
- Amnesty must be offered to registered sellers in certain circumstances
- Each member state must annually certify compliance with the agreement

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- Administration of the agreement is through a governing board, which may take "any action necessary to fulfill the purposes" of the agreement, including allocating the costs of administration among the member states, and most actions taken by the board only require a simple majority
- If a single member state requires certain information to be protected from disclosure, the governing board can close its meetings to the public, regardless of law in other members states
- A closed session of the governing board can be convened on a majority vote of the board
- A member state's withdrawal cannot be effective until after 60 days have elapsed from notice given of withdrawal
- Optional language includes a restriction on a state's ability to determine whether a business has nexus in that state *after* the state exits the agreement
- Sanctions can be levied against members states upon a vote of three-fourths of participating member states, and the accused state cannot cast a vote
- Amendments and Interpretations can be adopted by a vote of three-fourths of the members of the governing board
- The issue resolution process, including allocation of costs all "further details" deemed necessary, is completely unresolved in the current draft agreement, meaning the governing board could adopt rules significantly impacting a member state after the state joins the agreement
- Standing to sue a state agency or department, on the grounds that state action is consistent or inconsistent with the agreement, is flatly barred

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Using the excuse that they want to "streamline" and "simplify" retail sales taxes so that there will be a "level playing field" between Main Street merchants and e-commerce, state and local politicians are asking for unprecedented power to impose taxes on transactions that take place outside their borders. (see section 806, page 42 lines 9-10) Do we want to give this kind of vague general power to an entity that we know nothing about so they can dictate to us our own state tax policy. WE could shut the tax department down and let them do all the work. IF that is what you want by voting for SSTP

The issue is not whether to tax Internet sales. Instead, the debate is about whether Congress should pass a law that allows taxation without representation. Should there be a national law, for example, allowing Utah to compel a Colorado business to collect and remit Utah taxes if that business sells something to a Utah resident?

The Constitution explicitly bars one state from regulating the commerce of another, which in this case means taxing retailers located across state lines. In the 1992 Quill decision, the Supreme Court affirmed this principle by ruling that a state can only collect sales tax from businesses that have a "nexus," or substantial physical presence, in that state.

Yet State and local politicians want to overturn this decision by getting Congress to approve a state sales tax cartel. Requests to establish this destination-based tax authority should be denied.

Such a regime would create an anti-consumer sales tax cartel for the benefit of profligate governments. It also would undermine privacy by requiring the collection of data on individual purchases and it would violate important constitutional principles by giving state and local governments the power to impose their own taxes on businesses in other states.

A Threat to Privacy

In addition to being bad tax policy, the destination-based regime, or SSTP, is a threat to privacy. The system envisioned by the NGA and NCSL, which is the model for this legislation, requires merchants to verify the residence of every customer and then impose the state and local taxes that apply in that locale. For this system to work, however, state and local bureaucrats would have the right to inspect records of transactions. At best, this approach means that personal financial information and buying patterns

would cease to be private. On a more ominous note, this type of system would dramatically increase opportunities for such crimes as identity theft and credit card fraud. Proponents assert that "trusted third parties" could act as intermediaries to guard against these problems, but cosmetic gestures will not deter hackers and others who misuse private information.

SSTP was developed to simplify and modernize sales and use tax collection and administration. In its place it provides a bureaucracy that dictates tax policy to member states at a cost of their state sovereignty and at the risk of the citizens of those same member states.

SSTP also creates a situation in which non-member states would reap the greatest benefit by providing nontax havens for companies to which they could relocate. Currently California, New York, Arizona, Virginia, Oregon, Idaho, Montana, Colorado, Utah, Georgia, Connecticut, Massachusetts and New Hampshire are not part of the SSTP cartel. They are classified as "Observer States" although the document does not define what that means. These states would be the beneficiaries of SSTP not the member states.

I would like to present a Memo that was I from the State Tax Department stating that SSTP is totally and completely unenforceable in non participating States. So if a retailer chooses not to participate and is located in a State that is not part of the cartel there is NOTHING that can be done about it.

I also want to present a Memo from Gov. Bill Owens from Colorado That outlines several points about the SSTP that talks about tax competition. If we want a European Socialist style tax system go ahead and vote for SSTP but if you believe in competition and free markets and a dynamic growing Economy then you will do the right thing and kill SSTP.

Chairman Urlacher and members of the committee it is with a humble heart and a heavy conscience that I urge you in the strongest terms possible to give a DNP recommendation to SB 2095

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Rep. Jueison
SB 2095

What Price Sovereignty? The Streamlined Sales Tax Project in the Balance (NOTE: THIS IS NOT AN OFFICIAL ALEC PUBLICATION)

By Chris Atkins, ALEC Director of Tax and Fiscal Policy

Introduction

A final draft agreement on the Streamlined Sales Tax Project (SSTP) is ready to go to the states for adoption in legislative sessions beginning in January.¹ SSTP is an effort to "simplify" and "modernize" state sales and use tax collection, sponsored by state lawmakers, tax administrators and representatives from national business chains. As recently as July, a press report indicated that agreement on a final draft had not been reached, and prospects were grim due to differences between retailers and state government officials on enforcement mechanisms.²

If one reads the latest draft report of the agreement³, it is not difficult to understand this skepticism. The entire enterprise seems to be an effort to struggle against state sovereignty. While some businesses may find their burden of tax compliance eased under the SSTP, states will certainly lose a great deal of flexibility under the agreement, and could even face sanctions for failing to maintain "compliance" under the plan. States could also find themselves adding more financial pressure in tax administration and compliance at a time when most states face budget deficits.

The SSTP and State Sovereignty

State sovereignty is an idea as old as the Republic itself. When they ratified the Constitution, the people of the states created three spheres of power: federal, state, and reserved.⁴ Federal power was gleaned only from the grants specifically given in the Constitution.⁵ This is the concept of enumerated powers: federal powers are limited, while all other powers are reserved to the states and the people.⁶ In these reserved areas, states are sovereign and not subject to federal oversight unless federal power is encroached.⁷ Thus, lawmakers must be vigilant to protect these principles and exercise extreme caution with policies that will undermine state sovereignty.⁸

One might argue, of course, that no one is forcing any state to join the SSTP. Any resulting loss of sovereignty, therefore, is self-inflicted, a public choice made after carefully balancing the sovereignty concerns with the tax policy needs of the state. Federalism and state sovereignty, however, are transcendent values that vastly benefit our society. The Constitution effectively removed them from the political calculus, setting up a system of government that cannot be changed (absent amendment) to suit the whims of the day.

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Furthermore, saying that state sovereignty is not eroded when a state willingly cedes a portion of that sovereignty is like saying a sports team does not lose if it "beats itself." In both cases, the focus should not be on the individual states, or teams, but on the scoreboard. Whether you get beat by the other team, or you beat yourself, you are still losing the game.

Numerous provisions in the latest draft of the SSTP limit state sovereignty in a manner that will erode these important constitutional protections:

- States have their ability to give local jurisdictions a modicum of sales tax flexibility curtailed, since the agreement provides that "...the tax base for local jurisdictions shall be identical to the state tax base, unless otherwise prohibited by federal law"⁹
- Each state that joins SSTP must have only one rate of sales taxation, with the exception of food and drugs¹⁰
- The SSTP agreement requires the adoption of uniform tax returns as well as uniform dates as to when the returns are due¹¹
- The agreement places restrictions on state and local sales tax holidays¹²
- The agreement forbids states from having caps or thresholds on exemptions based on the value of the transaction¹³
- Proposed language would force a state to adopt terms and definitions that comply with the agreement's "Library of Definitions"¹⁴
- The agreement requires a state to levy sales and use tax on "all products or services included within each definition or exempt from sales and use tax all products or services within each definition"¹⁵
- Amnesty must be offered to registered sellers in certain circumstances¹⁶
- Each member state must annually certify compliance with the agreement¹⁷
- Administration of the agreement is through a governing board, which may take "any action necessary...to fulfill the purposes" of the agreement, including allocating the costs of administration among the member states, and most actions taken by the board only require a simple majority¹⁸
- If a single member state requires certain information to be protected from disclosure, the governing board can close its meetings to the public, regardless of law in other members states¹⁹

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- A closed session of the governing board can be convened on a majority vote of the board²⁰
- A member state's withdrawal cannot be effective until after 60 days have elapsed from notice given of withdrawal²¹
- Optional language includes a restriction on a state's ability to determine whether a business has nexus in that state *after* the state exits the agreement²²
- Sanctions can be levied against members states upon a vote of three-fourths of participating member states, and the accused state cannot cast a vote²³
- Amendments and interpretations can be adopted by a vote of three-fourths of the members of the governing board²⁴
- The issue resolution process, including allocation of costs all "further details" deemed necessary, is completely unresolved in the current draft agreement, meaning the governing board could adopt rules significantly impacting a member state after the state joins the agreement²⁵
- Standing to sue a state agency or department, on the grounds that state action is consistent or inconsistent with the agreement, is flatly barred²⁶

Business Protections?

SSTP was developed to simplify and modernize sales and use tax collection and administration.²⁷ In reality, the agreement is designed to make it simple for businesses to collect taxes currently uncollectable, namely, sales and use taxes on purchases made over the Internet or through catalog sales. This is why many state revenue officials and state lawmakers support the agreement, because they think a new source of revenues will be "unleashed" if SSTP can successfully persuade Congress to overturn the *Quill* decision²⁸ and require remote vendors to collect sales and use tax.

Many brick and mortar retailers, however, already have physical presence in many states, which requires them to collect sales and use taxes under current law. Will the agreement reduce their current collection costs? While many costs associated with collecting taxes in the current regime are lessened, new costs are added:

- No safe harbor provided for businesses that fail to collect sales and use taxes for a member state, even when a state fails to notify businesses of a change in the sales and use tax law of that member state²⁹
- Member states can require businesses to use an address-based system to

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determine tax jurisdictions³⁰

- Member states can require sellers to source the sale of a product³¹
- Sellers can be forced to obtain a host of information about buyers claiming a sales or use tax exemption, including identity, reason for claiming the exemption, and sellers may be forced to keep certain records in regard to exemptions³²
- Member states can force sellers to use certain uniform rules when they remit tax revenues to the state³³
- Sellers who register with the agreement are forced to collect sales and use taxes in states that join *after* the seller registers³⁴
- The agreement requires a registering seller to choose one of three methods of remitting sales and use tax to member states³⁵

Improving State Finances?

SSTP is also supposed to provide states with stable tax revenues, and stop the "erosion" of the sales and use tax base "caused" by electronic commerce. Many state revenue officials are banking on this revenue stream in the long term, despite the fact that revenues from generally and specifically exempted transactions dwarf the revenue that would be captured by taxing e-commerce and catalog transactions.³⁶

Even if the agreement did provide a stable stream of revenues from e-commerce, the agreement adds many costs that would offset them:

- Member states with local jurisdictions must provide a database that describes boundary changes for those jurisdictions, as well as sales and use tax rates and zip codes³⁷
- Member states must participate with other members in the development of an address based system for assigning tax jurisdictions³⁸
- A proposed section requires member states to administer exemptions through exemption certificates or other methods that do not burden sellers³⁹
- The intent of the agreement is to require member states to provide electronic filing for all registered sellers⁴⁰
- Member states must provide alternative methods of payment if electronic transfers

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- Each member state must adopt a rounding algorithm that meets certain criteria⁴²
- Direct pay authority must be established to allow holders of a direct pay permit to forego tax payments on goods purchased from suppliers⁴³
- Proposed language requires each member state to create a "taxability matrix" available to sellers⁴⁴
- Online registration must be provided for sellers⁴⁵
- Member states must provide a monetary allowance to sellers for the implementation of new technologies for sales and use tax collection⁴⁶

Conclusion

Despite the fact that SSTP is supposed to respect state sovereignty, lessen the cost of sales and use tax collection, and stop erosion of the state sales tax base, the current draft agreement does not provide an efficient manner of dealing with these "problems." Instead of forcing the new economy to play by the rules of the old economy, by clinging to the old destination based sales and use tax collection regime, states should consider an origin based plan where all buyers and sellers are taxed at one rate in every state. This would be true streamlining and modernization, but would still be respectful of state sovereignty and the constitutional protections it affords all of us.

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¹See *Washington Internet Daily*, 9/11/2002.

²See Russel Gold, "Setback in State Sales-Tax Plan Hurst Push for Levies on Web Sales", *Wall Street Journal* B6 (7/15/2002).

³See SSTP Draft §302, <http://66.28.69.53/sline/0902MtgWrkDraft.pdf> (9/12/2002).

⁴See U.S. Constitution Amendments IX and X.

⁵*Id.* at Article I, §1.

⁶See James Madison, *Federalist* No. 45 ("The powers delegated by the proposed Constitution to the Federal Government, are few and defined. Those which are to remain in the State Governments are numerous and indefinite.")

⁷See U.S. Constitution, Article VI. "This Constitution...shall be the supreme law of the land..." Interestingly, Madison wanted the federal government to maintain a veto over the acts of state legislatures. See Letter to Thomas Jefferson, in James Norton Smith, Ed., *A Republic of Letters: The Correspondence Between Jefferson and Madison 1776-1826* 498 (1995).

⁸See Michael S. Greve, *Compacts, Cartels, and Congressional Consent*, (forthcoming, *Missouri Law Review* (2003)), at 11. Draft available at <http://www.federalismproject.org/masterpages/publications/Compacts.pdf>. "State compacts, then, may enhance efficiency and federalism values, but they may also compromise those values. A 'federalism' that celebrates the exercise of state sovereignty, in derogation of the Constitution and at the risk of diminishing political accountability and the rights of non-compact states, is federalism fubar—[messed] up beyond all recognition."

⁹See SSTP Draft, *supra* note 3, at §302.

¹⁰*Id.* at §308.

¹¹*Id.* at §316.

¹²*Id.* at §319.

¹³*Id.* at §321.

¹⁴*Id.* at §325.

¹⁵*Id.* at §325.

¹⁶*Id.* at §402.

¹⁷*Id.* at §803.

¹⁸*Id.* at §806.

¹⁹*Id.* at §807.

²⁰*Id.*

²¹ SSTP Draft at §808.

²²*Id.*

²³ SSTP Draft at §809.

²⁴*Id.* at §§901-902.

²⁵*Id.* at §1001.

²⁶*Id.* at §1103(B).

²⁷See *Streamlined Sales Tax Project Executive Summary*, <http://66.28.69.53/sline/ExecSum0702.pdf> (July 2002).

²⁸ 504 U.S. 298 (1992)

²⁹ SSTP Draft at §304(A).

³⁰*Id.* at §305(G).

³¹*Id.* at §309.

³²*Id.* at §315.

³³*Id.* at §317.

³⁴*Id.* at §401.

³⁵*Id.* at §403.

³⁶ According to this author's calculations, the potential revenues from taxing services, which almost every state exempts from sales tax, dwarfs the potential revenues from e-commerce by nearly 10,000%. This does not account for other sectors specifically exempted from sales tax, e.g. food and utilities.

³⁷ SSTP Draft at §305(D)-(F).

³⁸*Id.* at §305(G).

³⁹*Id.* at §315(A)(7).

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⁴⁰Id. at §316(D)(5).

⁴¹Id. at §317(D).

⁴²Id. at §322.

⁴³Id. at §324.

⁴⁴Id. at §326.

⁴⁵Id. at §401(A).

⁴⁶Id. at §§601-603.

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Blair Thoreson

02/26/2003 01:13 PM

To: Ron A. Iverson/NDLC/NoDak@NoDak, Al H.
Carlson/NDLC/NoDak@NoDak, Jim M.
Kasper/NDLC/NoDak@NoDak

cc:

Subject: State Sales Tax

I emailed Governor Bill Owens of Colorado concerning the Streamlined Sales Tax proposal. He has been a vocal critic of this plan, and responded with the following helpful information:

----- Forwarded by Blair Thoreson/NDLC/NoDak on 02/26/2003 01:13 PM -----



GovernorOwens
<governorowens@capitol.state.co.us>

To: "bthoreso@state.nd.us" <bthoreso@state.nd.us>

cc:

Subject: State Sales Tax

02/24/2003 12:12 PM

Dear Mr. Thoreson:

Thank you for your email regarding the Streamlining the State Sales Tax project.

As you consider the ways to best oppose this new tax, it's important to keep several points in mind. First, electronic commerce makes up a tiny fraction of total retail sales in the United States. According to the most recent data, Internet commerce represented a paltry 1.2% of total retail sales in the country in 2nd quarter 2002, which was actually down from 1.3% in 1st quarter 2002. The argument that a large number of sales are flowing away from Main Street businesses to online companies is simply not true.

Second, our republic was founded on the principle of no taxation without representation. However, this is exactly the kind of tax regime that certain states want to place on online businesses by asking them to be the tax collectors for taxes that they have no voice in determining.

Third, and I believe most important to Colorado's economy, tax competition is good. Economics tells us that capital and commerce will migrate to low-tax environments. Keeping Colorado's existing taxes low and avoiding the expansion of those taxes makes this state a better place to do business and create jobs.

Finally, I believe the argument about a "level playing field" is misleading. Imposing a tax on the Internet does not create a level playing field; instead it forces Internet merchants to be the tax collectors for scores of jurisdictions around the country, while brick-and-mortar businesses would continue to collect taxes from a maximum of two or three localities.

There is some information located at www.cato.org that might be helpful as you work on this issue further. I appreciate the time you took to write to me.

Sincerely,

Bill Owens

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Posted: Thursday, October 04, 2001

"Streamlined Sales Tax" Just Another Government Grab for Cash

By **Mr. Lawrence W. Reed**

ISSN: 1093-2240 SKU: V2001-37

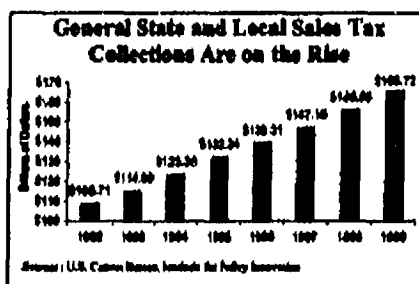
Mr. Lawrence W. Reed

Summary

The National Governors' Association's "Streamlined Sales Tax Project" is being sold as a way to apply existing sales and use taxes to Internet, catalog, and 1-800 number purchases fairly and uniformly. But the project would not only be unfair to out-of-state vendors, it would also result in higher taxes, threaten consumers' privacy, and even open the door to a national sales tax.

Main text word count:
700

Despite some public officials' claim that states are "losing" revenue over Internet purchases, sales tax collections continue to grow.



The U.S. Supreme Court has ruled that state and local governments cannot force out-of-state companies to collect taxes for them, since this would interfere with interstate commerce. States and localities may only require companies with a "substantial physical presence" or "nexus" in their state to collect sales taxes. That's as it should be.

But some public officials aren't content with that ruling. Gov. Engler, for example, strongly supports a National Governors' Association (NGA) proposal that would apply sales taxes to virtually all Internet, catalog, and 1-800 number purchases. Labeled the "Streamlined Sales Tax Project," the proposal would deputize a private "third-party entity" to collect and distribute those taxes and could—if enough states approve it and Congress endorses it—open the door to a national sales tax.

Supporters of the NGA plan talk a lot about fairness and the need to "harmonize" states' sales taxes. But what's to fear from diversity in either the manner or the amount that states tax? It's not "unfair" that New Hampshire has neither a sales nor an income tax. Nor is it unfair that items on which some states impose a sales tax are exempted by other states. Michigan "loses" revenue all the time to states that tax less and tax better, and it gains revenue over states that tax more and in more harmful ways. That's healthy tax competition, and it's why the states are often called "laboratories of democracy."

What concerns me are such things as compromising any one

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state's sovereignty over its tax structure in the name of "streamlining" or harmonizing it with the tax structures of other states. I'm concerned about scrapping the privacy and anonymity inherent in the sales tax. And I'm concerned about making it much easier for the federal government to superimpose a national sales tax.

But back to the fairness issue. Is it fair that Michigan bricks-and-mortar businesses must remit to the state a sales tax while their out-of-state competitors do not? Taxes are supposed to pay for services that governments provide, such as police protection. Out-of-state vendors with no physical presence in a state would not use any government services in that state. So it would be *unfair* to tax out-of-state Internet, catalog, or 1-800 companies.

Advocates of the NGA scheme argue that their plan is designed simply to collect existing sales or use taxes from Michigan consumers, not impose a new tax on out-of-state companies. But that argument is undermined by the fact that a consumer who orders a book from Amazon.com isn't using the roads or any other state service to make his purchase.

And privacy concerns about the NGA plan are certainly justified. When you pay a sales tax at a local shop, no one asks you your name, where you live, or anything about your buying habits. The third-party entity the NGA plan would deputize to facilitate Internet tax collection and revenue distribution may very well need to know such things to do the job.

Additionally, claims by state governments that they're "losing" revenue on Internet transactions are almost always inflated for these and other reasons:

- Business-to-business sales are sometimes included, but they would be exempt from sales taxes anyway. Most estimates put those transactions at 75 percent or more of all Internet transactions.
- Internet transactions that result in physical sales in local stores—such as when a consumer purchases a product online but picks it up and pays sales tax at a local outlet—are frequently not factored out.
- Increases in tax revenue that come from Internet-induced economic growth are excluded or underestimated. In 1998 alone, the Internet was responsible for 1.2 million new jobs, representing lots of new income and sales-taxable purchases.
- At least some online purchases can be characterized as transactions that would never occur in a local store, where sales tax would be assessed. Thinking about the obscure items I purchase by the dozen on eBay auctions,

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Yvonne J. Lee

Date

10-16-03

I realized that almost none of them I would have bought
in any local, Michigan store.

Some say the effort to impose sales taxes on all Internet
transactions is a train rolling down the track. Maybe so, but it's
still a train that should be derailed.

(Lawrence W. Reed is president of the Mackinac Center for
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eBusiness

Congress mulls permanent Net tax ban

By Declan McCullagh

Init

January 9, 2003, 4:28 AM PT



A debate in Congress over how to tax the Internet began Wednesday with the latest effort to permanently prevent such fees.

Rep. Chris Cox, R-Calif., and Sen. Ron Wyden, D-Ore., introduced a bill called the Internet Tax Non-Discrimination Act, renewing their efforts to transform what is currently a moratorium on Internet sales taxes into an outright ban.

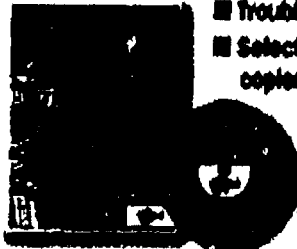
"We have had ample time to evaluate the effects of the moratorium on Internet taxes—on the growth of the online economy in general and e-commerce in particular," Cox said in a statement. "Given the continued softness in the tech economy, this is hardly the time for new taxes on the Internet. Rather, providing long-term certainty about tax policy is one of the necessary ingredients for a tech rebound."

A Cox and Wyden penned moratorium prohibiting states from collecting Internet taxes went into effect in 1998 and was extended in 2001 by other legislation authored by the team (which also bears the Non-Discrimination moniker). With that extension set to expire in November, the next 10 months will see Congress besieged by mayors and governors lobbying for the power to levy taxes and online retailers and free-market groups pushing for Cox and Wyden's ban or another extension of the moratorium.

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Americans generally are supposed to pay taxes voluntarily on items they order from Web sites and mail-order companies that are located out of the state in which they live. But very few people ante up, and state officials have griped for years about what they view as billions of dollars a year in lost revenue.

"Increasing sales over the Internet threaten to significantly compound this revenue loss for states and localities," the National Governors Association has said, citing a University of Tennessee study that projected state revenue losses from Internet sales would reach \$45 billion by 2006 and nearly \$55 billion by 2011.

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The NGA has been pitching a proposal designed to overcome objections from Net-tax opponents who say that the Byzantine requirements and rules of the 7,500 different taxing jurisdictions in the United States would create a nightmare for businesses. The NGA says its Streamlined Sales Tax Project would lead to a uniform tax-collection mechanism that would make it simpler for Internet and mail-order retailers to collect taxes on shipments.

The last time around, the Senate rejected a pro-tax amendment penned by Sen. Michael Enzi, R-Wyo., with a relatively close vote of 57-43. During this year's expected debate over a ban or another extension of the moratorium, the NGA hopes that the existence of the Streamlined Sales Tax Project will swing the vote in its favor.

Adam Thierer, an analyst at the free-market Cato Institute who opposes the NGA's plan, says he fears it will succeed. "I think the states will win over Republicans and get their way at some point," Thierer said.

A 1992 U.S. Supreme Court case, Quill Corp. v. North Dakota, created a high barrier to states trying to tax shipments from another jurisdiction. The court said North Dakota could not force an out-of-state retailer to collect taxes on purchases sent to residents of North Dakota.

But in a majority opinion written by Justice John Paul Stevens, the court took pains to point out that Congress had the power to enact a federal law that would effectively override the justices' decision.

"This aspect of our decision is made easier by the fact that the underlying issue is not only one that Congress may be better qualified to resolve, but also one that Congress has the ultimate power to resolve," the court said.

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