02

NATIONAL RETAIL FEDERATION

RETAILERS SUPPORT A LEVEL PLAYING FIELD FOR ALL - OPPOSE ANY NEW TAXES ON REMOTE COMMERCE -

As you know, the NRF Board of Directors adopted a policy position calling for equal sales and use tax collection obligations for all retailer delivery channels on January 18, 2000. NRF believes tax policy should be channel-neutral. NRF feels that all retailers, regardless of the channel, or channels, in which they do business, should be treated equally with respect to collection obligations required by state sales and use taxes.

NRF does not support any new taxes on remote commerce or the Internet. Under current law, 45 states and the District of Columbia impose sales and use taxes on purchases of tangible goods. Due to the complexity of these sales and use taxes, the states and local governments that imposed these taxes require retailers to collect them at the point of sales from consumers. Retailers must then remit these taxes back to the state or local governments immediately.

Based on two separate Supreme Court rulings, the Court held that retailers cannot be required by a state or local government to collect sales and use taxes from the purchaser unless the retailer has a "physical presence" within the state of the purchaser. Although the retailer is not required to collect the sales tax in these instances, the consumer (i.e. the taxpayer) is required by state law to remit a "use" tax (i.e. the sales tax) to their home state. Many states include a line at the bottom of their state income tax returns for taxpayers to disclose if they made any out-of-state purchases. If sales taxes were not paid on these out-of-state purchases at the time of sale, the taxpayer must voluntarily remit these taxes to the state. States use revenue from the sales and "use" taxes to provide government services to its taxpayers.

Though consumers are required to remit use taxes on out-of-state sales, historically states have not enforced collection of the use tax claiming significant compliance burdens or for political reasons. However, given the explosion of Internet sales, states are concerned with future revenue loss as consumers buy more over the Internet. Instead of relying on taxpayers to remit "use" taxes on the backend, States want to require retailers to collect sales taxes on out-of-state purchases on the front end. NRF is only asking that retailers have the same collection obligations regardless of how a product is delivered. NRF's position supporting equal collection obligations for retailers across all channels does not constitute support for new taxes on the Internet.

NATIONAL RETAIL FEDERATION

MYTHS AND FACTS ON INTERNET TAX POLICY

MYTH: Advocates of tax equity support new online taxes.

FACT: No, currently consumers are expected to remit taxes on purchases made on the Internet or by catalog to their home state on state income tax filings each year. The National Retail Federation believes tax equity should be ensured regardless of whether the transaction is made in a traditional store, by an e-commerce retailer or through a catalog. By doing so, consumer confusion is eliminated, and the playing field is leveled for all retailers.

MYTH: Taxation of sales of goods and services online will cause a decrease in consumer purchases on the Internet.

FACT: Studies show consumers shop online for good product selection, competitive prices, and ease of use, not because sales taxes are not collected on these types of purchases. Detriments to buying online include consumer concerns over credit card security and privacy.

MYTH: Congress has imposed a three-year tax moratorium on sales on the Internet.

FACT: In 1998, Congress enacted the Internet Tax Freedom Act prohibiting any new or discriminatory taxes from being imposed online. The Act created an Advisory Commission to study and determine whether access, bit, or sales and use taxes should be applied to the Internet.

MYTH: The Internet is in it infancy and its growth should not be stifled by taxation.

FACT: Consumer shopping online in the United States is growing at a rapid rate. Between 1998 and 1999 the number of shoppers on Web sites increased from 17 million to 39 million. Spending online is expected to reach $300 billion by 2002. At this exponential rate, the Internet will continue to grow regardless of equitable collection of taxes on online sales.

MYTH: State and local governments don't need the additional revenue that would result from taxation on line.

FACT: According to the National Governors' Association, more than 40% of state revenues come from sales taxes. If taxes are not collected by online and catalog retailers, state and local governments could lose more than $10 billion in revenues by the year 2003. Much of sales tax revenue goes towards essential services such as education, law enforcement and transportation which communities benefit from. Without this additional revenue, states have felt the need to raise taxes to fund these programs. The additional revenue may actually allow States to cut taxes.

NEWS RELEASE

FROM THE NATIONAL RETAIL FEDERATION

For Immediate Release
Contact: Pamela Rucker / Scott Krugman (202) 783-7971

NATIONAL RETAIL FEDERATION ANNOUNCES SUPPORT FOR EQUITABLE APPLICATION OF EXISTING SALES AND USE TAXES

New York City, January 19, 2000 – The Board of Directors of the National Retail Federation (NRF) has approved a policy position calling for state sales and use tax equity across all retail channels.

NRF believes all retailers, regardless of the channel or channels in which they do business, be treated equally with respect to collection obligations currently required by existing state sales and use tax laws. Equity should be ensured regardless of whether the transaction is made in a traditional store, through a traditional store's own website, by a strictly e-commerce retailer, or through any other type of remote seller.

"Consumers today have an unprecedented range of choices about how to make purchases, from visiting stores to browsing catalogues to e-shopping," noted NRF President and CEO Tracy Mullin. "Exempting some catalogues and electronic merchants from collecting sales taxes amounts to an unfair subsidy that penalizes brick-and-mortar merchants, as well as state and local communities that rely on sales tax revenue."

"NRF believes tax policy should be channel neutral", added Mullin. "Providing equal collection obligations (i.e. requiring retailers to collect state sales and use taxes that already exist) for all retail distribution channels merely levels the playing field for retailers and their customers."

"While expanding retailers' collection obligations, states must educate taxpayers about the responsibility to remit use taxes under current law," added Mullin. "In addition, retailers must be adequately compensated for collecting and remitting sales and use taxes for the states." Currently, retailers are forced to absorb significant compliance costs and other burdens as they attempt to collect sales and use taxes on behalf of the states.

The **National Retail Federation (NRF)** is the world's largest retail trade association with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalogue, Internet and independent stores. NRF members represent an industry that encompasses more than 1.4 million U.S. retail establishments, employs more than 20 million people -- about 1 in 5 American workers -- and registered 1999 sales of $3.0 trillion. NRF's international members operate stores in more than 50 nations. In its role as the retail industry's umbrella group, NRF also represents 32 national and 50 state associations in the U.S. as well as 36 international associations representing retailers abroad.

For more information about NRF, visit our Website at www.nrf.com.

NATIONAL RETAIL FEDERATION

EQUITABLE COLLECTION OF RETAIL SALES TAXES

An overview

The growth of consumer shopping on the Internet is expanding at a rapid rate. In 1999, 39 million Americans shopped online, up 17 million from 1998. The total value of goods and services traded on the Internet is expected to reach $300 billion by 2002. The unique nature of the Internet, including the lack of physical stores and the ability to sell intangible goods, changes the frontier in which transactions are conducted. Although the Internet has not removed the necessity for governments to tax, for retailers to collect the tax, or the responsibility of consumers to pay taxes, it has made the calculation and collection of taxes more problematic. It has caused greater disparity in collection obligations for traditional "brick and mortar" retailers and electronic retailers. Traditional retailers must collect and remit taxes at the point of sale, while online and catalog businesses must only collect taxes in states where they have a physical presence, giving the online retailer a competitive advantage.

The National Retail Federation (NRF) supports an equity-based tax policy with equal collection obligations across all retail channels, whether the transaction is made in a traditional store, through a traditional store's own Web site, by a strictly e-commerce retailer or through any other type of remote seller.

BACKGROUND

Under current law, 45 states and the District of Columbia impose sales and use taxes on remote commerce on purchases of tangible goods. Due to the complexity of the sales and use taxes, the state and local governments that imposed these taxes require retailers to collect them at the point of sale from consumers. Retailers must then remit these taxes back to the state or local governments immediately.

Under the 1967 U.S. Supreme Court case *National Bellas Hess*, the Court held that a state or local government cannot constitutionally require a retailer to collect and remit use taxes unless the business has "nexus" (a physical presence) within the state. In 1992, the Supreme Court reaffirmed in *Quill* that an out-of-state mail order house without outlets or sales representatives in the state is not required to collect and pay use tax on goods and services purchased for use in the state, reaffirming *National Bellas Hess*. The Court ruling based its decision on due process considerations and reiterated Congress' authority to regulate or change interstate commerce policy.

In October of 1998, recognizing the ability of electronic commerce to influence our national economy, Congress imposed a three-year moratorium on any new or discriminatory federal or state tax on the Internet or electronic commerce. The moratorium gives Congress the opportunity to evaluate state, local, and international taxation of the Internet and electronic commerce. Congress believes "fair and administrable rules" for taxing and regulating the use

of the Internet and electronic commerce should be developed. To that end, an Advisory Commission on Electronic Commerce (ACEC) was created and tasked with studying electronic commerce tax issues and recommending to Congress, within 18 months, model legislation that will govern tax treatment of the Internet, electronic commerce, and remote sales. The Advisory Commission is expected to issue its report in April, 2000, while the moratorium sunsets in October of 2001.

HOW CURRENT LAW IMPACTS RETAILERS

Under the current sales and use tax system, traditional brick and mortar stores find themselves at a competitive disadvantage to their Internet and catalog counterparts because they must collect sales taxes on most in-store sales. Obviously, retailers who are not required to collect sales taxes have a price advantage with consumers. With retailers achieving only a modest 2-4 percent net profit on sales, remote sellers who are not currently required to collect sales and use taxes (which average 6-8 percent) have an unfair pricing advantage over their brick and mortar counterparts.

Some retailers have been forced to create separate dot-com subsidiaries in an effort to diminish this competitive disadvantage. This strategy eliminates the requirement for sales tax collection in states where the subsidiary does not have a physical presence. There are many disadvantages to setting up separate subsidiaries and companies who do so are concerned about their tax liabilities.

HOW THIS IMPACTS CONSUMERS

Though consumers are required to remit use taxes on out-of-state sales, historically states have not enforced collection of use tax claiming significant compliance burdens or for political reasons. Given the explosion of Internet sales, states are concerned with future revenue loss as consumers buy more over the Internet. Instead of relying on taxpayers to remit "use" taxes, States want to require retailers to collect sales taxes on out-of-state purchases.

In addition, low-income consumers who do not have access to the Internet are disadvantaged because they cannot make purchases from electronic retailers who do not collect sales taxes. These are often the individuals who can least afford the burden of a tax.

State and local governments also claim that more than $3.3 billion in tax revenue is lost annually from mail order sales and the amount from the Internet may be much greater. This is lost revenue that could be used for funding education, transportation, and law enforcement in the state and local governments.

HOW NRF DEVELOPED ITS POSITION

Historically, the National Retail Federation has remained neutral regarding the taxation of remote commerce following the *National Bellas Hess* and *Quill* Supreme Court cases. The extraordinary growth of Internet sales, coupled with the creation of a Congressional panel to evaluate taxation of the Internet required NRF to reevaluate its position. In developing its position, the NRF first presented the issue to the NRF Taxation Committee, which passed a resolution in support of a level playing field with conditions. Following the action of the

taxation committee, the NRF Policy Council addressed the issue and also voted in support of a level playing field. Because of the magnitude of the issue, the General Counsels forum also considered the issue prior to the board vote. The NRF position was overwhelmingly agreed to by the Board of Directors in January, 2000.

NRF'S POSITION

While NRF opposes the imposition of any new taxes on the use of the Internet or any other channel of distribution, NRF believes all retailers, regardless of the channel or channels in which they do business, should be treated equally. Equity should be ensured regardless of whether the transaction is made in a traditional store, through a traditional store's own website, by a strictly e-commerce retailer or through any other type of remote seller. Tax policy should be channel-neutral.

In moving toward a system in which purchases through all channels of commerce are taxed the same (i.e. tax equity), the following conditions must be met:

Restructuring of Sales and Use Tax Systems
Dramatic restructuring of existing state sales and use tax systems is necessary if collection obligations are to be expanded. This includes simplicity and uniformity in tax administration, definitions, and classifications (e.g. the tax base, uniform tax returns, simplified procedures for audit, bad debt deduction, assessment and appeals, etc). In addition, this system must maintain income tax nexus protections and provide for destination based sourcing.

Collection Allowances for Sellers
The complexity of state sales and use tax systems imposes significant compliance burdens and costs on multistate sellers. States who expect others to collect their taxes for them must provide and maintain mechanisms to compensate others for those efforts.

State and Local Responsibilities
The decision to impose, and the obligation to collect, sales and use taxes resides in the states. Currently, taxpayers are obligated to remit use taxes to their state if sales taxes were not paid on out-of-state purchases at the time of sale. State enforcement of this tax has been negligible. States have a responsibility to inform and educate their citizens about these obligations, in particular, the consumer's responsibility to pay the use tax under current law. States impose taxes, not retailers. Retailers are merely required to collect sales taxes on behalf of the state and local governments.

The **National Retail Federation (NRF)** is the world's largest retail trade association with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalogue, Internet and independent stores. NRF members represent an industry that encompasses more than 1.4 million U.S. retail establishments, employs more than 20 million people -- about 1 in 5 American workers -- and registered 1999 sales of $3 trillion. NRF's international members operate stores in more than 50 nations. In its role as the retail industry's umbrella group, NRF also represents 32 national and 50 state associations in the U.S. as well as 36 international associations representing retailers abroad.

NATIONAL RETAIL FEDERATION

POLICY STATEMENT

Taxation of Remote Commerce/Internet Sales

The growth of consumer shopping on the Internet is expanding at a rapid rate. In 1999, almost 40 million Americans shopped online, with the total value of goods and services traded on the Internet expected to reach $300 billion by 2002. The unique nature of the Internet, including the lack of physical stores and the ability to sell intangible goods, will dramatically change the way in which future transactions are conducted.

The Internet does not alter the ability of states to tax, the requirement that retailers collect those taxes, nor the responsibility of consumers to pay the taxes. However, the Internet has made the calculation and collection of taxes more problematic. It has caused disparity in collection obligations for traditional "brick and mortar" retailers and remote retailers. Traditional brick and mortar retailers are required to collect and remit taxes at the point of sale, while online businesses must only collect taxes in states where they have a physical presence, giving remote sellers an unfair tax advantage. In addition, consumers that may not have access to the Internet, predominantly low-income individuals, are also disadvantaged as they are unable to make purchases from sellers not required to collect the tax.

TAX EQUITY/A LEVEL PLAYING FIELD

While NRF opposes the imposition of any new taxes on the use of the Internet or any other channel of distribution, NRF believes all retailers, regardless of the channel or channels in which they do business, should be treated equally with respect to collection obligations required by existing state sales and use taxes. Equity should be ensured regardless of whether the transaction is made in a traditional store, through a traditional store's own website, by a strictly e-commerce retailer or through any other type of remote seller. Tax policy should be channel-neutral.

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Streamlined Sales and Use Tax Act - Summary

- Authorizes Wisconsin to enter into the Streamlined Sales and Use Tax Agreement with one or more states to simplify and modernize sales and use tax administration for all types of commerce.

- Authorizes Wisconsin to act jointly with other states that are members of the Agreement.

- Provides that Secretary of Revenue is authorized to represent Wisconsin as signatory to the Agreement.

- Provides that adoption of the Agreement by Wisconsin does not amend or modify any law of this State.

- Requires that the Agreement address:

  - State rates
  - Uniform sourcing, administration of exempt sales, bad debts, and sales and use tax returns and remittances
  - Uniform definitions
  - Central electronic registration
  - Local sales and use taxes bases and administration
  - Monetary allowances to sellers or certified service providers
  - Compliance with the Agreement
  - Privacy of consumers and confidentiality of tax information.
  - Governance

- Addresses seller and third party liability when a seller uses a Certified Service Provider, a Certified Automated System, or a proprietary system for determining the amount of tax due on transactions.

Streamlined Sales Tax Project

Status of Participating States

- Alabama (Act)
- Arkansas (Act)
- Illinois (Act)
- Indiana (Act)
- Iowa (Act)
- Kansas (Act)
- Kentucky (Act-signed)
- Louisiana
- Maine
- Maryland (Act)
- Michigan (Act/Agt)
- Minnesota (Act/Agt)
- Mississippi
- Missouri (Act)
- Nebraska (Act)
- Nevada
- New Jersey
- North Carolina (Act/Agt)
- North Dakota (Act)
- Ohio
- Oklahoma
- Rhode Island
- South Carolina
- South Dakota (Study)
- Tennessee (Act)
- Texas (Act)
- Utah (Act-signed)
- Vermont (Act)
- Washington
- West Virginia
- Wisconsin
- Wyoming (Act/Agt-signed)

Observer States (non-voting participants)

- California
- Colorado
- Connecticut
- Georgia
- Idaho
- New York
- Pennsylvania (Act)

as of 3-16-01

Streamlined Sales Tax Project Simplifications

- **Exemption Processing**

  The requirements for sellers accepting exemption certificates, as proof that sales are exempt, will be relaxed. A seller will be held harmless for the tax if they obtain all information required for a purchaser to claim exemption for tax.

- **Uniform Sourcing Rules**

  All participating states will follow the same rules in determining where a sale takes place. This will allow retailers greater ease in determining the tax rate to apply to a tax jurisdiction.

- **Uniform Definitions**

  Retailers operating in multiple states who have determined that a particular product or service is taxable will know that the amount subject to sales tax is generally the same among the participating states.

  Retailers, both multi-state and Wisconsin only, will have more bright line tests in determining what food products (e.g., candy, cookies, juices, etc.) and clothing are taxable or exempt.

- **Registration, Returns and Remittances**

  The administrative requirements for registering, reporting and paying sales tax will be simplified though a combined registration system, a return with minimal reporting lines, and electronic filing and payment options.

- **Same State and Local Tax Bases**

  By December 31, 2005, the same items that are taxable or exempt for states sales tax purposes will be taxable or exempt for local sales tax purposes.

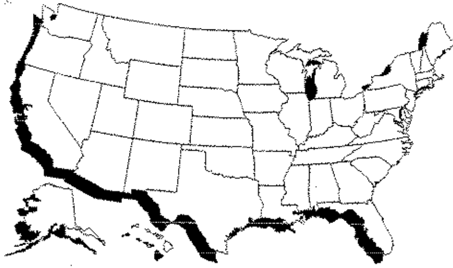
- **Elimination of Multiple State Rates**

  By December 31, 2005, a state will not be allowed to have different sales tax rates for different property or services.

  For example, a state could not choose to tax food at a 2% rate while other products are subject to a sales tax rate of 5%.

- **State Tax Administration**

  States will administer all state and local sales taxes, including one form per state and simplified audit procedures. Local governments will not have separate tax administration functions.



Streamlined Sales Tax Project

Simplified Sales Tax System Emerges from Project
By Diane L. Hardt, Co-Chair of the Streamlined Sales Tax Project

On December 22, 2000, twenty-seven states involved in the Streamlined Sales Tax Project approved a Uniform Sales and Use Tax Administration Act and the Streamlined Sales and Use Tax Agreement. Combined, these two documents provide the basis for states to adopt a simplified and modernized sales and use tax collection and administration system—and eventually replace the current set of varying state laws with a more uniform system used by sellers for all types of commerce.

Steering Committee

Diane Hardt
Co-Chair
Wisconsin

Charles Collins
Co-Chair
North Carolina

Johnnie Burton
Wyoming

Carol Fischer
Missouri

Jack Kopald
Tennessee

Scott Peterson
South Dakota

Nancy Taylor
Michigan

Background

The Streamlined Sales Tax Project is an effort created in March 2000 by state governments, with input from local governments and the private sector. The goal of the Project is to formulate a system that simplifies and modernizes sales and use tax collection and administration. To achieve this goal, the Project has focused on several major areas of simplification including incorporating uniform definitions within the tax base; simplifying audit and administration procedures; and using emerging technologies to substantially reduce the administrative burden on sellers and the states.

Currently, 39 states are involved in Project discussions, divided into two groups—participating states and observer states. Twenty-nine participating states signaled their intent to be active in the Project by passing legislation or having their governor issue an executive order or similar authorization. Participating states have voting rights on Project matters. Nine observer states within the Project are participating in all Project meetings and discussions even though they don't have the formal commitment of their executive or legislative branches.

Although the Project voted to approve the Uniform Act and Agreement in December, work on additional elements of the system is expected to continue throughout 2001, even as some state legislatures introduce, debate, and enact legislation to implement the system. Some states are expected to enact the entire Act and conforming amendments to implement the Agreement in 2001 legislative sessions while other states are expected to only enact the Uniform Act. Some states will wait until 2002 legislative sessions to begin the process.

A Dramatic Step Toward Simplification

Simplification has been the maxim that the Project has attempted to adhere to since its inception. Discussions with sellers, manufacturers, telecommunications companies, technology companies and others yielded ways in which nearly every aspect of the current sales tax system could be simplified and brought into the 21st century. From these discussions, states focused on some of the most critical areas. Specifically:

State Tax Administration. States will administer all state and local sales taxes. Local governments will not have separate tax administration functions.

Uniform definitions. Under current law, states provide varying definitions for terms and items in the tax base. The Uniform Agreement proposed by the Streamlined Sales Tax Project provides uniform definitions for critical terms and items in the tax base such as "retail sale," "sales price," "purchase price," "clothing," and "food". Under the streamlined system, these definitions would be used by every state participating in the system with individual state legislatures retaining flexibility to determine the taxability of items within their state. States expect to incorporate additional uniform definitions into the system in 2001.

Rate simplification. The Uniform Agreement provides that states and localities may retain their current sales tax rates, but a limit of one sales tax rate or one use tax rate per jurisdiction applies. If a local jurisdiction levies both a sales tax and a use tax, the rates must be identical. Jurisdictions with multiple rates will have five years to phase out multiple rates and begin assessing only one rate per jurisdiction.

States are responsible for providing adequate notice to sellers of changes in tax rates and rate changes can only take effect on the first day of a calendar quarter. Additionally, to assist in sourcing transactions, states will provide a central database that will assign each 9-digit zip code ("Zip+4") to the proper taxing jurisdiction. This system will default to the lowest tax rate imposed in the Zip+4 area if the designation produces more than one taxing jurisdiction. Sellers will be relieved of liability for relying on the state database.

Uniform sourcing rules. The Uniform Agreement proposes a destination approach to sourcing for purposes of taxation. This sourcing rule shall apply to tangible and digitized goods as well as services. A simple descending five-step sourcing rule has been developed:

Over-the-counter→Ship-to→Established Address→Supplied Address→Substitute Address

Exemption administration. To relieve the administrative burden on sellers, the Streamlined Sales Tax System incorporates a uniform electronic form for entity and use-based exemption claims. In addition, the system switches the liability for uncollected taxes from the seller to the purchaser in instances of wrongly claimed exemptions.

Uniform audit procedures. The system envisions reducing the scope and frequency of sales and use tax audits of sellers depending on the type of technology utilized by the seller for tax collection purposes.

Technology. Sellers participating in the Streamlined Sales Tax System will avail themselves of four separate methods of tax collection provided for under the system. A Model 1 seller may effect its tax collection responsibilities by hiring a Certified Service Provider to perform all of the seller's sales tax functions. A Model 2 seller may contract with a Certified Automated System that will perform the tax calculation function for the seller with the seller retaining the responsibility for remitting taxes collected to the states. A Model 3 seller (most likely a large, multi-state entity) may have its own

proprietary software certified by the state to calculate and remit sales taxes on its transactions. Finally, some sellers may choose to continue to collect and remit taxes as they do now—and still enjoy the benefits of simplification built into the Streamlined Sales Tax System.

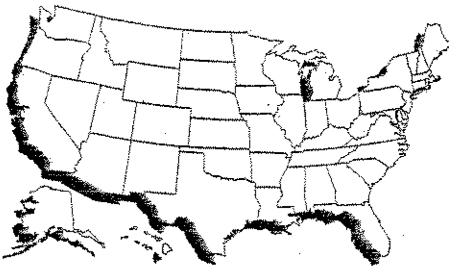
Nexus. The Streamlined Sales Tax System does not alter the current nexus rules.

Some Issues Remain for Debate. There are several issues that states participating in the Project will be tackling during the upcoming months. Principle among these issues are the definitions of tangible personal property and digitized goods; formulating uniform definitions for additional items in the tax base; resolving technology issues that may arise during the testing of tax collection software; joint audit procedures; and service provider and seller compensation issues.

Legislative Status. Minnesota and Wyoming have already introduced the Uniform Act and conforming amendments to implement the Agreement in their legislative sessions in January and expect action this year. Indiana and Wyoming have introduced the Uniform Act in their legislative sessions. Further, several other states are currently drafting amendments to their state statutes that are required to bring their state into compliance with the Act and Agreement. When completed, the Project estimates that ten to twenty states will introduce the legislation during their 2001 legislative sessions.

Project Activities in 2001. While state legislatures begin to debate and adopt the Streamlined Sales Tax System, state participants to the Project will continue to meet with stakeholders on a monthly basis to complete work on additional elements of the System. The Project is to complete work as expeditiously as possible in 2001 so that every state legislature has ample opportunity to analyze the system as a whole and determine how they want to proceed in their state. Project participants are confident that enough states will adopt the system to not only make it a viable alternative to current laws—but make it the preferred sales and use tax collection system implemented by states and used by sellers nationwide.

(Additional information on the Streamlined Sales Tax Project and copies of the Uniform Act and Agreement can be obtained from the Project website at www.streamlinedsalestax.org. The author may be contacted at dhardt@dor.state.wi.us or by calling (608) 266-6798.)



Streamlined Sales Tax Project

EXECUTIVE SUMMARY

The Streamlined Sales Tax Project is an effort created by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration. The Project's proposals will incorporate uniform definitions within tax bases, simplified audit and administrative procedures, and emerging technologies to substantially reduce the burdens of tax collection. The Streamlined Sales Tax System is focused on improving sales and use tax administration systems for both Main Street and remote sellers for all types of commerce.

Steering Committee

Diane Hardt
Co-Chair
Wisconsin

Charles Collins
Co-Chair
North Carolina

Johnnie Burton
Wyoming

Carol Fischer
Missouri

Jack Kopald
Tennessee

Scott Peterson
South Dakota

Nancy Taylor
Michigan

Thirty-nine states are currently involved in the project. Thirty-two states are voting participants in the project because their legislatures have enacted enabling legislation or their governors have issued executive orders or a similar authorization. Seven states are non-voting participants in the work of the project because they do not have the formal commitment of the state executive or legislative branches.

The project has addressed its issues through a steering committee and four work groups: Tax Base and Exemption Administration; Tax Rates, Registration, Returns and Remittances; Technology, Audit, Privacy and Paying for the System; and Sourcing and Other Simplifications. Businesses—including national retailers, trade associations, manufacturers, technology companies, and others-- have actively participated in Project meetings by reviewing proposals and providing feedback to the states on key elements of the new system.

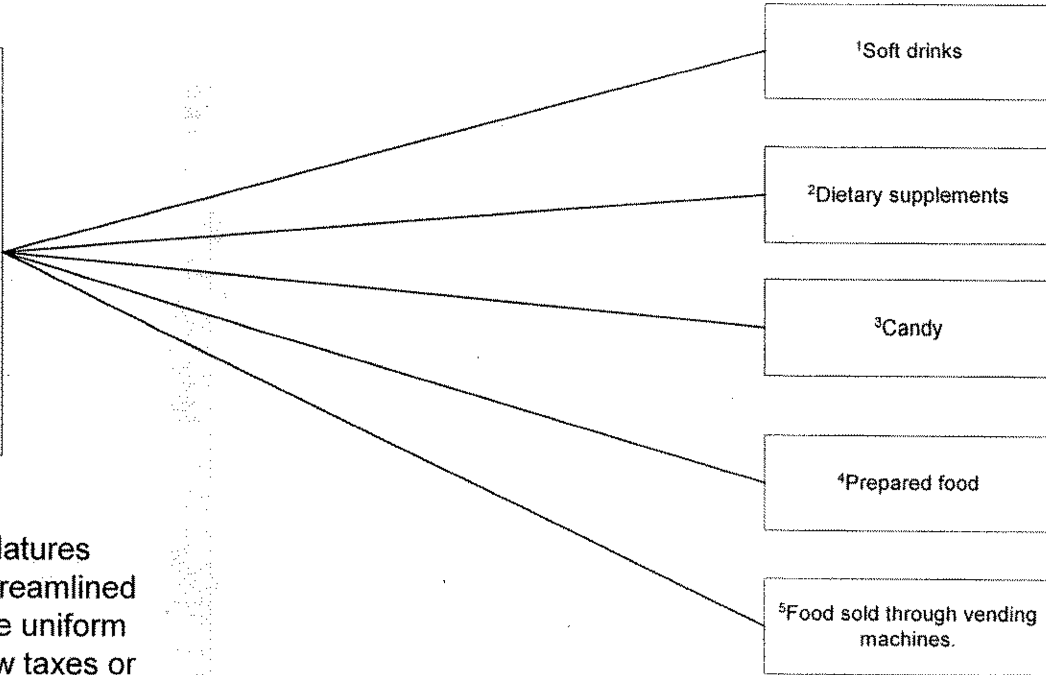
The key features of the Streamlined Sales Tax System include:

- Uniform definitions within tax bases. Legislatures still choose what is taxable and exempt but will use the common definitions for key items in the tax base.
- Simplified exemption administration for use- and entity-based exemptions. Sellers are relieved of the "good faith" requirements that exist in current law and will not be liable for uncollected tax. Purchasers will be responsible for incorrect exemptions claimed.
- Rate simplification. States will be responsible for the administration of all state and local taxes and the distribution of the local taxes to the local governments. State and local governments will use common tax bases and accept responsibility for notice of rate and boundary changes. States will be encouraged to simplify their own state and local tax rates.

Streamlined Sales Tax Project Definitions for Food

Food and food ingredients: Substances sold for ingestion or chewing by humans and consumed for their taste or nutritional value. This definition excludes alcoholic beverages and tobacco.

Options:



- The Project anticipates that Legislatures that enact the provisions of the Streamlined Sales Tax System will agree to the uniform definitions and will not impose new taxes or enact exemptions outside of these uniform definitions.

  Example: A legislature that exempts "food and food ingredients" would not impose tax on snacks that are included in the definition of "food and food ingredients."

- A Legislature could choose to tax or exempt any or all of the five sub-categories of food: soft drinks, dietary supplements, candy, prepared food, and food sold through vending machines.

Streamlined Sales Tax Project Definitions for Food

[1] "Soft drinks" means non-alcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain:

- milk or milk products;
- soy, rice or similar milk substitutes; or
- greater than fifty percent of vegetable or fruit juice by volume.

[2] "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

A. Contains one or more of the following dietary ingredients:
   - a vitamin;
   - a mineral
   - an herb or other botanical;
   - an amino acid;
   - a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
   - a concentrate, metabolite, constituent, extract, or combination of any ingredient described in above; and

B. Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

C. Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required pursuant to 21 C.F.R ss 101.36.

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

[4] "Prepared food" means:

A. Food sold in a heated state.

B. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws.

C. Two or more food ingredients mixed or combined by the seller for sale as a single item not requring further preparation by the consumer.

At the option of a state, "prepared food" may exclude any of the following:

1. Two or more food ingredients mixed or combined by the seller whose proper primary NAICS classification is manufacturing in sectors 31, 32, and 33, except subsector 3118, for sale as a single item.
2. Bakery items made by the seller, including bread, rolls buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes tortes, pies, tarts, muffins, bars, cookies, tortillas, except food described in B.
3. Two or more food ingredients mixed or combined by the seller and sold in an unheated state by weight or volume as a single item, except food described in B.

"Prepared food" does not include food that is only sliced, repackaged, or pasteurized by the seller.

[5] "Food sold through vending machines" means food dispensed from a machine or other mechanical device that accepts payment.

STATUS OF STATE EFFORTS ON STREAMLINED SALES TAX PROJECT
(as of 03/08/01)

Indicates SSTP Version of Legislation; Indicates NCSL Version of Legislation; Indicates Modified Act; Indicates Legislative Enactment; Indicates No Sales Tax State

STATE	LEGISLATION, DATE OF INTRODUCTION, AND SPONSOR	LEGISLATIVE STATUS	REVENUE DEPARTMENT CONTACT	OTHER INFORMATION
Alabama	HB 472 and SB 321 (SSTP Act only) introduced on 02/19/01 by Rep. Lindsey and Sen. Sanders.	Both bills have been referred to the tax-writing committees. No hearings have been scheduled as legislature is currently in Special Session.		
Alaska				
Arizona				
Arkansas	HB 2170 (SSTP Act only) introduced on 02/27/01 by Rep. Hunt and Sen. Hill	Referred to the House and Senate tax-writing committees; hearings expected in the House soon.	Mary Cameron 501-682-7030	
California				
Colorado				
Connecticut				
Delaware	NO SALES TAX			
Florida				
Georgia				
Hawaii				
Idaho				
Illinois	SB164—(NCSL Act and Agreement) introduced by Sen. Rauschenberger			
Indiana	SB 269 (NCSL Act only) introduced on 01/10/01 by Sen. Borst	Senate approved SB 269 week of 02/20/01.	Jim Turner 317-232-1862	
Iowa		Internal committee formed to draft Agreement; deadline for completion 03/01/01.	Carl Castelda 515-281-5990	Rev. Dept. officials have held a number of meetings with stakeholder groups, i.e., state retail federation, taxpayers association, local government groups; task force formed by Iowa Taxpayers Assn. to study proposal.
Kansas	SB 252 (Modified Act only) introduced upon recommendation of the Revenue Department and SSTP Oversight Committee.	SB 252 approved on February 14, 2001 by the full Senate; sent to the House Tax Committee for consideration.	Richard Cram	
Kentucky	HR 367 (SSTP Act) introduced on 02/20/01 by Rep. Moberly.	HB 367 approved on 03/01/01. Legislation sent to Senate for consideration week of 03/05/01.	Charlotte Quarles 502-564-6843	
Louisiana				

STATE	LEGISLATION, DATE OF INTRODUCTION, AND SPONSOR	LEGISLATIVE STATUS	REVENUE DEPARTMENT CONTACT	OTHER INFORMATION
Maine				
Maryland	HB 1390 (NCSL Act only) introduced on 02/23/01.			
Massachusetts	H1523 (SSTP Act only) introduced on 01/03/01 by Rep. Travis	Referred to the Committee on Taxation; no hearings scheduled		
Michigan			Nancy Taylor 517-241-2734	Rev. Dept. officials feel legislators still need more education on issue; stakeholder meetings have been held with state retailers.
Minnesota	S1325 by Sen. Rest H1416 by Rep. Abrahms introduced on 03/08/01 (SSTP Act and Agreement)	Legislation referred to tax-writing committees.	Jenny Engh 651-226-9640	Gov. Ventura held press conference on date of introduction stressing the importance of simplification; Rev. Dept. will be using media and industry focus groups to publicize efforts; have prepared talking points that will be made available to other states.
Mississippi				
Missouri	HB 803 (NCSL Act) introduced on 02/15/01 by Reps. Bray and Kennedy			
Montana	NO SALES TAX			
Nebraska	LB172 (SSTP Act only) introduced on 01/19/01 by the Revenue Committee.	LB 172 approved by Revenue Committee on 03/01/01; sent to floor for consideration.	Mary Jane Egr 402-471-5604	LB172 made two changes to the Act—gives the Governor authority to enter into Agreement and requires ratification of Agreement by the Legislature before state can participate.
Nevada	Will be introduced in 2001 (session starts 02/05/01).	Fiscal note being developed; probable sponsor is Assemblyman David Goldwater (D)	Woody Thorne 775-687-5774	The agreement will fall under the jurisdiction of the State's referendum law. Any changes to definitions, exemptions, etc. will require approval of the voters before taking effect. Thus, a major voter education effort will be required.
New Hampshire	NO SALES TAX			
New Jersey				
New Mexico				
New York				
North Carolina	SB 144 (SSTP Act and Agreement) introduced on 02/14/01 by Sen. Kerr.	Legislative proposal approved by Revenue Laws Study Committee on 01/16/01.	Sabra Faires 919-715-0237	Rev. Dept. holding meetings with stakeholder groups to provide education and gain support.
North Dakota	SB 2455 (NCSL Act) introduced on 02/08/01 by Sen. Cook and Sen. Nething	SB2455 approved by Senate week of 02/27/01; sent to House for consideration.	Gary Anderson 701-328-3471 Myles Vosberg 701-328-3011	
Ohio		Recommendation sent to Governor that NCSL version of Act be considered this year.	Fred Church 614-466-0684	
Oklahoma	SB 703 (NCSL Act) introduced by Sen. Monson	SB 703 passed by Senate Finance Committee on 02/20/01.		

STATE	LEGISLATION, DATE OF INTRODUCTION, AND SPONSOR	LEGISLATIVE STATUS	REVENUE DEPARTMENT CONTACT	OTHER INFORMATION
Oregon	NO SALES TAX			
Pennsylvania	NCSL Act will be introduced on 03/08/01			
Rhode Island		03/01/01—Governor issued recommendation to legislature that it should consider the SSTP Act for passage this year.		
South Carolina		Legislation is being drafted and discussed, but introduction date not determined	Meredith Cleland	
South Dakota	SB 166 (SSTP Study Proposal) passed 03/01/01	Governor signed SB 166 on 03/05/01; Legislature forms Task Force to study impact on municipalities; report due in Dec. 2001.	Scott Peterson 605-773-3311	
Tennessee	HB 1459 (NCSL Act) introduced on 02/14/01 by Rep. Kisber; SB 1722 (NCSL Act) introduced on 02/14/01 by Sen. Cooper.	Both pieces of legislation referred to Finance, Ways and Means Committees.	Jack Kopald 615-741-5884	
Texas	HB 1845 (NCSL Act) introduced on 02/21/01 by Rep. Oliveira	Legislation referred to Ways and Means Committee.		Rev. Dept. officials holding ongoing meetings with stakeholder groups to gain support.
Utah	SB 74 (modified Act) introduced by Sen. Hillyard.	SB 74 approved by Senate on 02/22/01; approved by House on 02/28/01; awaiting Governor's signature.	Bruce Johnson 801-297-3901	
Vermont	H457 (SSTP Act only) introduced by Rep. Keenan on 03/01/01.	Legislation referred to Ways and Means Committee.	George Phillips 802-828-2532	
Virginia				
Washington				
West Virginia				
Wisconsin	Legislation being drafted and expected to be considered during Spring legislative session.	Second hearing on SSTP held on 02/08/01 before the Joint Committee on Information Policy.	Diane Hardt 608-266-6798	Rev. Dept. continuing meetings with stakeholders ; Rev. Dept. has put together talking points and information for insertion in business community newsletters—effort well received.
Wyoming	HB259 (SSTP Act and Agreement) introduced on 01/23/01 by Rep. Hines and Sen. Peck	HR 259 signed into law by Gov. Geringer on 03/01/01; Act will have immediate effective date; conforming amendments in Agreement have an effective date of July 1, 2002.	Johnnie Burton/Dan Noble 307-777-5287	

Constitutional Restrictions on State Authority to Impose Sales and Use Taxes

Commerce and Due Process Clauses

The authority of the states to impose sales and use taxes is limited by the U. S. Constitution. The Commerce Clause of Article I and the Due Process Clause of the 14th Amendment are the principal constitutional challenges to these taxes.[1] These two provisions directly impact the ability of the states to tax nonresidents and interstate commerce. Both provisions require a sufficient connection between the state and the taxpayer it seeks to tax or the seller on which the state seeks to impose a responsibility to collect a use tax in order for the tax to be upheld.

Under the Commerce Clause, Congress has sole authority to regulate commerce with foreign nations, among the states, and with the Indian tribes. Accordingly, the Commerce Clause prevents the states from interfering with or unduly burdening interstate commerce through the use of its taxing authority. The Supreme Court's interpretation of this restriction (the Complete Auto test) provides that a state tax does not unduly burden interstate commerce if it is applied to an activity with a substantial connection or "nexus" with the taxing state, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to services provided by the state.[2]

Under the Due Process Clause, states may not deprive any person of life, liberty, or property without due process of law. This restriction limits the territorial reach of the states' taxing authority to persons, property, and business transactions within their jurisdictions. The Supreme Court's interpretation of this restriction requires some definite link, some minimum connection or "nexus," between a state and the person, property, or transaction it seeks to tax.[3]

Considerable case law has evolved addressing the differing constitutional requirements. Two Supreme Court cases are particularly relevant to the discussion of the Commerce Clause and Due Process Clause challenges to state imposition of use tax collection the responsibility on out-of-state sellers. These two cases, National Bellas Hess v. Department of Revenue of

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[1]Commerce Clause, Sec. 8, Cl. 3, Art. I and Due Process Clause, Sec. 1, amend. XIV. Additional constitutional restraints on state taxation include the Import-Export Clause that prevents states from imposing duties on imports or exports without congressional consent; the Privileges and Immunities Clause that prevents states from imposing greater burdens on nonresidents than on residents; the Supremacy Clause that prevents state taxing statutes from contravening federal laws, regulations, or treaties; the First Amendment that prevents states from discriminating against free speech or freedom of religion; and the Equal Protection Clause of the 14th Amendment that prevents states from making unfair classifications.

[2]Complete Auto Transit Inc. v. Brady, 430 U.S. 274 (1977).

[3]Miller Brothers Co. v. Maryland, 347 U.S. 347 (1954).

Illinois , 386 U.S. 753 (1967), and, more recently, Quill Corp. v. North Dakota, 504 U.S. 298 (1992), address the "nexus" requirements for taxation of interstate transactions.

National Bellas Hess Addresses Nexus Standards for Mail-order Sellers

The National Bellas Hess company was a mail-order house with its principal place of business in Missouri. It had neither outlets (nor any tangible property, real or personal) in Illinois nor sales representatives physically located there to sell or take orders. Twice-a-year catalogs were mailed to the company's customers throughout the United States, including Illinois. Customers mailed orders for the goods to the National Bellas Hess plant in Missouri. The ordered goods were then sent to the customers either by mail or common carrier.

The State of Illinois obtained a judgment from its highest court requiring National Bellas Hess to collect and pay to the state a use tax imposed upon its consumers who purchased goods for use within Illinois. National Bellas Hess argued that imposition of the responsibility to collect a use tax collection violated the Due Process Clause and created an unconstitutional burden upon interstate commerce.

The Supreme Court reversed the ruling of Illinois' highest court, noting, first, that National Bellas Hess' two constitutional challenges were closely related. According to the Court, the test for whether a particular state tax invades the exclusive authority of Congress to regulate commerce among the states and the test for a state's compliance with the requirements of due process in this area are similar. The Court pointed to its previous holding that state taxation falling on interstate commerce can only be justified to bear a fair share of the cost of the local government whose protection it enjoys.

In determining whether a state tax falls within the confines of the Due Process Clause, the Court noted its previous holding that the controlling question is whether the state has given anything for which it can ask a return. According to the Court, the same principles had been held applicable in determining the power of a state to impose the burdens of collecting use taxes upon interstate sales. There, too, the Court noted, the Constitution requires some definite link, some minimum connection, between a state and the person, property, or transaction it seeks to tax.[4]

[4]There was no question of the connection or link between the State and the person it sought to tax, i.e. Illinois residents who used the goods purchased from National Bellas Hess. Although National Bellas Hess was not the person being directly taxed (but rather it was asked to collect the tax from the user),

The Court then noted that in applying these principles it had upheld the power of a state to impose liability upon an out-of-state seller to collect a local use tax in many circumstances, but it had never upheld the power to impose this duty upon a seller whose only connection with customers in the state was by common carrier or the U.S. mail. The Court refused to repudiate here the distinction it had previously drawn between mail order sellers with retail outlets, solicitors, or property within a state and those sellers who do no more than communicate with customers in the state by mail or common carrier. Accordingly, the Court concluded that imposition on National Bellas Hess of the responsibility for use tax collecting a use tax, in fact, unconstitutional on both grounds.

Quill Draws Distinction Between Due Process Clause and Commerce Clause Requirements

In Quill v. North Dakota, the Court reviewed its earlier decision in National Bellas Hess. The Court used this opportunity to draw a clearer distinction between the Due Process Clause and Commerce Clause nexus requirements.

The Quill Corporation was a mail order house with offices and warehouse in Illinois, California, and Georgia. It had neither outlets nor tangible property in North Dakota, nor did any of its employees work or reside there. Quill sold office equipment and supplies through catalogs and flyers, advertisements in national periodicals, and telephone calls. Its annual national sales exceeded $200 million of which almost $1 million was made from about 3,000 customers in North Dakota. Quill delivered all of its merchandise to its North Dakota customers by mail or by common carrier from its out-of-state locations.

Quill took the position that North Dakota did not have the power to compel it to collect a use tax from its North Dakota customers. A North Dakota trial court agreed with Quill finding the case indistinguishable from the Supreme Court's decision in National Bellas Hess.

North Dakota's highest court reversed the trial court, concluding that wholesale changes in both the economy and the law made it inappropriate to follow the National Bellas Hess decision. The principal economic change noted by the court was the remarkable growth of the mail-order business from a relatively inconsequential market in 1967 to a "goliath" with annual sales that reached $183.3 billion in 1989. Equally important in the court's view were changes it perceived in the legal landscape. The court maintained that the Supreme Court's subsequent four-part

it was, however, made directly liable for the payment of the tax whether collected or not. Ill. Rev. Stat. C. 120, sec. 439.8 (1965).

Commerce Clause analysis (the Complete Auto test) indicated that the Commerce Clause no longer mandated the sort of physical presence nexus suggested in National Bellas Hess. The North Dakota court further concluded that the Due Process requirement of a minimum connection to establish nexus was no longer a separate requirement but was encompassed within the Complete Auto test. According to the court, the relevant inquiry was whether the state had provided some protection, opportunities, or benefit from which it could expect a return. With regard to the case at hand, the court emphasized that North Dakota had created an economic climate that fostered demand for Quill's products, maintained a legal infrastructure that protected that market, and disposed of 24 tons of catalogs and flyers mailed by Quill each year into the state.

The U.S. Supreme Court reversed the ruling of North Dakota's highest court. The Court agreed with the North Dakota court's conclusion that the Due Process Clause did not bar enforcement of that state's use tax against Quill. The Court concluded, however, that the state's enforcement of the use tax against Quill placed an unconstitutional burden on interstate commerce. The Court noted that although it had not always been precise in distinguishing between the two, the Due Process Clause and Commerce Clause reflect different constitutional concerns and are analytically distinct.

The Supreme Court agreed with the North Dakota court that nexus is not synonymous with physical presence for due process purposes and overruled its previous holdings to that effect. The Court noted that its due process jurisprudence had evolved substantially in the 25 years since National Bellas Hess and that the relevant inquiry was whether a defendant had minimum contacts with a jurisdiction such that maintenance of the suit did not offend traditional notions of fair play and substantial justice. The Court concluded that Quill's widespread and continuous solicitation in North Dakota made the magnitude of its contacts more than sufficient for due process purposes.

In contrast, the Court upheld its previous holding in National Bellas Hess to the extent that it required physical presence in the Commerce Clause context. The Court first concluded that its decision in National Bellas Hess is not inconsistent with Complete Auto and other recent cases. The Court noted that under Complete Auto's four-part test, a tax will be sustained against a Commerce Clause challenge so long as the tax is applied to an activity with a substantial nexus with the taxing state, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the state. According to the Court, National Bellas

Hess concerns the first of these tests and stands for the proposition that a vendor whose only contacts with the taxing state are by mail or common carrier lacks the "substantial nexus" required by the Commerce Clause. Using this bright-line, physical presence, rule the Court then concluded that the imposition of the responsibility to collect the use on Quill placed an unconstitutional burden on interstate commerce.

After concluding its decision on the case, the Supreme Court noted in Quill that Congress may not only be better qualified to resolve the underlying issue in the case, but also is the one with the ultimate power to do so. The Court stated that no matter how it evaluated the burdens that use taxes impose on interstate commerce, Congress remains free to disagree. The Court further noted that in recent years, Congress had in fact considered legislation that would legislatively overrule the National Bellas Hess decision. The Court surmised that Congress' decision not to take action in that direction may have been dictated by its holding in National Bellas Hess that the Due Process Clause prohibits states from imposing such use tax collection responsibilities.[5] The Court noted that since the Quill decision overruled that aspect of National Bellas Hess, Congress, with the sole authority to regulate commerce among the states, could freely decide whether, when, and to what extent the states could burden interstate mail-order concerns with a duty to collect use taxes.

National Geographic Holds That Nexus Need Not Relate to Taxed Activity

The Supreme Court, in ruling on the National Geographic Society case, held that the activity or physical presence that established a company's nexus did not have to be related to the taxed activity.[6] National Geographic Society's mail-order office that made merchandise sales to customers in California was separate from the Society's magazine sales and advertising office that maintained offices in the state. The Court held that the maintenance of the two magazine sales offices in California with advertising copy in the range of $1 million annually adequately established a relationship of nexus between the Society and the State of California. This connection was sufficient for California to require National Geographic to collect the California use tax. In so holding, the Court rejected the Society's argument that there must be a relationship between the taxed activity and the seller's activity within the state.

[5] While Congress has plenary power to regulate commerce among the states and thus may authorize state actions that burden interstate commerce, it does not similarly have the power to authorize violations of the Due Process Clause.

[6] National Geographic Society v. State Board of Equalization, 430 U.S. 551 (1977).

State Court Holds Deminimis Contact Insufficient to Establish Nexus

While National Geographic held that the activity that established the company's nexus did not have to relate to the taxed activity, a state court has ruled on circumstances that do not constitute sufficient nexus. For example, the Connecticut Supreme Court ruled that insignificant property in a state does not necessarily establish nexus. Cally Curtis, a California firm, rented film to customers in Connecticut for a 3-day preview period before purchase. The court ruled that the presence of film for the preview period was de minimis contact and insufficient to support a nexus relationship between Cally Curtis and Connecticut.[7] The U.S. Supreme Court declined review of this case.[8]

Dual Entity Arrangements

Several cases have examined the use of dual entity arrangements and whether nexus can be imputed to a vendor that does not appear to have sufficient nexus to support a state sales and use tax collection responsibility because of its affiliation, through a parent-subsidiary or brother-sister relationship, with another vendor that does have nexus with the state. The issue has generally turned on whether the two affiliated companies are separate and distinct entities and whether the affiliated company that has sufficient nexus with the state has acted as an agent for the company that does not have nexus. Two case examples follow.

In SFA Folio Collections, Inc. v. Bannon, 217 Conn. 220 (1991), Saks and Company, a New York Corporation, owned both Folio, a New York Corporation whose mail-order business sold to Connecticut customers but had no physical presence in that state, and Saks-Stamford, a separate corporation operating a retail store in Connecticut. The Connecticut Supreme Court rejected the argument of Connecticut's Revenue Commission that because these separate entities were linked by their common parent, Saks and Company, their separate existence should be disregarded and that they should be treated as one enterprise for the purpose of establishing nexus. The Connecticut court noted that the commissioner's argument demonstrated a misunderstanding of a fundamental principle underlying our system of taxation, which is that taxpayers may arrange their affairs to minimize their tax liabilities. According to the court, this included careful planning of both transactions and corporate structure. The Supreme Court declined review of this case.[9]

[7] Cally Curtis Co. v. Groppo, 214 Conn 292 (1990).

[8] Writ of certiorari denied, Commissioner of Revenue Services v. Cally Curtis Co., 498 U.S. 824 (1990).

[9] Writ of certiorari denied, Commissioner of Revenue Services v.SFA Folio Collections, 501 U.S. 1223 (1991).

Similarly, in Bloomingdale's v. Department of Revenue, 527 Pa. 347 (1991), the Pennsylvania Court found that there was not sufficient nexus between an out-of-state mail-order company, Bloomingdale's By Mail, which did mail-order business in the state but had no physical presence there, even though its parent company, Bloomingdale's, did own and operate retail stores in the state. In that case, the Department of Revenue argued that Bloomingdale's By Mail's separate corporate existence from Bloomingdale's department stores was a mere legal formality. The court pointed to previous court holdings of a parent/subsidiary relationship with nothing more would not justify disregarding the separate corporate identity. According to the court, the issue turned on whether the Bloomingdale's department stores had acted as an agent or representative for Bloomingdale's By Mail.[10] The Pennsylvania court concluded though that the revenue department had not established the existence of an agency relationship between Bloomingdale's department stores and Bloomingdale's By Mail. The Supreme Court declined review of this case.[11]

[10] In response to the Department of Revenue's argument that catalog purchasers had been allowed to return merchandise directly to the local department store, the court found that such returns appeared to be "an aberration from normal practice," so it did not reach a conclusion as to whether nexus could have been established if such returns had been a regular practice.

[11] Writ of certiorari denied, Pennsylvania Department of Revenue v. Bloomingdale's By Mail, 504 U.S. 955 (1992).

WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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DATE: January 19, 2000

TO: SENATOR ROBERT JAUCH AND REPRESENTATIVE DAVID HUTCHISON, COCHAIRPERSONS, JOINT COMMITTEE ON INFORMATION POLICY

FROM: John Stolzenberg, Staff Scientist, and Dan Schmidt, Analyst

SUBJECT: State and Federal Requirements for Contributions by Commercial Mobile Radio Service Providers to the State Universal Service Fund

This memorandum provides background information on state and federal requirements relating to whether commercial mobile radio service (CMRS) providers are required to contribute to the state universal service fund (USF). Senator Jauch requested this information to assist in your review of Clearinghouse Rule 99-19. This rule relates to the provision of universal telecommunications service and administration of the USF. It was submitted to the Legislature by the Public Service Commission (PSC) and is presently being reviewed by the Joint Committee on Information Policy.

As used in the Wisconsin statutes, a "telecommunications provider" is any person who provides telecommunications services. [s. 196.01 (8p), Stats.] A "CMRS provider" is a telecommunications provider that is authorized by the Federal Communications Commission (FCC) to provide "commercial mobile service," as defined in 47 U.S.C. s. 332 (d). [See s. 196.01 (2g) and (2i), Stats.] "Commercial mobile service" includes cellular phone service and wireless personal communication service.[1]

Under current PSC rules in ch. PSC 160, CMRS providers are not required to contribute to the state USF. Clearinghouse Rule 99-19 continues that policy and does not require these providers to contribute to the USF.

1. State statutes have previously used other terms to refer to providers of cellular telecommunications service. The United States Code refers to a "commercial mobile serve provider," which substantively has the same meaning as the state "CMRS provider." To simplify this memorandum, the memorandum will only use the current state terminology "CMRS provider."

The remainder of this memorandum is divided into the following sections:

a. State statutes.

b. Federal statutes.

c. FCC interpretations.

d. Relevant case law.

e. Current PSC rules and Clearinghouse Rule 99-19.

A. STATE STATUTES

1. Section 196.218, USF

The state USF was created as part of the Legislature's major revision of the regulation of the telecommunications industry in 1993 Wisconsin Act 496. In general, the PSC must require all telecommunications providers to contribute to the USF beginning on January 1, 1996. [s. 196.218 (3) (a) 1., Stats.] Section 196.218 (3), Stats., provides two exceptions to this contribution requirement. One exception authorizes the PSC to exempt from part or all of the required contributions telecommunications providers who have small gross operating revenues from the provision of intrastate telecommunications services in Wisconsin and have provided the services for a period specified by the PSC, not to exceed five years. [s. 196.218 (3) (b), Stats.] Under the second exception, the PSC may exempt a telecommunications provider from part or all of the required contributions if the PSC determines that requiring the contributions would not be in the public interest. [s. 196.218 (3) (b), Stats.]

2. Section 196.202, Stats., CMRS Providers Exemption

In addition to creating the USF, 1993 Wisconsin Act 496 also addressed the state regulation of CMRS providers. Act 496 exempted CMRS providers from utility securities law (now ch. 200) and repealed the condition and mechanism by which these providers could become subject to s. 196.203 and, thus, be regulated by the PSC as an alternative telecommunications utility.

Act 496 also established that these providers would not be subject to ch. 196 (i.e., regulation by the PSC) with one exception relating to USF contributions and related data requests. Current law sets forth these exemptions and the exception to the exemptions as follows:

> A commercial mobile radio service provider is not subject to ch. 200 or this chapter [ch. 196], except a commercial mobile radio service provider is subject to s. 196.218 (3) [relating to USF required contributions] ***to the extent not preempted by federal law***. If the application to s. 196.218 (3) to the commercial mobile radio

> service provider is not preempted, a commercial mobile radio service provider shall respond, subject to the protection of the commercial mobile radio service provider's competitive information, to all reasonable requests for information about its operations in the state from the commission necessary to administer the universal service fund. [s. 196.202 (2), Stats. (emphasis added).]

B. FEDERAL STATUTES

Proponents and opponents of a state requiring contributions from CMRS providers to a state USF cite three U.S. Code provisions in interpreting whether federal law preempts or allows these contributions. These provisions are given below.

1. 47 U.S.C. s. 332, Mobile Services

In 1993, the U.S. Congress amended the Communications Act of 1934 in order to limit states' authority to regulate specific elements of the wireless telecommunications industry. As amended at that time, 47 U.S.C. s. 332 (c) (3) (A) provides, in relevant part, the following:

> Notwithstanding sections 2(b) and 221(b) [47 U.S.C. ss. 152 (b) and 221 (b)], no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates . . . . [47 U.S.C. s. 332 (c) (3) (A).]

2. 47 U.S.C. s. 253, Removal of Barriers to Entry

The Telecommunications Act of 1996 created the following provision relating to state requirements for universal service:

> (b) State regulatory authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 [47 U.S.C. s. 254], requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. [47 U.S.C. s. 253 (b).]

3. 47 U.S.C. s. 254, Universal Service

Congress also included in the Telecommunications Act of 1996 47 U.S.C. s. 254 (f), relating to states' authority to collect state universal service support fees. Section 254 (f) states:

> (f) State authority. A State may adopt regulations not inconsistent with the Commission's [FCC's] rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms. [47 U.S.C. s. 254 (f).]

C. FCC INTERPRETATIONS

The FCC became involved in the question of whether a state may require a CMRS provider to contribute to its USF when the FCC offered an interpretation of the relevant statutes in a 1997 order on universal service. In this interpretation, the FCC concluded that states may require wireless telecommunications service providers to contribute to state universal service support mechanisms. [See FCC 97-157, *Report and Order in CC Docket No. 96-45*, paragraph 791 (May 8, 1997).] The FCC concluded that 47 U.S.C. s. 254 (f) prohibited state regulation of CMRS provider market entry or rates, not "equitable and nondiscriminatory" state universal service support mechanisms. In addition, the FCC noted that it rejected the CMRS providers' argument that the portion of the second sentence in s. 332 (c) (3) (A) in parentheses indicated that CMRS providers were exempt from anything but state entry or rate regulation.

After the first order was published, the FCC received several legal challenges to its interpretation (see Section D, "*Relevant Case Law*," below) and CMRS providers formally requested that the FCC reconsider its position on the state assessments. The FCC responded to the requests for reconsideration in another order by citing the same interpretation of the federal statutes as was in the original order and again rejecting the CMRS providers' claims that 47 U.S.C. s. 254 (f) (47) conflicts with 47 U.S.C. s. 332 (c) (3) (A). [See FCC 97-420, *Fourth Order on Reconsideration in CC Docket No. 96-45*, paragraph 299 (December 30, 1997).]

D. RELEVANT CASE LAW

Three recent federal appeals courts' decisions are specifically relevant to the issues surrounding state universal service assessment of CMRS providers. The cases are *Sprint Spectrum, L.P., et al. v. State Corporation Commission of the State of Kansas, et al.*, 149 F.3d 1058 (10th Cir. 1998), also referred to as *Sprint*; *Cellular Telecommunications Industry Association, et al. v. Federal Communications Commission*, 168 F.3d 1332 (D.C. Cir. 1999), also referred to as

Cellular; and *Texas Office of Public Utility Counsel, et al. v. Federal Communications Commission*, 183 F.3d 393 (5th Cir. 1999), also referred to as *Texas*.

1. Sprint Spectrum, L.P., et al. v. State Corporation Commission of the State of Kansas, et al.

In *Sprint*, the Federal Appeals Court for the Tenth Circuit reviewed the general question of whether the State of Kansas may assess CMRS providers for universal service support. Specifically, the court dealt with the question of whether 47 U.S.C. s. 254 (f) conflicts with 47 U.S.C. s. 332 (c) (3) (A). The CMRS providers argued that the second sentence in 47 U.S.C. s. 332 (c) (3) (A), cited above in Section B, creates a specific exemption for mobile services.

According to the plaintiffs' primary argument, the parenthetical language within the sentence identifies the only condition under which such assessments may be made--when commercial mobile services are a substitute for land-line service for a substantial portion of a state.

The court found that the scope of the second sentence of 47 U.S.C. s. 332 (c) (3) (A) is limited to that subparagraph and therefore it is not affected by and does not limit 47 U.S.C. s. 254 (f). The court also found that 47 U.S.C. s. 332 (c) (3) (A) has no relevance to 47 U.S.C. s. 254 (f) because s. 254 does not impose any rate regulation. The court affirmed the district court's decision to deny a preliminary injunction.

2. Cellular Telecommunications Industry Association, et al. v. Federal Communications Commission

In *Cellular*, the Federal Appeals Court for the District of Columbia considered a petition for review of the FCC's universal service order. The CMRS providers challenged the validity of the FCC's interpretation on whether states may assess such providers for universal service support. The CMRS providers argued that the FCC had incorrectly interpreted the relationship between 47 U.S.C. s. 254 (f) and 47 U.S.C. s. 332 (c) (3) (A). [See FCC 97-157, *op. cit.*] The FCC argued that the plaintiffs were interpreting 47 U.S.C. s. 332 (c) (3) (A) incorrectly by not viewing the second sentence of the statute in the context of the rest of the subsection.

The court found in favor of the FCC and noted that, in the court's opinion, one provision does not control the other and that 47 U.S.C. s. 254 (f) and 47 U.S.C. s. 332 (c) (3) (A) are not in conflict, but rather in harmony with one another. The court denied the plaintiffs' petitions for review.

3. Texas Office of Public Utility Counsel, et al. v. Federal Communications Commission

In *Texas*, the Federal Appeals Court for the Fifth Circuit addressed the issue of state universal service support assessments in a petition for review of the final universal service order of the FCC. Again, the CMRS providers challenged the FCC's interpretation of 47 U.S.C. s. 254 (f) and 47 U.S.C. s. 332 (c) (3) (A) as presented in the original universal service order. [See FCC 97-157, *op. cit.*] The court noted that the CMRS providers argued that "Congress has

spoken to the precise question at issue," and "therefore, the FCC's interpretation deserves no deference."

Although in disagreement with the precise manner in which the *Sprint* court came to its conclusion, the Federal Appeals Court for the Fifth Circuit came to a similar conclusion. The court found that the FCC's interpretation, as represented by the original universal service order, was an accurate reading of the relationship between 47 U.S.C. s. 254 (f) and 47 U.S.C. s. 332 (c) (3) (A) and rejected the interpretation offered by the CMRS providers. In rejecting the CMRS providers' challenge to the FCC interpretation, the court noted:

> The FCC's reading reflects Congress's unambiguous intent as expressed in the plain language of the statute and takes into account Congress's instruction that s. 254 be construed in ways that do not conflict with other federal laws.

On December 23, 1999, Celpage, Inc., and other CMRS providers that were parties to the Fifth Circuit case, requested that the U.S. Supreme Court review the decision of the Appeals Court for the Fifth Circuit to uphold the FCC's interpretation of 47 U.S.C. s. 332 (c) (3) (A). The Supreme Court has not yet indicated if it will grant such a review.

E. CURRENT PSC RULES AND CLEARINGHOUSE RULE 99-19

The PSC's original rules on the USF are set forth in ch. PSC 160, Wis. Adm. Code. These rules became effective May 1, 1996, a date prior to the enactment of the Federal Telecommunications Act of 1996. The original rule contains a provision, s. PSC 160.18 (1) (b), that addresses the assessment of CMRS providers for the USF. Clearinghouse Rule 99-19 changes the terminology used in par. (b) but not the substance of par. (b). As amended by Clearinghouse Rule 99-19, s. PSC 160.18 (1) (b) reads:

> (b) Commercial mobile radio service providers shall be assessed only if the commission determines after hearing that market information regarding the commercial mobile radio service area indicates that commercial mobile radio services are a substitute for land-line telecommunications exchange service for a substantial portion of the communications in this state pursuant to 47 USC 322(c)(3). [s. PSC 160.18 (1) (b), as amended by Clearinghouse Rule 99-19.]

In addition, the analysis accompanying Clearinghouse Rule 99-19 states that "The Commission considered but did not make changes that would have made wireless providers immediately subject to universal service fund assessments."

If you have any questions regarding this memorandum, please feel free to contact either of us at the Legislative Council Staff offices.

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CRS Report for Congress

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Electronic Commerce: An Introduction

Glenn McLoughlin
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Resources, Science, and Industry Division

Summary

Electronic commercial transactions over the Internet, or "e-commerce," have grown so fast over the last five years that many experts continue to underestimate its growth and development. Whether retail business-to-customer or business-to-business transactions, e-commerce shows no signs of slowing down. In turn, policymakers both in the United States and abroad are likely to face increasingly complex issues of security, privacy, taxation, infrastructure development and other issues in 2000 and beyond. This report will be updated periodically.

The Internet and E-Commerce[1]

The convergence of computer and telecommunications technologies has revolutionized how we get, store, retrieve, and share information. Many contend that this convergence has created the Information Economy, driven by the Internet, and fueled a surge in U.S. productivity and economic growth. Commercial transactions on the Internet, whether retail business-to-customer or business-to-business, are commonly called electronic commerce, or "e-commerce."

In 1995, it was estimated that between 1 and 2 million people in the United States used the Internet for some form of commercial transaction. By the next year, Internet traffic, including e-commerce, was doubling every 100 days. By mid-1997, the U.S. Department of Commerce reported that just over 4 million people were using e-commerce; by the end of 1997, that figure had grown to over 10 million users. The rate of e-commerce growth continues so rapidly that projections often are outdated as fast as they are published. One 1998 industry estimate projected that U.S. retail transactions would reach $7 billion by 2000 — a figure now widely accepted as having been reached in *the year the report came out.* Still, reliable industry sources report huge jumps in e-commerce transactions, particularly during fourth quarter holiday shopping. U.S. retail e-commerce

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[1] For statistics and other data on e-commerce, sources include: [http://www.idc.com]; [http://www.abcnews.go.com]; [http://www.forrester.com], and [http://www.cs.cmu.edu]. It is important to note that many contend that most measurement of e-commerce are subject to verification.

in the fourth quarter of 1999 may exceed the fourth quarter of 1998 by 40%-60%. Some analysts contend that financial transactions–such as electronic banking and online stock trading–are also fueling a large part of retail e-commerce growth.[2]

One of the fastest growing sectors of e-commerce is business-to-business transactions. The Forrester Group, a private sector consulting firm, estimates that by 2003, that sector of the U.S. economy will reach $1.5 trillion, up from $131 billion in 1999. In the United States, business-to-business transactions between small and medium sized businesses and their suppliers is rapidly growing, as many of these firms begin to use Internet connections for supply chain management, after-sales support, and payments.

Internationally, there are issues regarding Internet use and e-commerce growth. While the western industrialized nations dominate Internet development and use, by the year 2003 more than half of the material posted on the Internet will be in a language other than English. This has large ramifications for e-commerce and ease of transactions, security, and privacy issues. Policymakers, industry leaders, academicians, and others are concerned that this development will not correlate with equal access to the Internet for many in developing nations — therefore creating a global "digital divide." The United States and Canada represent the largest percentage of Internet users, at 56.6%. Europe follows with 23.4%. At the end of 1999, of approximately 180 million Internet users worldwide, only 3.1% are in Latin America, 0.5% are in the Middle East, and 0.6% are in Africa. The Asian Pacific region has 15.8% of all Internet users; but its rate of growth of Internet use is nearly twice as fast as the United States and Canada.

U.S. Perspectives

The Clinton Administration: Policies and Principles.[3] The Clinton Administration's approach to e-commerce was laid out in a 1994 speech by Vice President Gore. In that speech in Buenos Aires, the Vice President announced that the United States would pursue the development of a global network of networks that he called the Global Information Infrastructure, or GII. He stated that the United States would encourage private investment, promote competition, provide open access, create flexible regulatory environments, and ensure universal service so that the Internet would truly become a global network. According to Vice President Gore, the GII could act as a key for economic growth and increase global trade among nations.

In a subsequent series of reports, the Clinton Administration amplified and expanded upon these principles. In June 1997, the Clinton Administration released a report, "A Framework for Global Electronic Commerce." Building upon the GII, the Administration advocated a wide range of policy prescriptions. These included calling on the World Trade Organization (WTO) to declare the Internet to be a tax-free environment for delivering both goods and services; recommending that no new tax policies should be imposed on Internet commerce; stating that nations develop a "uniform commercial code" for electronic commerce; requesting that intellectual property protection — patents,

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[2] The explosive growth of e-commerce services does not automatically mean that all firms providing these services are profitable; many have yet to turn a profit.

[3] For more on the Clinton Administration policies, programs, and related reports, see: [http://www.whitehouse.gov].

trademarks, and copyrights — be consistent and enforceable; that nations adhere to international agreements to protect the security and privacy of Internet commercial transactions; that governments and businesses cooperate to more fully develop and expand the Internet infrastructure; and when possible, businesses self-regulate e-commerce content.

The Clinton Administration followed this report with the first annual report of the U.S. Government Working Group on Electronic Commerce in December 1998. This report highlighted the domestic and international e-commerce policies and achievements of the Clinton Administration, including summaries of President Clinton's Electronic Commerce Strategy and the major international agreements flowing from this strategy. Among the achievements listed were U.S. agreements with the Netherlands, Japan, France, Ireland, and Korea to remove barriers to e-commerce; and U.S. participation in agreements under the WTO, the European Union (EU), the Asian-Pacific Economic Council, and the Trans-Atlantic Business Dialogue, all of which provide broad policy guidelines to encourage continued e-commerce growth.

The Clinton Administration's "The Emerging Digital Economy" (April 1998) and "The Emerging Digital Economy II" (June 1999) provide overarching views on domestic and global e-commerce. Both reports provide data on the explosive growth of e-commerce, its role in global trade and national Gross Domestic Product (GDP), and contributions that computer and telecommunications technology convergence is making to productivity gains in the United States and worldwide. Both reports also share a central theme of letting the private sector continue to develop e-commerce with minimal government interference and regulation.

These reports underline Administration policy to promote GII principles for e-commerce and subsequent policies calling for government-industry partnerships to promote electronic commerce, create a strong federal encryption policy to protect U.S. commercial interests, establish a national policy for authenticating digital signatures, and promote tax-free Internet e-commerce.

Role of Congress. Since the mid-1990s, Congress also has taken an active interest in the e-commerce issue. Among many issues, Congress has considered legislation to establish federal encryption and electronic signature policies, and in 1998, Congress enacted legislation creating a 3-year moratorium on e-commerce taxation.

Encryption. Encryption is the encoding of electronic messages to transfer important information and data, in which "keys" are needed to unlock or decode the message. Encryption is an important element of e-commerce security, with the issue of who holds the keys at the core of the debate. The 105th Congress considered seven bills addressing national encryption/computer security policy; none was enacted. In the 106th Congress, two bills are being considered, with several congressional committees having significant differences regarding over the legislation. Also, the Clinton Administration has had differences with both congressional policymakers and representatives of U.S. industry over its encryption policy. Initially, the Administration favored a policy in which the federal government would hold keys for all major commercial transactions. However, industry and congressional critics contended that citizens' privacy rights could easily be violated. Currently, the Administration favors a policy in which a "spare key" would be held by a third party "key recovery agent," and not directly held by the federal government. Still,

many critics are uncomfortable with the federal role in having direct access to the "spare key." (See CRS Issue Brief IB96039, *Encryption Technology: Congressional Issues*, by Richard M. Nunno, for more on this issue).

Export Control. In addition, U.S. export control policy makes it easy to export products with key recovery, and difficult to export those products without key recovery. The Clinton Administration's position is that export control is a way in which the federal government can ensure that unfriendly forces do not have encrypted communications or data transmission that the United States cannot recover. Some in U.S. industry contend that this policy is only restricting U.S. trade in electronic goods and services while foreign firms are freer to engage in this trade. In part due to this industry opposition, and because the 106th Congress has not fully supported the Clinton Administration's position on this issue, the Administration announced on January 14, 2000 new export regulations. The proposed rule changes would allow retail encryption commodities and software of any key length to be exported to most countries without a license, with certain qualifications. (See CRS Report RL30273, *Encryption Export Controls,* by Jeanne Grimmett, for more on U.S. encryption export control policy).

Electronic Signatures. Electronic signatures are a means of verifying the identity of a user of a computer system to control access to, or to authorize, a transaction. The main congressional interests in electronic signatures focus on enabling electronic signatures to carry legal weight in place of written signatures, removing the inconsistencies among state policies that some fear may retard the growth of e-commerce, and establishing federal government requirements for use of electronic signatures when filing information electronically. Neither federal law enforcement nor national security agencies oppose these objectives. Most U.S. businesses would like a national electronic signatures standard to further enhance e-commerce. The House and Senate passed electronic signature bills late in the first session of the 106th Congress, and a conference is expected early in 2000. (For more, see CRS Report RS20344, *Electronic Signatures: Technology Development and Legislative Issues,* by Richard M. Nunno).

Taxation.[4] Congress passed the Internet Tax Freedom Act on October 21, 1998, as Titles XI and XII of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (P.L. 105-277, 112 Stat 2681). Among its provisions, the Act imposes a 3-year moratorium on the ability of state and local governments to levy certain taxes on the Internet; it prohibits taxes on Internet access, unless such a tax was generally imposed and actually enforced prior to October 1, 1998; it creates an Advisory Commission on Electronic Commerce (ACEC), which may make recommendations to Congress on e-commerce taxation in the United States and abroad; and it opposes regulatory, tariff, and tax barriers to international e-commerce and asks the President to pursue international agreements to ban them. (See CRS Report 98-509, *Internet Tax Bills in the 105th Congress,* by Nonna A. Noto, for more on this issue).

On December 14-15, 1999, the ACEC met in San Francisco. Among the topics discussed during this meeting was the perceived competitive advantage that online retailers have over traditional retail stores, since online retailers avoid having to collect sales tax.

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[4] The proposed domestic e-commerce tax is different from trade tariffs or duties to related e-commerce transactions.

The Small Business Survival Committee, an industry group which testified before the ACEC, called for a permanent ban on the collection of sales and use taxes for e-commerce. The E-Freedom Coalition, representing several anti-taxation groups, also called for a permanent ban on Internet taxes. However, the National Governors' Association, the National League of Cities, and other state and local government groups have called for a simplified Internet tax plan, contending that a ban on Internet taxes will adversely affect state budgets. The Clinton Administration has backed this proposal. Because of these varying viewpoints, the ACEC could not come to a consensus on an Internet tax policy recommendation. Some contend that the inability of the ACEC to bring different parties to agreement may mean that Congress will seek to extend the moratorium when it expires in October 2001; others state that the lack of consensus may hurt the U.S. in global discussions regarding a common e-commerce tax policy.

Beyond U.S. Policies: the WTO and the EU

While much of the debate on the government's role in e-commerce has focused on domestic issues in the United States, two important players — the WTO and the EU — will likely have an important impact on global e-commerce policy development.

The WTO. The success of the General Agreement on Tariffs and Trade (GATT) in reducing and eliminating many trade barriers led to an increased focus on other issues, such as reducing trade barriers in global service industries and high technology goods, by the WTO (its successor since January 1, 1995). (For more on the WTO, see CRS Report 98-928, *The World Trade Organization: Background and Issues,* by Lenore Sek).

The first WTO Ministerial conference was held in Singapore on December 9-13, 1996. Among the issues considered by the WTO participants was an agreement to reduce trade barriers for information technology goods and services. This issue was considered vital to the development of telecommunications infrastructure–including the Internet–among developing nations. A majority of participants signed an agreement to reduce these barriers. At the second WTO Ministerial conference, held in Geneva on May 18 and 20, 1998, an agreement was reached by the participating trade ministers to direct the WTO General Council to develop a work program on electronic commerce and to report on the progress of the work program, with recommendations, at the next conference. The ministers also agreed that countries continue the practice of not imposing tariffs on electronic transmissions. The third WTO Ministerial meeting in Seattle, December 7 -10, 1999, was marked both by strife in the streets of Seattle and disruption of the conference proceedings. While the General Council reported favorably on maintaining the international e-commerce tax moratorium, no final decision was reached at the conclusion of the Seattle Ministerial. (See CRS Report RS20319, *Telecommunications Services Trade and the WTO Agreement,* by Bernard A. Gelb, and CRS Report RS20387, *The World Trade Organization (WTO) Seattle Ministerial Conference,* by Lenore Sek).

The EU. The EU is very active in e-commerce issues. In some areas there is agreement with U.S. policies, and in some areas there are still tensions. While the EU as an entity represents a sizable portion of global Internet connections, users are concentrated in countries like the United Kingdom and Germany. In France, Italy, and Spain, the rate of Internet connection is reported at less than five percent of the total population. Thus, while EU policies can provide a broad regional context for e-commerce, across national

boundaries, Internet use and e-commerce potential varies widely. The United Kingdom, Ireland, and France have advocated a common set of standards that, they contend, would provide a baseline of government regulation for e-commerce. These countries have opposed a more specific and perhaps restrictive approach across the EU. Germany, Austria, and the Netherlands have advocated extending domestic commercial legislation to e-commerce. Critics contend that this latter approach would ensnare e-commerce in a knot of differing national laws and regulations; supporters state that e-commerce policy should not be set by EU bureaucrats in Brussels.

To address this issue, the EU has approached e-commerce with what one observer has called a "light regulatory touch." On December 7, 1999, the European Commission announced an EU Directive that includes language that governs electronic contracts, the information an e-commerce trader must give to a customer, what advertising e-mails must say about the sender, and limits on the liabilities of intermediaries for unlawful content. The EU also has supported the temporary moratorium on new e-commerce taxes, and supports making the moratorium permanent. But the EU has taken a different approach than U.S. policy for treating electronic transactions under international tariff regimes. The EU favors treating electronic transmissions (including those that deliver electronic goods such as software) as services. This position would allow EU countries more flexibility in imposing trade restrictions, and would allow treating electronic transmissions — including e-commerce — as services, making them subject to EU value-added duties.

The EU also has taken a different approach than the United States to data protection and privacy, key components for strengthening e-commerce security and maintaining consumer confidence. The EU's Data Protection Directive (October 1998) prohibits the transfer of data into and out of the EU, unless the outside country provides sufficient privacy safeguards. The U.S. position has been to permit industry self-regulation of data protection and privacy safeguards. U.S. and EU representatives are negotiating this issue.

Issues

The 106th Congress may address a series of complex questions on e-commerce. They include: how viable is the continuation of the Internet tax moratorium, and can a consensus be reached on an e-commerce tax policy? What are the appropriate roles of government and industry in U.S. policies on encryption, digital signatures, and data storage and protection for e-commerce? What is the best mechanism for achieving standard and consistent e-commerce policies between the United States and other nations? Will the United States, by virtue of its large proportion of Internet use and e-commerce development, try to dominate global e-commerce policy? Internet use erases national boundaries, and the growth of e-commerce on the Internet and the complexity of these issues may mean that domestic and global e-commerce policies become increasingly intertwined.

Anon
E-Commerce

MEMORANDUM

TO: Members of the Executive Committee Task Force on State and Local Taxation of Telecommunications and Electronic Commerce

FROM: Neal Osten and Scott Mackey

DATE: February 18, 2000

SUBJECT: Next Meeting of the Task Force / Business Proposal to ACEC Status Report on Model Legislation

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As we discussed in Tampa, the next meeting of the Task Force will be April 1 and 2, 2000 in Denver, Colorado. The Task Force meeting will take place along with the Spring Meeting of the Assembly on State Issues, which starts on Friday, March 31. The Opening Plenary Session of the ASI Spring Meeting, Saturday morning, will be an opportunity for the Task Force's Co-Chairs, Senator Steve Rauschenberger and Representative Matt Kisber to address your colleagues on the issues surrounding the taxation of Electronic Commerce. You are invited to participate as well.

The preliminary agenda for the Task Force includes:

Saturday, April 1, 1:30 PM - 5:30 PM
Sunday, April 2, 10:00 AM - 2:00 PM

- Update on Advisory Commission's Final Meeting;
- Proposal by Wal-Mart, Sears and the National Retail Federation on Sales Tax Collection;
- Review of state actions with regard to NCSL model legislation and multi-state discussions;
- Continued discussions on Telecommunications tax reform proposals.

Please plan to attend. Housing and travel information are attached.

You may have seen reports in the last week that the business members of the federal Advisory Commission on Electronic Commerce have proposed a "compromise" for the ACEC's consideration. It was anything but a compromise. NCSL through the Task Force's Co-chairs, Senator Steve Rauschenberger and Representative Matt Kisber led the charge against the proposal. The NCSL press release will follow in a separate fax. We have attached our analysis of the industry proposal and the press release issued by state and local government organizations, as well as an overview of a proposal submitted by Governor Leavitt and Governor Locke.

Also attached is the latest information we have about state legislative/executive authorizations for state participation in multi-state discussions on the Streamlined Sales Tax Collections System for the 21st Century.

If you have any questions about the meeting logistics, please contact Graham Williams at 202 624-8683.

We look forward to seeing you April 1 and 2.

Hotel Reservations
A block of rooms has been reserved at the following hotel:

Adams Mark Denver Hotel
1550 Court Place
Denver, Colorado 80202
(303) 893-3333 or (800) 444-2326

Single Rate: $120
Double Rate: $135

Please call the hotel directly to arrange hotel reservations. Indicate that you are attending the NCSL Assembly on State Issues meeting to receive the special room rate. Each person is responsible for contacting the hotel and making arrangements for housing. Reservations must be held by one night's deposit (a major credit card guarantee is acceptable.) NCSL cannot be responsible for guarantees. The deadline for making hotel reservations is **March 1, 2000**. After that date, room requests will be accepted on a space-available basis at the conference rates.

Travel Information

To obtain special air and car rates, call Corporate Travel Services (800) 825-3283, ext. 2. In Colorado or outside the United States, call (303) 694-4344, ext. 2

NCSL Special Discount Airfare
Make your reservations through NCSL's official travel headquarters to receive discounts off United Airlines and Delta regular coach and lowest applicable round-trip airfares to Denver, Colorado. Airline reservations must be made at least 14 days in advance.

Car Rental
NCSL has arranged special car rental discount rates with Hertz and Alamo for meeting participants. These rates include free mileage.

Take a Look at Colorado
The Adam's Mark Hotel is within walking distance of the Denver Art Museum, Colorado History Museum, U.S. Mint, the Colorado State Capitol and many restaurants and shops. For more information on things to do and see in Denver visit www.denver.org. For more information on mountain resorts and skiing visit www.skicolorado.org.

e-commerce *NEWS RELEASE*

FOR IMMEDIATE RELEASE: February 14, 2000

COUNCIL OF STATE GOVERNMENTS
INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION
NATIONAL ASSOCIATION OF COUNTIES
NATIONAL CONFERENCE OF STATE LEGISLATURES
NATIONAL GOVERNORS' ASSOCIATION
NATIONAL LEAGUE OF CITIES
THE U.S. CONFERENCE OF MAYORS

State and Local Govt. Organizations Blast "Loophole Laden" Internet Tax Scheme; Say Corporate Proposal Also Gives Washington Control of Most Taxes & Revenues

WASHINGTON, D.C. – The organizations that represent the leaders of the nation's state and local governments in a joint statement today called a draft proposal from e-commerce industry giants nothing more than a plan to allow large corporations to escape taxation.

The proposal, which originated from e-commerce industry representatives who serve on the federal Advisory Commission on Electronic Commerce (ACEC), would preempt state and local governments' ability to collect sales and use taxes on products and services that are already subject to these taxes. The proposed preemption would seriously affect the tax base in many states and local governments.

"This proposal sets in motion the end of the sales tax system which is the single most important source of revenue in the United States for schools and police and fire protection," said Illinois Senator Steven Rauschenberger. Rauschenberger is co–chairman of the National Conference of State Legislatures (NCSL) Task Force on State and Local Taxation of Electronic Commerce.

Representatives of the seven major state and local public interest groups said the proposal flies in the face of principles that the commission agreed to in September including a commitment to respect state sovereignty issues. The proposal creates serious problems for state and local governments because it would:

- Provide new and continued tax benefits to "dot-com" businesses while requiring Main Street retailers to continue to collect taxes on all sales – putting them at a competitive disadvantage;
- Create new loopholes for e-commerce companies to avoid payment of income and property taxes by "affiliating" with companies in non-tax states;
- Eliminate existing sales taxes on items sold in stores today such as books, periodicals, newspapers, software, and compact disks; and
- Give the federal government unprecedented authority over state and local tax systems.

State-Local Organizations Blast "Loophole Laden" Internet Tax Scheme – Page 2

"While this proposal purports to be a compromise, we believe it is fundamentally flawed," said Mayor Bob Knight of Wichita, Kansas, president of the National League of Cities (NLC). "We're more than ready to work with industry to find a solution. But we can't support a plan that gives the federal government control over state and local tax systems and drastically curtails our ability to raise the revenue we need to deliver public services."

"The proposal deeply involves the federal government in selecting winners and losers with regard to paying taxes in the e-commerce economy," said Commissioner C. Vernon Gray of Howard County, Maryland, president of the National Association of Counties (NACo). "At a time when state and local governments are striving for simplicity in their tax codes, it adds enormous new complexity. And most disappointing is the fact that it provides tax shelters to the wealthiest corporations on earth."

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Organization Contacts:

Council of State Governments (CSG): Kristin Cormier (202) 624-5460
International City/County Management Association (ICMA): Mike Lawson (202) 962-3634
National Association of Counties (NACo): Shawn Bullard (202) 942-4212
National Conference of State Legislatures (NCSL): Neal Osten (202) 624-8660
National Governors' Association (NGA): Frank Shafroth (202) 624-5309
National League of Cities (NLC): Cameron Whitman (202) 626-3023
The United States Conference of Mayors (USCM): Larry Jones (202) 861-6709

State and Local Government Review of Business Industry "Compromise"

General

This proposal is exactly what one might expect as a first step. It is not a compromise and does not purport to be a compromise. It poses an unwarranted and unprecedented federal intrusion into the rights of state and local voters and taxpayers to determine their own ways to raise the revenues necessary to meet their needs. It includes specific proposals to undermine and add complexity to state and local tax and revenue systems that are hard to treat as serious. It would involve the federal government deeply in selecting winners and losers in the economy, adding to growing inequities and unlevel playing fields. We're disappointed. State and local leaders have been working to solve the problem, not make it worse. State and local leaders have been working on Internet time to achieve solutions, instead of further, indefinite delays. State and local leaders have been working to radically simplify state and local tax systems, not to add enormous new complexity and tax shelters for some of the most wealthy corporations on earth. State and local leaders have been working together, effectively and successfully, with the telecommunications industry to achieve significant reforms and simplification in wireless and now wired state and local telecommunication tax laws. There can be no justification for setting back or undermining these efforts.

Specific Talking Points

- The corporate proposal would mean fewer and fewer people would pay more and more taxes.
- The corporate proposal would wrest decisions about what activites and transactions to tax from the people at the state and local level and turn those over to the federal government. To an unprecedented degree, this proposal would turn over key control of property, income, and sales taxes and revenues over to the federal government.
- The proposal would create a system whereby the federal government determined winners and losers in our economy instead of letting the market decide.
- The proposal seems almost ingenious in that it provides new tax breaks for each and every corporation that participated in developing it.
- The proposal not only does not solve the problems Congress asked the Commission to address, but rather introduces significant new complexities and indefinite delays to any solution. It is a proposal which does little to guarantee a level playing field, but does much to guarantee years and years of complex litigation. It is a lawyers' and tax lobbyists' dream.
- The proposal would set in motion the end of the sales tax system, the single most important source of revenue in the United States for education and police and fire. It proposes and extraordinary erosion of this critical source of these services without guaranteeing any alternative.

- For any proposal to be serious, it must guarantee that every retailer and small business in American can compete on a level playing field within five years.

- Any compromise must support the substance of the telecommunications industry proposal to encourage state and local governments to work cooperatively with the telecommunications industry to reduce complexity and cost of complying with telecommunications taxes (common definitions, single tax rate, single tax return, etc.).

➢ Any serious proposal must encourage state/business partnerships to simplify sales tax for all taxpayers; reduce or eliminate compliance costs and burdens; and experiment with meaningful voluntary collection systems utilizing a combination of simplification and technology.

- Any serious compromise must get the federal government out of the business of picking winners and losers in our economy, and preempting the rights of our citizens to determine their own state and local taxes.

(1) 5 year extension and preemption of digitized goods and their functionally equivalent good/products and preempt existing and any future Internet access taxes

Digitized Goods

The proposal would impose a 5-year prohibition on taxing sales of "digitized goods/products" and preempt the taxation of "functionally equivalent" goods sold via traditional means should be considered. Such preemption would do substantial damage to the tax base of a number of states.

- Twenty-eight states currently consider downloaded software to be taxable, and 19 states consider downloaded information to be taxable. About 15 states tax a broad category of "electronic information services."
- There is no well-defined category of "digitized" product. The preemption would logically apply to all subscriptions to online data bases and information services, online publications, online photos and movies (including pornographic sites), and a variety of services that produce digitized products (e.g., photo finishing). Certain tangible products (music CDs, software CDs and diskettes) are also digitized products and could presumably be covered by the preemption.
- If taxing "functionally equivalent" tangible products were also preempted, states and localities would lose the ability to tax all sales of newspapers, books, music and software CD's, periodicals, photos, software, movies, cable services, etc.

Internet Access Charges

The proposal calls for a complete, permanent prohibition on transaction taxes (sales, use, gross receipts) on Internet access charges, including in the states grandfathered in the ITFA.

- This would preempt state tax laws in 10 states, including South Dakota, where the sales tax applies to all goods and services, with a resultant revenue loss approaching $50 million per year.
- There has been no showing of administrative difficulty that requires such a preemption, much less disparate treatment from comparable services. As telecommunications, especially telephony, moves to the Internet and the offering of "bundled services" grows, such a prohibition would likely lead to unintended consequences and administrative and compliance issues for companies and states alike.

(2) five-year extension and redefinition of nexus

Sales Tax Nexus Clarifications

The proposal would provide a permanent changes in sales and use tax collection obligations (i.e., nexus) to "clarify" that certain activities would not be considered indicia of physical presence for making nexus determinations. Generally speaking, the "clarifications" create "loopholes" or "planning opportunities" by which a seller can enter into a variety of arrangements with in-state entities (that do have nexus) that enable it to better market its product in the state and still avoid a tax collection obligation, including:

- Affiliates: Prohibiting consideration of the relationship between a seller and an affiliate with presence in the taxing state opens up the potential for an "Internet kiosk" arrangement. The affiliate could establish in-store kiosks through which goods are ordered from the seller and, if the goods were delivered from outside the state, the seller would not be required to collect tax.
- Communications Services: Prohibiting consideration of the use of communications services from an in-state provider with nexus opens up two potential loopholes. It creates an avenue where the telecommunications provider could be acting as the representative of the seller that would create nexus under current law. In addition, it creates opportunities for "resellers" of telecommunications to operate in the state without establishing nexus, thereby avoiding tax obligations.
- Internet Service Provider: Here again, enactment of a restriction such as this (without limits on the terms "use of an [ISP]" would enable a seller to enter into arrangements with an ISP for marketing products while still avoiding a tax collection obligation. The ITFA already contains language similar to this, and any case for expanding the breadth of that provision has not been articulated.

(3) Permanent preemptions with regard to the definitions of nexus for state and local income tax purposes.
Income Tax Nexus Clarifications
The proposal would "clarify" that certain activities (6 are listed) would "not be taken into account" in determining nexus for income tax purposes. As with the sales tax above, these "clarifications" would create opportunities for entities to engage in economic activity in a state without coming within the jurisdiction of the tax laws.

- Affiliates etc.: As with the sales tax, the proposal would prohibit consideration of relationships with an affiliate, use of an ISP, and use of communications services in determining income tax nexus. The effect would be to allow an entity to engage in a range of activities with in-state parties that would, under current law be considered to be nexus creating without incurring any income tax obligations. In addition, it would enable companies to create subsidiaries for certain activities that could also be used to reduce tax exposure.
- Ownership of Intangibles: The proposal would prohibit states from considering the ownership of intangibles in the state as a factor in determining income tax nexus. This is, effectively, an extension of P.L. 86-272, the primary effect of which is to benefit financial service companies. With this restriction in place, a financial service company could make loans, hold accounts receivable, finance purchases, etc. in a state without incurring income tax obligations. In addition, to the extent that a physical presence was considered desirable, it could use an affiliate to perform the services and still avoid liability for much of the income arising from a state.
- Sales Tax Registration. The proposal would provide that a seller's voluntary registration for collection and remittance of sales taxes should not be considered in making a determination of nexus for income tax purposes. This is something states and local governments could support.

(4) encourage state and local development of Model Act
Model Sales and Use Tax Act
The proposal "encourages" states and NCCUSL to develop a model Uniform Sales and Use Tax Act with various uniform provisions. It then provides that any state failing to enact the Uniform Act within 6 months after it were promulgated would be prohibited from taxing some unspecified part of remote sales.

- As a general matter, states are supportive of working with NCCUSL and others to develop greater uniformity and simplifications in sales tax administration. They are concerned, however, regarding the degree to which the "compromise" proposal would mandate adoption of the uniformity proposals and the penalties that would be imposed for failing to adopt.
- There is no mention in the document or listing of provisions in the Uniform Act of any expanded duty to collect tax under the Uniform Act. In other words, the states would have adopted a uniform sales tax and still be stuck with the income tax and sales tax nexus clarifications/preemptions outlined above.
- The timetable for adoption is unrealistic given the monumental nature of the task and the reality of legislative sessions.

NCCUSL is a creature of state governments, and there is no need for "encouragement" from Congress if states desire to go this way. Likewise, there is no need shown for a commission to be formed to report annually on the NCCUSL progress in the undertaking as is proposed.

(5) establishment of new Commission to report to Congress and determination with regard to permanent preemption on collection of remote sales:
The proposal calls for establishment of a new federal commission to monitor and report to Congress on NCCUSL's progress. The new commission would have no deadline, nor any requirement to make a report to Congress to guarantee a level playing field. Rather the new commission would mostly be charged with determining whether the model act met the corporate standards, whether it would result in a level playing field, and whether enactment would impose an unreasonable burden on interstate commerce.

(6) encourage states and local governments to work through NCCUSL to draft a Uniform Telecommunications State and Local Excise Tax Act within three years that met federally set criteria.

(7) elimination of the 3% federal sales tax

The proposal calls for immediate elimination of the federal sales tax. This proposal is not in the President's budget, either the House or Senate GOP tax cut proposals, or the proposed tax plans of any of the Presidential candidates. It would require offsetting cuts in federal entitlement programs like Medicaid or other proposed tax and revenue measures to accommodate.

The problem with eliminating the 3% Federal Excise Tax on telecom is that it is part of the definition of what is (and is not) telephone service for purposes of levying City Utility User Taxes (UUT) in California. So, elimination of the 3% tax will invalidate the telephone portion of many City UUT ordinances in California. The 3% Federal Excise Tax on telecom is also a trigger contained in the California Internet Tax Act (aka AB 1614, 1998). When Internet Access charges are deemed to be subject to the Federal 3% tax, they can be taxed in California as part of the telephone UUT rates. Again, eliminating the 3% tax nukes a key part of our compromise on the California Internet Tax Act.

(8) encourage state and local governments to extend 4-R property tax treatment to all telecommunications infrastructure property

4-R Protections for Telecommunications Property

The proposal calls for extending 4-R Act-like protections to interstate telecommunications property. The effect would be to establish telecommunications companies as a special class of taxpayer with rights not available to others; the impact would likely extend well beyond the property tax area.

- The language of the proposal (at least as we have seen) would allow telecommunications companies to challenge a wide range of state and local taxes that provide preferences to one group or another even though a telecommunications company may not be affected by the preference.
- The proposal would allow telecommunications firms with direct access to federal courts to address tax issues while nearly all other taxpayers are required to seek redress in state courts. This is disruptive of state and local revenue flows and consistency in the application of state tax policy.
- The proposal from the telecommunications industry itself did not seek this sort of preemption. Instead, it recommended that property tax issues be dealt with on a state-by-state basis as part of an overall approach of direct negotiations between the states and telecommunications companies.

(9) model telecommunications state and local tax reform act and sanctions for failure to enact Telecommunications Tax Reform

The proposal suggests that states and localities should work with NCCUSL to develop a Model Uniform State and Local Telecommunications Excise Tax Act meeting certain criteria. Failure to enact the model within a specified timeframe would subject a state to "Federal requirement against discrimination in the taxation of telecommunications services."

- As above, states are supportive of working with NCCUSL and others on uniformity and simplifications. They have, in fact, already initiated an effort with the telecommunications industry to work with certain states to address issues within those states and to develop model legislation.
- The degree to which the contours of the model act are specified here as well as the mandated adoption of the act and/or the nebulous nature of the penalty contained in the proposal are troublesome.

02/10/2000

Locke-Leavitt Compromise Proposal
The Harmonized Plan
Advisory Commission on Electronic Commerce

Confidential-Draft

Elements of the Harmonized Proposal:

- Extend the existing moratorium on Internet access taxation, new taxes, discriminatory and multiple taxation.

- Recommend a Tariff-free Internet: Encourage the federal government to continue its pursuit of an international moratorium on tariffs on electronic transmissions.

- Telecommunications Simplification: Support the substance of the telecommunications industry proposal. (Encourage state and local governments to work cooperatively with the telecommunications industry to reduce complexity and cost of complying with telecommunications taxes: common definitions, single tax rate, single tax return, etc.)

- Sales Tax Simplification:

  - Draft model legislation – Enlist an organization such as the National Conference of Commissioners on Uniform State Laws to draft model state legislation addressing common definitions, interstate harmonization and uniformity.

  - Encourage state/business partnerships to simplify sales tax for all taxpayers; reduce or eliminate compliance costs and burdens; and experiment with meaningful voluntary collection systems utilizing a combination of simplification and technology.

- Nexus Status Quo: No expanded duty to collect sales taxes and no change in existing obligations to pay (no congressional action on nexus at this time.) Also, pursue uniform state legislation or regulation acknowledging that a voluntary agreement to collect sales taxes does not in and of itself create nexus for other business tax purposes.

- Further Study: Congress should request further empirical research on:

  - Digital Divide: What steps should Congress take to reduce, with the goal of eliminating, the Digital Divide and empowering needy families in rural America and inner cities to participate in the Internet economy?

  - Data that measures the effect e-commerce has on the national economy and on state and local governments.

Status of State Legislation to Enable Multistate Discussions

As of 2-17-00

State	House Action	Senate Action	Administrative/Executive	Possible Action to Come
Alabama				
Alaska	***No Sales Tax***			
Arizona				
Arkansas				***No 2000 Session***
California				
Colorado				
Connecticut				
Delaware	***No Sales Tax***			
D.C				
Florida				
Georgia				
Hawaii				
[illegible]				[illegible]
[illegible]		[illegible]		
Indiana				
Iowa				
[illegible]		[illegible]		
Kentucky				
Louisiana				
Maine				
[illegible]				[illegible]
Massachusetts				
[illegible]			[illegible]	
Minnesota				
[illegible]				[illegible]
Missouri				
Montana	***No Sales Tax***			***No 2000 Session***
Nebraska				
Nevada				***No 2000 Session***
New Hampshire	***No Sales Tax***			
New Jersey				
[illegible]	[illegible]	[illegible]		
New York				
North Carolina				
North Dakota				***No 2000 Session***
[illegible]				[illegible]
[illegible]		[illegible]		
Oregon	***No Sales Tax***			***No 2000 Session***
[illegible]				[illegible]
Puerto Rico				
Rhode Island				
South Carolina				
[illegible]	[illegible]	[illegible]		
[illegible]	[illegible]	[illegible]		

Texas				***No 2000 Session***
Vermont				
Virginia				
Washington				
West Virginia				
Wisconsin				

* Passed Senate Executive Committee, Vote Expected on Senate Floor 2/22 or 2/23

** S 560 Passed the Senate Tax Committee, Moves to Senate Floor

*** HB 2316 Passed House Finance Committee, Moves to House Floor