

- 703 b. As used in this section, the term "confidential taxpayer information" means all
- 704 information that is protected under a member state's laws, regulations and
- 705 privileges and the term "personally identifiable information" means information
- 706 that identifies a person.
- 707
- 708 c. The member states' laws and regulations regarding the collection, use and
- 709 maintenance of confidential taxpayer information remain fully applicable and
- 710 binding. This agreement does not enlarge or limit the member states'
- 711 authority to:
- 712
- 713 1. Conduct audits or other review as provided under this
- 714 agreement and state law.
- 715 2. Provide records pursuant to a member state's Freedom of
- 716 Information Act, disclosure laws or other regulations.
- 717 3. Prevent, consistent with state law, disclosures of confidential
- 718 taxpayer information.
- 719 4. Prevent, consistent with federal law, disclosures or misuse of
- 720 federal return information obtained under a disclosure
- 721 agreement with the Internal Revenue Service.
- 722
- 723 d. The member states agree that a fundamental precept in Model 1 is to
- 724 preserve the privacy of consumers by protecting their anonymity. With very
- 725 limited exceptions, a certified service provider must perform their tax
- 726 calculation, remittance and reporting functions without retaining the personally
- 727 identifiable information of consumers. To preserve the privacy of consumers,
- 728 member states agree that:
- 729
- 730 1. A certified service provider's system must be designed and
- 731 tested to ensure that the fundamental precept of anonymity is
- 732 respected, and that personally identifiable information is only
- 733 used in very limited circumstances when it is absolutely
- 734 necessary.
- 735 2. The collection, retention and disclosure of personally identifiable
- 736 information will be limited to exemption claims by reason of a
- 737 consumer's status or intended use of the goods or services
- 738 purchased.
- 739 3. Certified service providers must provide such technical, physical
- 740 and administrative safeguards so as to protect personally
- 741 identifiable information from unauthorized access and
- 742 disclosure.
- 743 4. This privacy policy is subject to enforcement by member states'
- 744 attorneys general or other appropriate authorities.
- 745 5. When personally identifiable information is retained for limited
- 746 purposes by or on behalf of the member states, in the absence
- 747 of exigent circumstances, individuals should be provided with
- 748 reasonable notification of such retention and should be afforded

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reasonable access to their own data, and a right to correct inaccurately recorded data.

6. If anyone other than a member state seeks to discover personally identifiable information, then, in the absence of exigent circumstances, a reasonable and timely effort should be made to notify the individual of such request.

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**ARTICLE IV
SELLER REGISTRATION**

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400 SELLER PARTICIPATION

- 764 a. In order to simplify the seller registration process, the member states
765 will provide an online registration system that will allow sellers to register in all
766 the member states.
767
- 768 b. By registering the seller agrees to collect and remit sales and use
769 taxes for all taxable sales into the member states. Withdrawal or revocation of
770 a member state shall not relieve a seller of its responsibility to remit taxes
771 previously collected on behalf of the State.
772
- 773 c. In member states where the seller has a physical presence, the seller
774 may be required to provide additional information to complete the registration
775 process or the seller may choose to register directly with those states.
776
- 777 d. The term "physical presence" is used only to determine if a seller may
778 need to provide additional information to complete the registration process.
779 Examples of physical presence are:
780 1. Solicitation in the State by employees, agents, or independent
781 contractors;
782 2. Delivery in company-owned or leased vehicles;
783 3. Performing installation and/or repair of products through
784 employees, agents or independent contractors; or
785 4. Owning or leasing real or personal property in the State.
786
- 787 e. Registration with the central registration system and the collection of sales
788 and use taxes in the member states will not be used as a factor in
789 determining whether the seller has nexus with a State for any tax.
790
- 791 f. Subject to the limitations stated below in this section and the following
792 sections:
793
- 794 1. A State participating in the Streamlined Sales and Use Tax
795 Agreement will provide amnesty for uncollected or unpaid sales
796 and/or use tax to a seller who registers to pay and/or to collect and
797 remit applicable sales and/or use tax on sales made to purchasers
798 in the State in accordance with the terms of the Agreement,
799 provided that the seller was not so registered in that State in the
800 twelve month period preceding the commencement of the State's
801 participation in the Agreement.
802 2. The amnesty will preclude assessment for uncollected or unpaid
803 sales and/or use tax together with penalty or interest for sales

804 made during the period the seller was not registered in the State,
805 provided registration occurs within twelve months of the effective
806 date of the State's participation in the Agreement.

807 3. Amnesty similarly will be provided by any additional State that
808 joins the Agreement after the seller has registered.

809

810 g. The amnesty is not available to a seller with respect to any matter or matters
811 for which the seller received notice of the commencement of an audit and
812 which audit is not yet finally resolved including any related administrative and
813 judicial processes.

814

815 h. The amnesty is not available for sales and/or use taxes already paid or
816 remitted to the State or to taxes collected by the seller.

817

818 i. The amnesty is fully effective absent the seller's fraud or intentional
819 misrepresentation of a material fact as long as the seller continues registration
820 and continues payment and/or collection and remittance of applicable sales
821 and/or use taxes for a period of at least thirty-six months. The statute of
822 limitations applicable to asserting a tax liability is tolled during this thirty-six
823 month period.

824

825 j. The amnesty is applicable only to sales and/or use taxes due from a seller in
826 its capacity as a seller and not to sales and/or use taxes due from a seller in its
827 capacity as a buyer.

828

829 k. A State participating in the Agreement may allow amnesty on terms and
830 conditions more favorable to a seller.

831

832 **402 METHOD OF REMITTANCE**

833

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

836

837 a. MODEL 1 Seller selects a Certified Service Provider (CSP) as
838 an agent to perform all the seller's sales tax functions.

839 b. MODEL 2 Seller selects a Certified Automated System (CAS)
840 to use which calculates the amount of tax due on a transaction.

841 c. MODEL 3 Seller will utilize its own proprietary automated sales
842 tax system that has been certified as a CAS.

843

844 **404 REGISTRATION BY AN AGENT**

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846 A seller may be registered by an agent. Such appointment must be in writing and
847 submitted to a member state if requested by the member state.

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849 **ARTICLE V**
850 **PROVIDER AND SYSTEM CERTIFICATION**

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852
853 **500 CERTIFICATION OF SERVICE PROVIDERS AND AUTOMATED**
854 **SYSTEMS**

- 855
856 a. In order to facilitate the provisions of this Agreement, the member states
857 acting jointly will certify automated systems and service providers to aid in the
858 administration of sale and use tax collections.
859
- 860 b. The member states acting jointly may certify a person as a Certified Service
861 Provider if the person meets all of the following requirements:
862 1. The person used a Certified Automated System.
863 2. The person integrates its Certified Automated system with the
864 system of a seller for whom the person collects tax so that the
865 tax due on a sale is determined at the time of the sale.
866 3. The person agrees to remit the taxes it collects at the time and
867 in the manner specified by the member states.
868 4. The person agrees to file returns on behalf of the sellers for
869 whom it collects tax.
870 5. The person agrees to protect the privacy of tax information it
871 obtains.
872 6. The person enters into a contract with the member states and
873 agrees to comply with the terms of the contract.
874
- 875 c. The member states acting jointly may certify a software program as a
876 Certified Automated System if the member states determine that the program
877 meets all of the following requirements:
878 1. It determines the applicable state and local sales and use tax
879 rate for a transaction, based on the uniform sourcing provision
880 established under the Agreement.
881 2. It determines whether or not an item is exempt from tax.
882 3. It determines the amount of tax to be remitted for each taxpayer
883 for a reporting period.
884 4. It can generate reports and returns as required by the member
885 states.
886 5. It can meet any other requirement set by the member states.
887
- 888 d. The member states acting jointly may establish one or more sales tax
889 performance standards for multistate sellers that meet the eligibility criteria
890 set by the member states and that developed a proprietary system to
891 determine the amount of sales and use tax due on transactions.
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**ARTICLE VI
MONETARY ALLOWANCES FOR PARTICIPATION**

600 MONETARY ALLOWANCES FOR CSPs AND SELLERS

This Article addresses the monetary allowances to be provided by a member state to a CSP in Model 1 or to a seller in Model 2 or Model 3. The significant non-monetary benefits that accrue to all sellers that participate in the Agreement are addressed in other sections. These non-monetary benefits include limitations on the assessment of back taxes, reduced audit scope, uniform returns, and other methods of tax compliance simplification.

602 MONETARY ALLOWANCE UNDER MODEL 1

a. The member states agree to provide a monetary allowance to a CSP in Model 1 in accordance with the terms of the contract the member states sign with the CSP. The details of the monetary allowance cannot be determined except through the contract process. The member states, however, anticipate, an initial monetary allowance to a CSP to be based on both of the following:

1. A percentage of tax revenue generated for a member state by new sellers that voluntarily register with the State through the Agreement's central registration process.
2. A base rate that applies to transactions processed by the CSP.

b. The member states anticipate that they will provide an increased monetary allowance to a CSP for an initial period after the Agreement is implemented so that the CSP can create an incentive for sellers to join the Agreement. The initial period can be the first 12 months after a seller signs an agreement with a CSP to join the Agreement. Under this method, the length of the initial period would be the same for each seller signed by the CSP, but the date the initial period begins would differ based on when the seller signed with the CSP.

604 MONETARY ALLOWANCE UNDER MODELS 2 AND 3

The member states initially anticipate that they will provide a monetary allowance to sellers under Models 2 and 3 based on both of the following:

- a. A percentage of tax revenue generated for a member state by new sellers that voluntarily register with the State through the Agreement's central registration process.
- b. Vendor discounts under state law.

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**ARTICLE VII
STATE ENTRY AND WITHDRAWAL**

700 ENTRY INTO AGREEMENT

Any State may apply to become a party to this Agreement by executing an adopting resolution and specifying the proposed date of entry. The applying State shall agree to abide by all terms, conditions, and requirements of the Agreement, adopt enabling legislation to enter into the Agreement, and provide certification of compliance with the terms of the Agreement along with its adopting resolution. A copy of the adopting resolution and the certification of compliance shall be provided to each member state for the purpose of obtaining the required endorsement.

702 CERTIFICATION OF COMPLIANCE

The certification of compliance shall document compliance with the provisions of this Agreement and cite applicable statutes, regulations, or other authorities supporting such compliance. Each member state shall maintain and make the instrument available for public inspection.

704 INITIAL ADOPTING STATES

This Agreement shall become effective when five (5) states have completed the prescribed adopting resolution. An initial state shall be approved by being found in compliance with the requirements of this Agreement by a vote of three-fourths majority of the other initial states.

706 CONDITIONS FOR MEMBERSHIP

The member states shall vote whether the petitioning state is in compliance to accept its petition for membership. A three-fourths vote of all the member states is required. A State is in "compliance" if its laws, rules or regulations, and policies are consistent with this Agreement and do not substantially deviate from the requirements set forth in this Agreement. Public notice and opportunity for comment will be given before a State is allowed to participate in the Agreement.

708 AGREEMENT ADMINISTRATION

The member states may organize to govern compliance of each State participating in the Agreement and take other actions as may be necessary to administer and implement the provisions contained herein. The member states acting jointly must appoint a business advisory council to consult with in the administration of the Agreement.

984 **710 WITHDRAWAL OF MEMBERSHIP**

985

986 This Agreement shall continue in full force and effect, after its original adoption,
987 as to each State until withdrawn by the proper officials of a State upon thirty days
988 written notice. Such notification shall immediately be sent to the officials of the
989 other member states of the Agreement. However, withdrawal by one State shall
990 not effect the Agreement among other states. Notwithstanding the withdrawal,
991 the obligations incurred by the withdrawing State shall survive the withdrawal
992 during its membership.

993

994 **712 REVOCATION OF MEMBERSHIP**

995

996 Any member state may request a resolution before the member states acting
997 jointly to expel another member state which is not in compliance with the terms of
998 this Agreement. A resolution expelling a member state from the Agreement shall
999 require the affirmative vote of three-fourths of the total member states, excluding
1000 the State that is the subject of the resolution. The member state that is the
1001 subject of the resolution will not be allowed to vote. Failure of a member state to
1002 vote shall be deemed a vote against the resolution of expulsion.

1003

1004 **714 EFFECTIVE DATE**

1005

1006 This Agreement shall become binding and take effect upon the signing of five (5)
1007 states and their respective filing of a Certificate of Compliance reflecting
1008 compliance with the provisions hereof, including citations to applicable statutes,
1009 regulations or other authorities supporting such compliance.

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**ARTICLE VIII
AMENDMENTS AND INTERPRETATIONS**

800 AMENDMENTS TO AGREEMENT

This Agreement may be amended, subject to approval, by three-fourths of the states casting a vote on the amendment; acting through the officials thereof authorized to enter into this Agreement. Any State not casting a vote shall be deemed to have abstained, and such abstention shall not be considered in determining passage or failure of a ballot. Prior to the vote, the member states acting jointly shall give public notice of the proposed amendment and opportunity for public comment.

802 INTERPRETATIONS OF AGREEMENT

Matters involving interpretation of the Agreement may be brought before the member states acting jointly by any member state or any person registered under this Agreement. The member states acting jointly are empowered to issue an interpretation of the Agreement, subject to approval by a majority of the voting states. All interpretations issued under this section shall be published in an appendix to the Agreement with footnotes under the appropriate sections of the Agreement.

1037 **ARTICLE IX**
1038 **RELATIONSHIP OF AGREEMENT TO MEMBER STATES AND PERSONS**

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1040
1041 **900 COOPERATING SOVEREIGNS**

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1043 This Agreement is among individual cooperating sovereigns in furtherance of
1044 their governmental functions. The Agreement provides a mechanism among the
1045 member states to establish and maintain a cooperative, simplified system for the
1046 application and administration of sales and use taxes under the duly adopted law
1047 of each member state.

1048
1049 **902 RELATIONSHIP TO STATE LAW**

1050
1051 No provision of this Agreement in whole or part invalidates or amends any
1052 provision of the law of a member state. Adoption of the Agreement by a member
1053 state does not amend or modify any law of the State. Implementation of any
1054 condition of this Agreement in a member state, whether adopted before, at, or
1055 after membership of a State, must be by the action of the member state. All
1056 member states remain subject to Article VI, State Entry and Withdrawal.

1057
1058 **904 LIMITED BINDING AND BENEFICIAL EFFECT**

1059
1060 This Agreement binds and inures only to the benefit of the member states. No
1061 person is an intended beneficiary of this Agreement.

1062
1063 **906 EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES**

1064
1065 Any benefit to a person is established by the law of the applicable member state
1066 and not by the terms of this Agreement. No state law of any member state, or
1067 the application thereof, may be declared invalid as to any person or circumstance
1068 on the ground that the provision or application is inconsistent with the
1069 Agreement. No person shall have any cause of action or defense under the
1070 Agreement or by virtue of a member state's approval of the Agreement. No
1071 person may challenge, in any action brought under any provision of law, any
1072 action or inaction by any department, agency, or other instrumentality of any
1073 member state, or any political subdivision of a member state on the ground that
1074 the action or inaction is inconsistent with this Agreement

1075
1076 **908 FINAL DETERMINATIONS**

1077
1078 The determinations pertaining to this Agreement that are made by the member
1079 states are final when rendered and are not subject to any protest, appeal, or
1080 review.

APPENDIX A

**STREAMLINED SALES AND USE TAX AGREEMENT
LETTER OF INTENT**

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

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

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

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

NOW, the undersigned representative hereby executes their intent to sign the attached draft of the Streamlined Sales and Use Tax Agreement upon enactment of the Uniform Sales and Use Tax Administration Act.

NAME
TITLE
STATE OF _____



NATIONAL CONFERENCE of STATE LEGISLATURES
The Forum for America's Ideas

Jim Costa
State Senator
California
President, NCSL

Diane Bolender
Director, Legislative Service Bureau
Iowa
Staff Chair, NCSL

William T. Pound
Executive Director

MEMORANDUM

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

FROM: Bill Pound, Neal Osten, Scott Mackey, and Graham Williams

DATE: December 5, 2000

RE: December 12th Task Force hearing on the Streamlined Sales Tax Project

In preparation for the Task Force hearing on the preliminary recommendations of the Streamlined Sales Tax Project, we have included for your review the proposed model bill and the proposed interstate agreement that would implement the Streamlined Sales Tax System in participating states. The Project has met since this draft and made several changes, however, for the most part these are the documents that the public will be commenting on at the hearing. The hearing will begin at 10:00 am in room B-318 of the Rayburn House Office Building and will continue until all the parties have had a chance to testify. Written testimony will be provided to each member of the Task Force on the day of the hearing. This memo is designed to highlight some of the remaining controversial elements of the Project's recommendations.

We want to apologize in advance for the length of this memo. However, when trying to modernize decades of state sales tax codes, numerous complex and controversial issues are bound to arise. It is important that you have a realistic understanding of these controversial issues.

The proposal includes two elements: a short model bill authorizing state participation, granting certain authority to the Department of Revenue, and authorizing state participation in an "interstate agreement" that is really an Interstate Compact. At this stage, this is the type of interstate compact that does not need congressional approval because it does not encroach upon federal powers. Accompanying the short model bill will be an extensive "Streamlined Sales and Use Tax Agreement" that highlights the specific statutory and administrative simplification provisions that states must adopt in order to become a member state. This structure is very similar to the International Fuel Tax Agreement that all states have adopted.

Denver
1560 Broadway, Suite 700
Denver, Colorado 80202
Phone 303.830.2200 Fax 303.863.8003

Washington
444 North Capitol Street, N.W. Suite 515
Washington, D.C. 20001
Phone 202.624.5400 Fax 202.737.1069

Website www.ncsl.org
Email info@ncsl.org

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States have two choices on how to make the statutory changes necessary to participate. One is to pass the model act as a stand-alone bill and then make the statutory changes in a later, separate bill. Another option is to include both the model bill and the statutory changes in a single bill.

Potentially Controversial Provisions. Here is a brief summary of the potentially controversial provisions that will be highlighted in legislative hearings on the proposal.

Local Tax Bases (Section 304, p.7). As prescribed by Section 304 of the agreement, local governments will not be able to pick and choose what items to tax. If a state allows local-option taxes, all localities in that state must have the same tax base. This will preclude home rule cities in some states from determining their own tax bases, but will also eliminate a major headache for businesses trying to comply with the tax. Moreover the Project has called for a uniform state and local base to be phased in no later than December 31, 2005. This could be a major problem in states that allow local governments to tax items that the state may not, such as food or electricity. It should be noted that requiring local and state governments to have the same tax base would, in some states, force legislatures to choose between expanding the base in localities that currently do not tax items (resulting in a tax increase) or narrowing the base in some localities (resulting in revenue losses in some large cities with home rule taxing authority).

Tax Rates (Section 308, p. 8). The agreement would allow local governments to impose local option taxes at rates determined locally or under state law. However, local governments would be prohibited from charging different sales and use tax rates based upon products. For example, a locality could not impose a general sales tax rate of 2.5 percent and charge a lower 1 percent rate on food.

States would have the option of charging rates different from the generally applicable sales and use tax rate until December 31, 2005. However, after then, all items covered by the sales and use tax must be taxed at the same rate. The agreement would also prohibit state or local "single item caps" or exemption based upon the value of the item (clothing under \$100, for example).

Local rate changes could only take effect on the first day of a calendar quarter with 60 days notice. State rate changes could be made anytime, but the agreement encourages states to make them effective on the first day of the calendar quarter with "as much advance notice as is practicable."

Vendor Compensation (Article VI, p. 25). The project is premised on the fact that private software and payment processing companies will have a financial incentive to invest millions of their own dollars in developing the capability to become "Certified Service Providers." These "CSPs" will develop the software to calculate and collect taxes, fill out paperwork on behalf of companies, and serve as "agents" on behalf of companies that do not want to incur the expense of registering with states and filing returns. Making this option available to sellers is critical if states are to offer a "zero burden" system that eventually might lead the courts re-examine the *Quill* decision.

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Given state experiences with failed multi-million dollar computer projects, the project believed that it is less risky for the states to require companies to build the system with investor dollars than with state appropriations. Obviously, companies will only be willing to do this if they believe they can make money.

In Sections 600-604 of the agreement, the project proposes to pay the CSPs in model one through a per transaction fee coupled with a percentage discount for new money (non-nexus volunteers) coming into the system and a front end incentive discount for all retailers who join through an CSP for the first year. Project proposes that model two collectors would receive a percentage of new money (non-nexus volunteers) and/or a percent vendor discount (a slight change from the draft you have). Model 3 sellers who have their own proprietary systems would receive a percentage of new money and existing vendor discounts, if any in each state. The project has recommended that retailers electing to continue to paper file, those in model 4, should not receive any additional compensation than what the states already provide for in vendor discounts.

While states hope that new vendors entering the system will provide new collections to offset the cost of paying vendors compensation for existing retailers that enter the new system, it is possible that there will be a short-term revenue loss. This may be the price states must pay to develop this new system without state appropriations.

A related issue is whether, and how, to pay companies that choose to participate in the new system using their own proprietary systems. Big companies like Sears or Wal-Mart have already developed systems capable of complying with sales tax laws across the country. States want to encourage them to participate in the new system as well, so that as they set up new dot.com subsidiaries they will collect and remit taxes through the simplified system.

The retailers have been states' strongest allies in pushing for a fair, modernized sales tax system. It is critical that compensation be provided to create the incentives for retailers to participate in "jump starting" this new system and to help ensure their support in state legislatures.

Sourcing Rule (Section 310, p. 10). The sourcing rule determines which state and local jurisdictions are legally entitled to the tax revenue from a sale. This issue is frequently raised by critics of the states under hypothetical scenarios of multiple taxation when a purchaser buys something in another state. The project's sourcing rules will use the following hierarchy: 1) over-the-counter sales sourced to location of the seller; 2) sales taxes go to the "ship to" address in remote sales; 3) if the ship to address is not known, revenues will go to the billing address of the purchaser (in a credit card transaction, vendors ask for the billing address to prevent credit card fraud); 4) if the billing address and ship to address are not known, the revenues go to the seller's state.

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Page 4.

The main controversy on sourcing concerns the sales of digitally-delivered products like music, movies, and software. There are concerns that the project will lead sellers to set up servers in tax haven countries or states with no sales taxes. This may be one of those issues where the states do not have a good response to these concerns.

Governing the Agreement (Articles VII, VIII, IX, pp. 26-29). The proposal provides that once a threshold number of states (possibly five) adopt the agreement, these states become the governing authority. Voting authority is designated by the executive branch. New states entering the agreement are admitted by a three-fourths vote of the member states and must certify that the applicant state has achieved substantial compliance with the requirements on the Interstate agreement. Disputes about whether a state is in compliance with the provisions of the agreement are settled by a vote of the member states. Compliance is achieved by a combination of statutory and administrative changes to meet the provisions of the agreement.

The issue of governance is one that our Task Force has not had the opportunity to fully discuss. Some members of the Task Force have expressed concern about possibly giving up some legislative authority to a board of tax commissioners. However, legislatures currently delegate this authority in the International Motor Fuel Tax Agreement. The Task Force should address this issue at its meeting in Savannah.

Current and Future Project Phases. When the project can actually get up and running will depend upon how quickly states join. It is unlikely that any system can actually get up and running until January 1, 2002 and a more likely scenario is late 2002 or even 2003. Therefore, the project expects to continue working on uniform definitions such as tangible personal property (TTP) and digital products, as well as other simplification features that could be added to the system to make it more attractive to retailers and other businesses.

States want to move as quickly as possible to address the concerns of retailers, but we also don't want to rush something in a way that jeopardizes its success. We need to show progress before the Congressional moratorium expires or our argument against federal intervention is weakened.

The Task Force hearing on December 12th will be the only time the public will be able to file comments on the project's recommendations as a whole. The project is expected to meet as early as December 18th to finalize and vote on the group's proposals. The Task Force will not take a position on any recommendations until it meets at the NCSL Executive Committee Meeting, January 26-28, 2001 in Savannah, Ga.



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

Jim Costa
State Senator
California
President, NCSL

MEMORANDUM

Diane Bolender
Director, Legislative Service Bureau
Iowa
Staff Chair, NCSL

TO: All Members of the Task Force on State and Local
Taxation of Telecommunications & Electronic Commerce

William T. Pound
Executive Director

FROM: Rep. Matt Kisber, Tennessee
Sen. Steve Rasuchenberger, Illinois
Task Force Co-Chairs

DATE: December 5, 2000

SUBJECT: Public Hearing - December 12, 2000 - Washington, DC
Task Force Meeting - January 26-27, 2001, - Savannah, GA

This memorandum serves as the call for our next full meeting of the Task Force on State and Local Taxation of Telecommunications and Electronic Commerce, to be held January 26-27, 2001 in Savannah, Georgia. This meeting will be in conjunction with NCSL's Executive Committee meeting. The purpose of the Task Force meeting is to discuss the SSTP's proposed interstate agreement and model legislation. The Task Force also will discuss and vote on a possible resolution that we would forward to the NCSL Executive Committee for their consideration in Savannah.

The Task Force meeting will be held in The Westin Savannah Harbor Resort. Hotel information and reservation form is enclosed and **you need to make your reservations by December 26, 2000.** We also ask that you RSVP to Graham Williams in NCSL's Washington office as to whether you plan to attend the Task Force meeting on January 26-27, 2001 in Savannah.

As you are aware, our Task Force will hold a Public Hearing on the recommendations of the Streamlined Sales Tax Project (SSTP) on Tuesday, December 12, 2000 from 10:00 am to 5:00 pm in Room B-318 of the Rayburn House Office Building in Washington, D.C. The Rayburn House Office Building is located on Independence Avenue, SW, directly across from the United States Capitol.

We are sending with this memorandum a copy of the SSTP's recommendations encompassed in the "Streamlined Sales Tax Agreement" and the model legislation states would need to enact to enter into this interstate agreement. Also included is a memorandum from NCSL staff outlining some of the more controversial issues that you may hear about during the public hearing on December 12, 2000.

Please remember that you have the opportunity to make an opening statement at the public hearing if you wish to do so. We also would encourage you to ask as many questions as you would like during the hearing. Remember that this is the only chance that the public will have to comment on the SSTP recommendations before the 2001 legislative sessions. Copies of the witnesses' testimony will be made available to you for the hearing. We will send copies of the testimony to those members of the Task Force unable to join us on December 12th.

We look forward to your participation next week and your assistance in our deliberation in Savannah next month.

If you are unable to attend the hearing next week, please accept our best wishes for a wonderful and happy holiday season.



**EXECUTIVE COMMITTEE TASK FORCE ON
STATE AND LOCAL TAXATION OF TELECOMMUNICATIONS
AND ELECTRONIC COMMERCE**

**TASK FORCE MEETING
JANUARY 26-27, 2001
SAVANNAH, GEORGIA**

Response Form

NAME: _____

**I will be attending the Task Force Meeting
January 26-27, 2001 in Savannah, GA**

YES / NO

Please fax this completed form to Neal Osten or Graham Williams as soon as possible
@ **202-737-1069**.



THE WESTIN
SAVANNAH HARBOR RESORT
Georgia

Room Reservation Form
FAX to: (912) 201-2059

Group Name: NATIONAL CONFERENCE OF STATE LEGISLATURES

Arrival Date: _____

Departure Date: _____

Please print and fill out completely:

Name: _____

Number of Adults _____ Number of Children _____

Ages of Children _____ Number of Rooms _____

Company: _____

Please enclose your deposit check or credit card information to confirm your reservations.

Address: _____

Credit Card Type: _____

City: _____ State: _____ Zip: _____

Number: _____ Expires _____

Phone Number: _____

Signature: _____

Please Note: **Room rate is \$160.00**** single/double.

Run-of-House rooms are assigned based upon availability at the time of check-in and exclude Suite and Club Room accommodations.

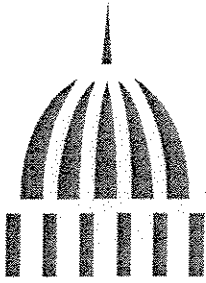
Rollaway beds are available in guest rooms with king beds at \$20.00 each night. May we arrange to have one delivered for you?

Reservations may be made through our Reservations Department Monday-Saturday at (912) 201-2090, or after 7pm and Sunday, 1-800-WESTIN-1.

Non-smoking rooms are based upon availability at check-in. May we request a non-smoking room for you? _____

- Reservations should be made by **12/26/00 12:00:00 AM** in order to qualify for your Preferred Conference rate. After this time, reservations will be accepted on a space available basis.
- The Conference Rate quoted is a preferred rate which has been negotiated especially for your group.
- All rates are subject to state and local sales tax, currently 12%. ****A \$5.00 per room, per night incidental service fee** will be assessed to cover water shuttle transportation, telephone access charges, a morning newspaper, and in room coffee service. Gratuities are not included.
- To avoid an early departure fee of one night's room and tax, please change your departure date no later than the point of check-in.
- If you are unable to keep your reservations, please cancel 72 hours prior to your scheduled arrival to avoid a charge of one night's room and tax.

Check-in time is 3:00 pm. Check-out time is 12:00 noon.



NATIONAL CONFERENCE OF STATE LEGISLATURES

The Forum for America's Ideas

Executive Committee/Legislative Staff Coordinating Committee

January 26-27, 2001

Westin Savannah Harbor Resort – Phone: (912) 201-2000 Fax 201-2001

One Resort Drive - Savannah, Georgia 31421

DRAFT SCHEDULE

Friday, January 26, 2001

- 8:00 am – 12:00 pm** **National Legislative Services and Security Association (NLSSA)**
Executive Board
- 8:00 am – 12:00 pm** **Leadership Staff Section**
Executive Committee meeting
- 12:00 pm – 5:00 pm** **State & Local Taxation of Telecommunications and Electronic Commerce**
Task Force meeting
- 2:00 pm – 5:00 pm** **LSCC Task Forces**
Promoting Professional Development (Jim Greenwalt, Chair)
Promoting State Legislatures (Susan Schaar, Chair)
Promoting NCSL Services to State Legislatures (Steve Watson, Chair)
- 6:00 pm – 7:30 pm** **Opening Reception**

Saturday, January 27, 2001

- 7:00 am & noon** **BREAKFAST and LUNCH available**
- 7:30 am – 9:00 am** **LSCC Staff Section Officers Meeting**
All LSCC members are invited
- 8:00 am – noon** **State Government Affairs Council (SGAC) Board Meeting**
- 8:00 am – 12:00 pm** **National Legislative Services and Security Association (NLSSA)**
Executive Board - Meeting continues from Friday
- 8:00 am – 12:00 pm** **Leadership Staff Section**
Meeting continues from Friday
- 8:00 am – 12:00 pm** **State & Local Taxation of Telecommunications and Electronic Commerce**
Task Force - Meeting continues from Friday
- 9:15 am – 11:00 am** **Budget, Finance and Rules Committee**
- 11:00 am – 1:00 pm** **Program, Planning and Oversight Subcommittee**
- 1:00 – 2:30 pm** **LSCC Full Committee**
- 1:00 pm – 2:30 pm** **Leader's Advisory Committee**
- 3:00 am – 5:00 pm** **FULL EXECUTIVE COMMITTEE**
- evening** **Monsanto Dinner (*an annual event hosted and sponsored by Monsanto*)**
- Sunday 8am/noon** **LINC's Staff Section Executive Committee**

DON'T TAX FOOD COALITION

American Bakers Association
American Frozen Food Institute

December 12, 2000

American Wholesale Marketers
Association
Biscuit & Cracker Manufacturers
Association

Mr. Charles D. Collins
State of North Carolina
Department of Revenue
Post Office Box 871
Raleigh, North Carolina 27602-0871

Food Marketing Institute

Giant Food Inc.

Grocery Manufacturers of
America

Ms. Diane L. Hardt
State of Wisconsin
Department of Revenue
Post Office Box 8933
Madison, Wisconsin 53708

Hershey Foods Corporation

International Bottled Water
Association

International Dairy Foods
Association

Dear Mr. Collins and Ms. Hardt:

Kellogg Company

Kraft Foods

MARS, Incorporated

McCormick & Company, Inc.

McKee Foods Corporation

Nabisco, Inc.

National Confectioners
Association

I am writing to comment on the draft definition of "food and food ingredients" discussed at the joint meeting of the Streamlined Sales Tax Project (Project) and the National Conference of State Legislatures' (NCSL) Executive Committee Task Force on State and Local Taxation of Telecommunications and Electronic Commerce (Task Force) held November 28-29 in Chicago.

National Food Processors
Association

The Don't Tax Food Coalition (DTFC) is a group of food manufacturing and retailing companies and their related trade associations dedicated to a fair, competitive marketplace for food and opposed to the selective taxation of certain foods. DTFC is currently chaired by the Grocery Manufacturers of America.

Retail Confectioners International

Snack Food Association

The Pillsbury Company

The Procter & Gamble Company

Upon reviewing the definition, I would like to offer some observations. First, DTFC supports the use of the broadest definition of food. Realizing that certain subsets of "food and food ingredients" are taxed at varying rates in different states and localities throughout the country, detailed analysis of how this proposal would be implemented in those jurisdictions is needed in order to realize the net impact to our members.

1010 Wisconsin Avenue, NW

Ninth Floor

Washington, DC 20007

Ph: (202) 337-9400

Fx: (202) 337-4508

The inclusion of the "food" subsets of "candy" and "soft drinks" is also troubling to DTFC. Such selective treatment under the proposal will only add unnecessary complexity to an already confusing sales tax system and give the impression that the government is dictating what it feels is "good food" and "bad food."

Selective food taxation is arbitrary, discriminatory, and regressive. Placing a tax on one category of food and excluding other items leads to consumer confusion and establishes preferences that may unfairly affect consumer-purchasing decisions. Furthermore, selective food taxes hinder free choice by consumers and disproportionately affect households with lower incomes that may have fewer affordable food options.

Dedicated to a fair, competitive marketplace for food
and opposed to its selective taxation.

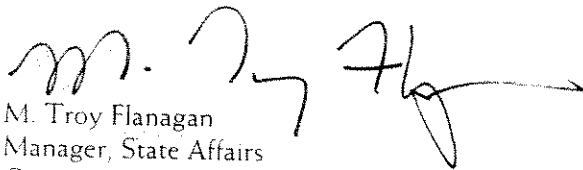
Page 2

Mr. Charles Collins; Ms. Diane Hardt
December 12, 2000

Selective food taxes also create competitive disadvantages. Food merchants in states with a selective tax must compete at a disadvantage with retailers in nearby, business-friendly jurisdictions that do not operate with a similar tax burden. This is particularly true along state borders where consumers can easily drive to neighboring states that do not have selective snack taxes. Although this may be an unintended consequence according to the Project's goal, it creates a risk, nonetheless, of further complicating states' sales tax system.

Thank you for this opportunity to comment on the work of the Streamlined Sales Tax Project. I look forward to working with you as the Project moves forward.

Sincerely,



M. Troy Flanagan
Manager, State Affairs
Grocery Manufacturers of America

cc: ✓ NCSL Executive Committee Task Force on State and Local Taxation of
Telecommunications and Electronic Commerce

NCSL Task Force to Lobbyist: The Time to Simplify Is Now

An observer at a December 12 National Conference of State Legislatures task force hearing on the Streamlined Sales Tax Project said that states can take their time in dealing with the sales tax simplification issue, but NCSL members vehemently disagreed.

Document Type: News Stories

Tax Analysts Document Number: Doc 2000-32331 (8 original pages)

Tax Analysts Electronic Citation: 2000 STT 241-40

Citations: (December 13, 2000)

===== SUMMARY =====

Tell 'em their sales tax system is flawed. Tell 'em that compliance is difficult for taxpayers. You can even tell 'em that their road to simplification will be a very hard one. But don't tell state legislators that they can take their time correcting the problem because there's no threat of federal legislation.

A panelist who made that argument met with a hostile reaction while testifying on the Streamlined Sales Tax Project at a public hearing of the National Conference of State Legislatures (NCSL) Executive Committee Task Force on State and Local Taxation of Telecommunications and Electronic Commerce, held in Washington on December 12. If there were any doubts that members of the NCSL task force were being motivated by a perceived threat of federal preemption, as they had stated at an October 27 meeting, they were put to rest. (For coverage of the task force's October 27 meeting, as well as an October 26 public hearing of the Streamlined Sales Tax Project, see State Tax Notes, Nov 6, 2000, p. 1216; 2000 STT 213-45 ; Doc 2000-28261 (9 original pages).)

In the meantime, the cochairs of the Streamlined Project told members of the task force that several more changes had been made to the project's model legislation and corresponding model interstate agreement. (For the most recent coverage of the Streamlined Sales Tax Project, see State Tax Notes, Dec 4, 2000, p. 1498; 2000 STT 232-30 □; or Doc 2000-31017 (5 original pages).)

The project's proposal drew criticism from Software Finance and Tax Executives Council President Mark Nebergall, testifying on behalf of the Internet Tax Fairness Coalition (ITFC), who said that in spite of his coalition's support of simplification, he felt that state legislators have been presented with an "incomplete" proposal and should wait until the Streamlined Project has finished all provisions, including definitions and compensation, and garnered the support of "all elements of the state and local government community and all segments of the business community."

"We believe that there is little if any danger that the federal legislature will consider legislation that might preempt the states' right to determine if, when, and how to tax their

citizens," Nebergall said. "While ITFC believes it is appropriate for the federal legislature to provide the states with guidance regarding the circumstances under which it might consider exercising its power under the Commerce Clause of the Constitution, we know of no current movement to meddle in the details on how the states handle their internal tax affairs. The coalition's members have always advocated that the issues of simplification of state sales and use tax laws be handled through state legislation."

California state Sen. Jim Costa (D) questioned Nebergall's position, arguing that the coalition had actively lobbied for a moratorium extension and federal legislation on the issue as recently as this year. "Your suggestion was that we postpone these efforts for a number of reasons," Costa said. "Am I to understand that would also include your willingness to continue any effort to suggest to Congress that they extend the moratorium until the year 2010 or whatever year you might like?"

===== FULL TEXT =====

Tell 'em their sales tax system is flawed. Tell 'em that compliance is difficult for taxpayers. You can even tell 'em that their road to simplification will be a very hard one. But don't tell state legislators that they can take their time correcting the problem because there's no threat of federal legislation.

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"Which part of the moratorium are you referring to, the moratorium on access taxes or the moratorium on multiple and discriminatory taxes?" Nebergall responded.

"Mr. Nebergall, you know what I'm talking about," Costa shot back. "It's very important that you don't mislead."

Wisconsin state Sen. Robert Jauch (D) also took issue with Nebergall, arguing that the Internet Tax Fairness Coalition has historically been "adamant" in its "support of preempting states' rights like Wisconsin and Tennessee, who have already decided for themselves how they want to tax access on the Internet."

"Your statement is contrary to your public position, and I want you to reconcile that so that we can determine whether anything you say is credible," Jauch said, referring to Nebergall's aforementioned statement in support of state simplification.

"I think you need to separate the issue of the taxation of Internet access from sales and use taxation of goods and services delivered using the Internet coming across state lines," Nebergall said. "We're here today to talk about the Streamlined Sales Tax Project's issues, and we have always advocated that the states take care of the complexity of sales and use and business activity taxes [on] interstate commerce. I think the two are separate; I don't think there's any inconsistency between the positions."

"Don't misunderstand me; I'm not suggesting this task force promote an expansion of access [taxes]," Jauch replied. "I'm simply trying to assert that sovereignty is at the heart of the matter that organizations respect, as you say. You don't distinguish, in your comments, that on one hand you believe in states' rights; on the other hand, you believe in federal preemption. You've combined the two, so your record is [that] you believe there should be federal preemption on the access issue?"

"Yes," Nebergall said.

"I hope that you will correct your statement so that you say: 'Sometimes we believe in federal preemption,'" Jauch said.

Costa also said that he felt Nebergall's assertion that "all" interested parties must back any model legislation was unrealistic: "If you're suggesting that we have all 50 states, if

you're suggesting that we have to have all the companies that are engaging in the Internet . . . we'll never get there. For you to suggest that we make no movement at all until we have all agreeing defies practical political implementation of a policy."

The task force cochair, Illinois state Sen. Steven J. Rauschenberger (R), who has been openly critical of ITFC's positions in the past, asked Nebergall how many coalition members must support a position before it is advocated.

"Do you guys have some operative rules that determine how you're going to decide on a policy issue?" Rauschenberger asked. "I mean, when you guys decide whether you're going to be for or against a proposal, do you take a vote or anything?"

"We circulate the proposal, we talk about it, and we don't put something out if we haven't talked about it," Nebergall answered.

"How many companies do you have in your coalition?" Rauschenberger asked.

"We've probably got about a dozen companies, and we have a number of trade associations, including the AEA [American Electronics Association]," Nebergall said.

"I just want to personally pledge to you that I promise to raise the same level of awareness and thoughtful understanding of all the state legislators I ask to vote for the Streamlined Sales Tax as the coalition did on the moratorium on access charges," Rauschenberger responded, referring to the passage of the Internet Tax Freedom Act in 1998. "We'll meet your threshold."

"One thing you should know about federal legislation: You take the title, and you can bet that the legislation will be the opposite of what the title suggests," Nebergall told Rauschenberger.

Compensation the Main Industry Issue

As has been the case with every public hearing about or through the Streamlined Sales Tax Project, the private sector presented points of view as diverse as the business community itself. Throughout proceedings that stretched out over eight hours on December 12, however, compensation emerged as a primary theme, as seven business representatives emphasized it to the NCSL task force members. The Streamlined Project is working with various industry representatives to ascertain the appropriate vendor allowance for participation in a simplified sales tax system.

Joe Crosby, legislative director for the Committee On State Taxation (COST), which represents 540 multistate companies, said that the Streamlined Project's draft needs to significantly revise its provisions for monetary allowances for participation "to provide for a uniform and reasonable vendor allowance. The vast majority of vendors, especially 'Main Street' retailers, have no incentive to participate in this system without a reasonable vendor allowance. COST, in conjunction with several multistate retailers and representatives of state government, is working to develop a vendor compensation study that will give guidance to policymakers seeking to reimburse a vendor's true cost of collecting the state's tax."

Robert Jenner, manager of non-income taxes for Toys "R" Us Inc., took issue with the fact that the Streamlined Project's proposal will "currently only require vendor compensation from new sellers."

"In the recent days since the release of the model act and agreement, I have heard significant concerns from state retail associations that the small and medium-sized existing brick-and-mortar retailers will not support this project because the proposals do not address vendor compensation for existing sellers," Jenner said. "It is our opinion that it would be fundamentally unfair to expect voluntary participation and compliance with the project by current, tax-collecting, traditional vendors without reasonable compensation when other vendors are receiving significant compensation or a 'no cost' plan for their participation."

Maureen Riehl, vice president, state and industry relations counsel for the National Retail Federation, also said that achieving the support of retailers would be difficult without a "uniform, reasonable vendor collection compensation."

"It is fundamentally unfair to expect voluntary participation and compliance with the project by traditional retailers -- those who have played the role of state tax collector since the sales tax was invented -- and not recognize or repay the traditional store owner for the identifiable costs of compliance," Riehl said. "Currently, only 28 of 45 states with a sales tax pay the vendor for a portion of the vendor's collection expenses. Ironically, in at least one state that has filing and remittance for locals at the state level, the vendor receives less compensation for collection than the state does for collecting on behalf of local governments."

Annabelle Canning, Verizon Wireless executive director of federal and state tax policy, testified on behalf of the industry members of the Telecommunications Tax Reform Initiative. Canning made a similar recommendation in relation to telecommunications taxes. The Streamlined Project's recommendations on monetary allowances for participation, Canning argued, should "include a recommendation that all member states must provide a vendor discount under models 2 and 3."

As per the December 6 version of the project's Streamlined Sales and Use Tax Agreement, a Model 2 seller would select a "certified automated system (CAS) to use which calculates the amount of tax due on a transaction," while a Model 3 seller would "utilize its own proprietary automated sales tax system that has been certified as a CAS." Sellers using these models would receive a monetary allowance based on both "a percentage of tax revenue generated for a member state by new sellers that voluntarily register with the state through the agreement's central registration process" and "vendor discounts under state law." (The actual requirements for a Model 3 seller have since been amended to allow for inclusion of more businesses by decreasing the minimum annual sales revenue to \$500 million, as well as clauses for states to make the number adjustable "so that as we bring businesses into Model 3, we can continue to add more," according to Streamlined Project Cochair Diane Hardt, administrator for the Wisconsin Department of Revenue.)

"Twenty-one states do not provide any vendor's discount; these states account for 118 of the 350 taxes applicable to telecommunications providers," Canning said. "The extension by all member states of a monetary allowance through a vendor discount applicable to models 2 and 3 will be essential to obtaining business support for this effort."

Near the end of the day, Hardt responded that the rationale for the provisions was that many states cannot absorb additional retail compensation, though the project is still considering its options.

Governance of the system was also on the minds of several of those who testified, including Crosby, who argued that the proposed agreement "should provide a mechanism for outside input and review to ensure that a state is indeed in compliance with the agreement before being certified as such by existing member states. Once the proposed agreement comes into force through the agreement of five initial states, constituents will find it very difficult to make any concerns they might have regarding the system heard."

"Addressing one's legislature after the agreement is in force in one's state is unlikely to be of significant value, as a legislature has no direct authority to suggest changes to the agreement," Crosby added. "Addressing one's executive branch is likely to prove equally frustrating, as potentially one would need to contact upwards of 30 states in order to secure a change."

Hardt later responded that the enforcement provisions were a matter of trying to find a balance between states, who want flexibility, and industry, which is calling for strict standards.

As per the agreement, the multistate compact will become effective once five states have met the requirements of the adopting resolution, with an initial state requiring the approval of three-fourths of the other initial states to be found in compliance and join. "The member states may organize to govern compliance of each state participating in the agreement and take other actions as may be necessary to administer and implement the provisions contained herein," the agreement further states. "The member states acting jointly must appoint a business advisory council to consult with in the administration of the agreement."

"We thought we took a middle ground here," Hardt said, "both in some oversight to this individual from each revenue department overseeing the states that are coming into it and deciding whether states should be expelled from it. I think we just have to start somewhere, and maybe it changes as we go down the road and get more states involved. But this is what we felt would be most acceptable to our legislatures right now, and yet still provide that oversight."

On the other hand, Multistate Tax Commission Executive Director Dan Bucks had argued earlier that the Streamlined Sales Tax System's governance provisions "maintain the autonomy of state legislatures to determine their participation in the agreement, while nullifying the need to establish any additional bureaucracy that could hinder the progress and participation in the agreement and the Streamlined Sales Tax System by both states and vendors. Indeed, accountability for the implementation and administration of the

Streamlined System remains within the regular and established structures of decisionmaking within each state."

Project Progress

According to project Cochair Charles Collins Jr., director of the North Carolina Department of Revenue's Sales and Use Tax Division, the streamlined effort is working to implement its pilot project.

"We are in the testing and proof of concept phase now to certify the software, so that [the certified service providers] can begin collecting from their retailers," Collins said. "We have a few retailers that have signed up, and the other retailers that we have talked to want to see the system in action to be sure that it doesn't interfere with their word-processing system right now."

Hardt said that since its most recent public hearing, on November 28 and 29 in Chicago, the Streamlined Project has made a number of amendments to both its model legislation and its agreement. Under uniform sourcing rules, for instance, the default rule has been expanded from just digital goods to tangible personal property and individual services, according to Hardt. What's more, a subcategory was added for candy under the "food and food ingredients" portion of uniform definitions, and in the same section retail sales will now include lease and rental. Lease and rental provisions were also added to the definition of seller in an earlier section, Hardt said. The changes will be posted to the Streamlined Project's Web site, www.geocities.com/streamlined2000/.

Code Section: Miscellaneous

Geographic Identifier: United States

Subject Area: Electronic commerce tax issues

Jurisdiction to tax

Multijurisdictional taxation

Sales and use taxation

Tax policy issues

Index Terms: electronic commerce

Internet transactions

state taxation, Internet transactions

local taxation, Internet transactions

sales tax

sales tax, interstate sales

sales tax, collection of tax

use tax

use tax, out-of-state purchases

use tax, collection of tax

Cross Reference: For the most recent coverage of the Streamlined Sales Tax Project, see State Tax Notes, Dec 4, 2000, p. 1498; 2000 STT 232-30 □; or Doc 2000-31017 (5 original pages).

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Web Information: As of December 13, 2000, the Web site of the Streamlined Sales Tax Project could be found at www.geocities.com/streamlined2000/

Author: Sheppard, Doug

Institutional Author: Tax Analysts

BACKGROUND AND ISSUE OVERVIEW

RESPONSIBLE SALES TAX COLLECTION FOR THE NEW ECONOMY

ENSURES FAIR COMPETITION
PROTECTS CONSUMERS
ADDRESSES SIMPLIFICATION
SUSTAINS OUR COMMUNITIES



HOW SALES AND USE TAXES ARE COLLECTED

Currently, 45 States and the District of Columbia impose sales and use taxes on the purchases of goods. Within many states, local governments also impose sales and use taxes, resulting in approximately 7,500 disparate tax jurisdictions in the United States, all with varying rates, exemptions, and procedures.

Due to the complexity of these sales and use tax systems, the states and local governments that impose these taxes require retailers to collect them at the point of sale from consumers. State and local taxes are levied on the consumer, and are merely collected through the retailer. Retailers must 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 fund basic government services.

Although traditional retailers must collect and remit taxes at the point of sale, online retailers must only collect taxes in states where they have a physical presence. This practice gives the online and other remote retailers a competitive advantage, allowing an "uneven tax playing field" to exist.

WHY THE CURRENT SYSTEM IS UNFAIR :

- Under a 1972 case, *National Bellas Hess*, the U.S. Supreme Court held that state or local governments cannot constitutionally require a retailer to collect and remit use taxes unless the business has a "nexus" (a physical presence) within the state.
- In 1992, the Supreme Court reaffirmed *Bellas Hess*, ruling in *Quill* that an out-of-state mail order house (catalog) 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.
- The absence of sales tax collection on Internet sales not only disadvantages Main Street brick-and-mortar retailers who are obliged to collect sales tax for the states, it risks eroding the sales tax base of states and threatens funding of basic government services.
- While the Supreme Court decisions were based on due process considerations, the Court reiterated in *Quill* that only Congress – with its authority to regulate or change interstate commerce policy – can fix or overturn the current sales and use tax inequity that exists.



NATIONAL RETAIL FEDERATION

National Retail Federation
Liberty Place
325 7th Street, NW
Suite 1100
Washington, DC 20004
(202) 783-7971 (ph)
(202) 737-2849 (f)

THE EMERGENCE OF ELECTRONIC COMMERCE AND THE CREATION OF AN UNLEVEL TAX PLAYING FIELD

The growth of online shopping is expanding at a rapid rate and will change the way people make purchases forever. In 1999, 39 million Americans shopped online, up 17 million from 1998. This new way of shopping, which is expected to reach \$300 billion by 2002, is dynamically changing the way retail 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 the consumer to pay taxes, it has made the calculation and collection of taxes more problematic.

Although traditional retailers must collect and remit taxes at the point of sale, online retailers must only collect taxes in states where they have a physical presence. This practice gives the online and other remote retailers a competitive advantage, allowing an "unlevel playing field" to exist.

THE INTERNET TAX FREEDOM ACT (ITFA):

- In 1998, legislation was enacted to impose a 3-year moratorium on new Internet access taxes and on new "discriminatory" taxes on electronic commerce. This did not prevent states and localities from collecting existing sales and use taxes on Internet sales.
- The legislation also created the *Advisory Commission on Electronic Commerce (ACEC)*, a 19-member commission chaired by Governor James Gilmore (R-VA) to decide how and whether online transactions should be taxed.

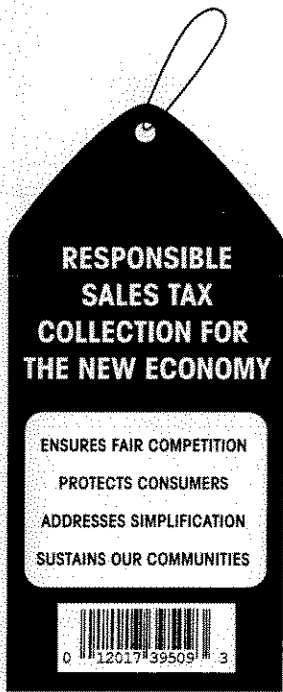
WHERE THE ISSUE STANDS NOW

The ACEC completed its work in April of 2000 and issued a report to Congress. Unfortunately, the Commission was unable to reach the two-thirds vote required by Congress to make any official findings on these matters. Amid much controversy, the self-appointed chair of the ACEC attempted to deliver a "majority recommendation" to Congress that proposed extending the ITFA moratorium for an additional five years as well as a proposal for a permanent moratorium on Internet access taxes.

Traditional, in-store retailers who conduct a majority of retail sales in this country were not represented on the ACEC, despite statutory language mandating this. Therefore, it is no surprise that the Commission did not make a formal recommendation in support of sales and use tax parity.

- On May 10, 2000, the House of Representatives passed the "*Internet Nondiscrimination Act*" (HR-3709). This bill, which does not address the sales and use tax inequity, would extend the current ITFA moratorium for five additional years. Despite this blaring omission, floor debate focused primarily on the need to address the existing sales and use tax inequity.

- That same day, the House passed a "Sense of the Congress" amendment, indicating its interest in providing a level playing field for sales and use tax collection for all retail sales.
- Only three Congressional hearings have been held on the sales and use tax issue in 2000. Clearly, more are necessary. With the existing ITFA moratorium not expiring until October 2001, Congress has more than ten months to debate this issue and act next year.



RETAILERS ONLY WANT A LEVEL TAX PLAYING FIELD

- The National Retail Federation (NRF) wants Congress to impose responsible sales tax collection for the new economy that will require equal collection of retail sales taxes across all channels. This will allow businesses to operate in a fair and equitable environment that **ENSURES FAIR COMPETITION**.
- The NRF wants Congress to enact a policy that **PROTECTS CONSUMERS**, those who have access to a computer, and those that do not. Such a policy will ensure all consumers are treated equally — whether they choose to shop in traditional or online stores.
- NRF members are committed to enriching the communities where they operate. If online and other remote commerce retailers continue to benefit from unequal sales and use tax collection preferences, valuable tangible community services such as education and law enforcement will suffer. The NRF wants all retailers to contribute to the tax base that **SUSTAINS OUR COMMUNITIES**.
- Right now, the burden is being placed on traditional retailers to collect the sales and use taxes on behalf of the states. The NRF wants states to **ADDRESS SIMPLIFICATION** issues by requiring sellers to collect taxes on the sale of goods or services delivered in those states, regardless of the channel of distribution used.



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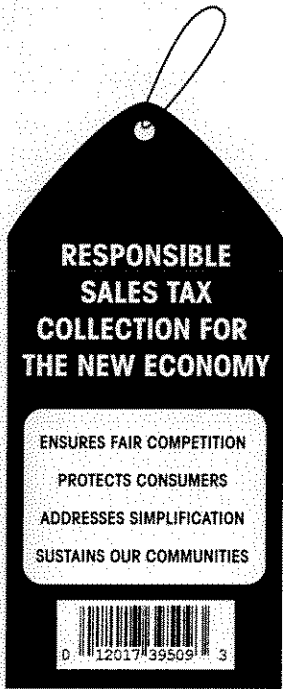
National Retail Federation
 Liberty Place
 325 7th Street, NW
 Suite 1100
 Washington, DC 20004
 (202) 783-7971 (ph)
 (202) 737-2849 (f)

RETAILERS OPPOSE NEW TAXES – ONLY WANT A “LEVEL PLAYING FIELD”

THE ISSUE

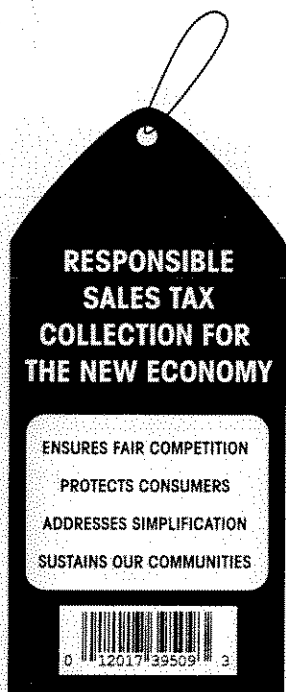
Retailers want Internet and catalog sellers to adhere to the same collection obligations as traditional brick-and-mortar retailers. Retailers want equitable sales and use tax collection obligations across all retail channels, whether the transaction is made in a traditional store, an online retailer or through a catalog. Retailers do not, in any way, support new or discriminatory taxes on Internet access or online commerce.

- Based on two separate Supreme Court rulings, *National Bellas Hess* and *Quill*, out-of-state sellers are not required to collect sales and use taxes in states where they do not have a “physical” presence.
- A “level playing” field does not mean a new tax – consumers are already required to pay this tax. Under current law, if sales tax is not paid on an out-of-state purchase at the time of sale in the 45 states that impose sales taxes, the purchaser is required by state law to pay, or remit, a comparable “use” tax to his or her state. This “use” tax already exists. However, historically states have not enforced collection of their “use” taxes.
- Failing to address the sales and use tax inequity that exists today unfairly disadvantages Main Street retailers and low-income persons. Refusing to address this issue in the same context as other Internet tax issues ensures that an unlevel tax playing field will continue to exist for retailers and consumers.
- If the Internet Tax Freedom Act, which doesn't expire until October 2001, is extended without eliminating the current sales and use tax inequity, resolution of this issue, as a practical matter, will be deferred for many years -- perhaps forever. Legislation to prohibit states from imposing new “bit” or “access” taxes on the Internet itself is not objectionable as a substantive matter.
- Refusing to address the current sales and use tax inequity at the same time as these other issues will result in a continued erosion of the state tax base and continued discriminatory tax treatment that disadvantages store-front retailers.
- **THERE IS A SOLUTION !!** S. 2775 and H.R. 4462 would eliminate the existing tax inequity by allowing states to apply collection obligations to both Main Street and remote retailers, once states adequately simplify their sales and use tax systems. Congress should work to eliminate the sales and use tax disparity in concert with efforts to extend the 3-year Internet Tax Freedom Act (ITFA) moratorium that expires October 21, 2001. Retailers oppose an extension of the ITFA if it does not also eliminate the current state sales and use tax inequity.



NATIONAL RETAIL FEDERATION

National Retail Federation
Liberty Place
325 7th Street, NW
Suite 1100
Washington, DC 20004
(202) 783-7971 (ph)
(202) 737-2849 (f)



ENSURES FAIR COMPETITION

THE ISSUE

A marketplace that allows businesses to operate in an equitable environment fuels fair competition. Right now, traditional brick-and-mortar retailers are being placed at a competitive pricing disadvantage to their online and remote counterparts. Unlike traditional retailers, e-commerce merchants are being granted a tax-subsidy because they are not required to collect sales and use taxes on consumer purchases.

- As Congress considers how sales over the Internet should be addressed, they must consider how this issue will impact all retailers, especially "mom and pop" stores that cannot afford to compete in a marketplace where preferential treatment exists.
- If Congress extends the current Internet Tax Freedom Act (ITFA) moratorium without addressing the sales and use tax collection inequity, online retailers will continue to benefit from unfair business practices, while "Main Street" merchants will be left to bear the burden of collecting sales and use taxes as required by the states.

FACTS ABOUT ENSURING FAIR COMPETITION

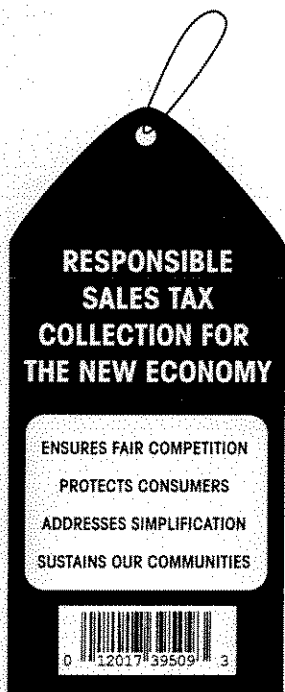
Requiring online and catalog merchants to collect sales and use taxes on consumer purchases does not create a new tax. All 45 states that impose a sales tax also have a "use" tax. If sales taxes are not collected at the time of an Internet sale, current law requires the consumer to pay the equivalent "use" tax.

- The National Retail Federation supports responsible collection of sales and use taxes for all retail sales. All retailers, regardless of the channel, or channels in which they conduct business, should be treated equally and be subject to the same obligation of collecting state sales and use taxes, as current law requires.
- In an industry where a 1-2% profit margin is standard, a 6-8% tax differential (the average states sales tax rate) is a significant pricing advantage for Internet sellers. Consumers should pick winners and losers based on factors they decide are important, such as selection, service, and convenience. Tax policy shouldn't provide one retailer a pricing advantage over another.
- Small businesses are the fastest growing segment of the economy, employing 99% of all U.S. workers. Retailers are the fabric of many communities, fueling local economies and providing jobs for millions of Americans. In order to remain competitive with their Internet counterparts, small enterprises must be allowed to operate in a fair climate.



NATIONAL RETAIL FEDERATION

National Retail Federation
Liberty Place
325 7th Street, NW
Suite 1100
Washington, DC 20004
(202) 783-7971 (ph)
(202) 737-2849 (f)



PROTECTS CONSUMERS

THE ISSUE

Fair competition in the marketplace provides added value to consumers. Requiring online and catalog retailers to collect sales and use taxes like their "Main Street" counterparts will ensure that communities will receive sales tax revenues to fund essential community services. Congress should not be in the business of picking winners and losers. The NRF believes that all consumers should be treated the same, whether they choose to shop in traditional brick-and-mortar stores or through online retailers.

- While many Americans have access to a computer and can benefit from the convenience, product selection and competitive pricing that online shopping provides, many Americans still do not have access to the Internet.
- According to a recent U.S. Department of Commerce study, wealthy individuals are 20 times more likely to have Internet access. With an average "Internet" household income of \$70,000, only high-income persons benefit from an "uneven tax playing field."
- Continuation of a tax system that favors online purchases will only exacerbate the digital divide. The marketplace should provide a climate where consumer choice, not Internet access, influences purchase decisions.
- Failure to address the current sales and use tax inequity will further shift the tax burden to low-income Americans who can only buy on mainstreet (and thus pay sales tax at the sales counter).

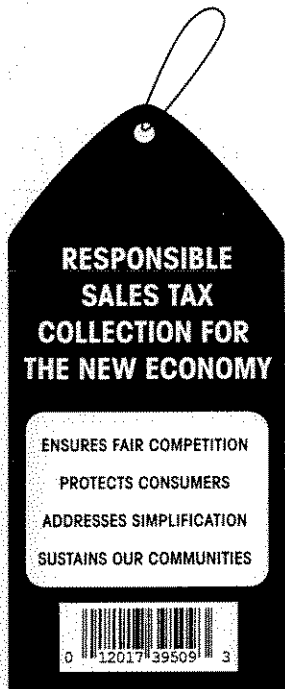
FACTS ABOUT PROTECTING CONSUMERS

- If the existing sales and use tax inequity continues, Americans who can least afford to pay the taxes will have to bear the burden for everyone.
- According to the U.S. Department of Commerce, personal computers are present in 80% of homes in which families make \$75,000 a year or more, but in fewer than 16% percent of families making less than \$20,000. Moreover, low-income consumers who do not have access to the Internet and must buy from Main Street (where sales tax is collected) are once again left carrying the tax burden for their more affluent neighbors.
- Between 1998 and 1999, the number of "e-shoppers" increased from 17 to 39 million. With such a phenomenal growth rate, online commerce will continue to flourish regardless if the current sales and use tax collection laws are enforced for Internet sales.



NATIONAL RETAIL FEDERATION

National Retail Federation
Liberty Place
325 7th Street, NW
Suite 1100
Washington, DC 20004
(202) 783-7971 (ph)
(202) 737-2849 (f)



ADDRESSES SIMPLIFICATION

THE ISSUE

Compliance under the current sales and use tax systems is extremely difficult. Currently, 45 States and the District of Columbia impose sales and use taxes on the purchases of goods. Within many states, local governments also impose sales and use taxes, resulting in approximately 7,500 disparate tax jurisdictions in the United States. States must dramatically simplify their existing sales and use tax systems before collection obligations are expanded. This includes simplicity and uniformity in tax rates, administration, definitions and classifications. Extending the current moratorium without addressing the issue of sales and use tax simplification financially threatens our businesses and communities.

- The complexity of state sales and use tax systems imposes significant compliance burdens and costs on retailers. States that expect others to collect their taxes for them must provide and maintain mechanisms to compensate for those efforts. Under any scenario, retailers must be compensated for acting as a state's collection agent. Studies show that retailers bear a significant cost in collecting state sales and use taxes.
- States have formed their own initiative, the "*Streamlined Sales Tax System Project*," a cooperative effort with local governments, to radically simplify the sales and use tax system.

FACTS ABOUT SIMPLIFICATION

Retailers believe states that adequately simplify their sales and use tax systems should be authorized to prevent inequities in taxation by requiring sellers to collect taxes on the sale of goods or services delivered in states, regardless of the channel of distribution used.

- The current system places an unfair burden on the traditional brick-and-mortar retailer who is forced to collect taxes on behalf of the states. However, once simplified, all retailers should have the same collection obligations, regardless of the delivery channel.
- Over 14 states have already passed legislation or gained a Governor's executive order to simplify their sales and use tax system. Congress must now provide them the authority to expand their collection authority if states agree to simplify their sales tax systems.



NATIONAL RETAIL FEDERATION

National Retail Federation
Liberty Place
325 7th Street, NW
Suite 1100
Washington, DC 20004
(202) 783-7971 (ph)
(202) 737-2849 (f)

SUSTAINS OUR COMMUNITIES

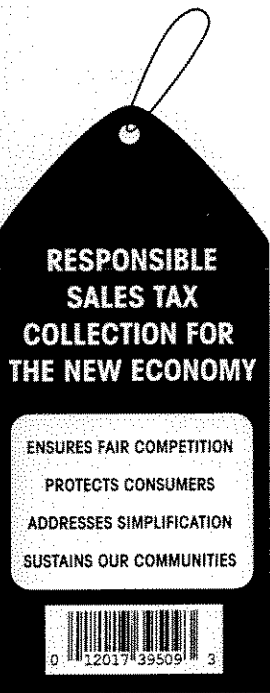
THE ISSUE

The retail industry employs the second highest number of people in the United States. In 1999, over 22 million people - one in five Americans - were employed in retail jobs. Retailers are committed to enriching the communities in which we live and operate. We believe it is our responsibility to help sustain the neighborhoods where our employees work, learn and play.

- Funds generated from state sales and use tax revenues contribute to valuable, tangible community services such as education for our children, law enforcement to protect our neighborhoods and transportation services to maintain and repair our roads.
- If the tax loophole that allows online retailers to avoid collecting a state's sales tax is not eliminated, state and local governments may have to raise income or property taxes to offset this lost revenue.
- Sales and use taxes are consumption taxes imposed on the consumer, not retailers. However, due to the complexity of the various sales and use taxes, the states require retailers to collect them at the point of sale.
- Main Street retailers are the ones who sponsor the Little League teams, buy tables at charity events, and participate directly in the communities in which they live.

FACTS ABOUT SUSTAINING OUR COMMUNITIES

- According to U.S. Census Bureau statistics, 48% of states' revenues come from the collection of sales and use taxes.
- A University of Tennessee study released in February 2000 showed that continuing to exempt e-commerce sales from sales tax collection would result in the loss of more than \$20 billion in states' sales tax revenue by 2003.
- States' Dependence on Sales Taxes: Many states rely heavily on funds generated from sales taxes for their overall state income.
 - ❑ **Nine states depend on sales and use tax revenue for 40% or more of their overall revenue**
 - ❑ **18 states rely on sales and use tax revenue for 30% or more of their overall revenue** *U.S. Census Bureau, Federation of Tax Administrators
- State and local governments report more than \$3.3 billion in tax revenue is lost annually from mail order sales and the amount from the online sales may be much greater.



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Liberty Place
325 7th Street, NW
Suite 1100
Washington, DC 20004
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FREQUENTLY ASKED QUESTIONS

Q: Why are "Main Street" retailers trying to kill the Internet by taxing it?

A: With the growth of Internet sales expected to reach \$300 billion by 2002, this medium is sure to continue soaring both in popularity and usage into the future. Requiring online merchants to collect sales and use taxes on consumer purchases does not create a new tax. This tax already exists in the 45 states that collect sales taxes. If sales taxes are not collected by a retailer, the consumer is required, by law, to pay an equivalent "use" tax. Main Street retailers only serve as a means of collection for the states.

The National Retail Federation supports equitable collection of sales and use taxes for all retailers. All retailers, regardless of the channel, or channels in which they conduct business, should be treated equally and subject to the same obligation of collecting state sales and use taxes.

Q: What is the Internet Tax Freedom Act (ITFA) moratorium?

A: In October 1998, Congress passed the Internet Tax Freedom Act (ITFA), implementing a 3-year moratorium on new Internet access taxes or new discriminatory taxes on electronic commerce. The moratorium, which expires on October 1, 2001, does not address the current sales and use tax loophole that allows out-of-state sellers to avoid collecting a state's sales tax. This legislation also created the Advisory Commission on Electronic Commerce (ACEC) to consider issues associated with the taxation of sales purchased on the Internet. The Commission completed its work in April of 2000 and attempted to issue findings to Congress. Unfortunately, the Commission was unable to reach the two-thirds vote required by Congress to make any official findings or recommendations on these matters.

Traditional in-store retailers who conduct the majority of retail sales in this country were excluded from the ACEC, despite statutory language mandating their participation. Therefore, it should be no surprise that the Commission was unable to make a formal recommendation in support of sales and use tax parity.

Q: Isn't this just advocating a new tax on the Internet?

A: No. Requiring on-line merchants to collect sales tax does not create a new tax. Forty-five states currently impose sales and use taxes on the purchase of products and goods. Main Street retailers are required to collect these taxes on behalf of the states. However, a tax loophole exempts some out-of-state remote sellers from this tax collection obligation. In this instance, consumers are supposed to pay, or remit, a comparable "use" tax directly to his or her state. These "use" taxes currently exist in all 45 states that impose sales tax. Unfortunately, many consumers are unaware of or often ignore this "use" tax requirement. By law, consumers are required to pay either their state sales tax or their state use tax. Retailers believe all shoppers and businesses should be treated fairly. Moreover, the industry supports equitable collection of retail sales and use taxes regardless of where a customer chooses to shop.



NATIONAL RETAIL FEDERATION

National Retail Federation
Liberty Place
325 7th Street, NW
Suite 1100
Washington, DC 20004
(202) 783-7971 (ph)
(202) 737-2849 (f)

Q: How will "mom and pop" stores' ability to compete with online retailers be impacted if Congress does not address the existing sales and use tax inequity with the current moratorium?

A: Small businesses are the fastest growing segment of the economy, employing 99% of all U.S. workers. These retailers are the fabric of many communities, fueling local economies and providing jobs for millions of Americans. In order to remain competitive with their Internet counterparts, small "mom and pop" enterprises must be able to compete in a fair climate. In an industry where a 1-2% profit margin is standard, a 6-8% tax differential (the average states sales tax rate) is a significant pricing advantage for Internet sellers. Consumers should pick winners and losers based on factors they decide are important, such as selection, service, and convenience. Tax policy shouldn't provide one retailer a pricing advantage over another.

Q: If sales and use taxes are not collected on consumer purchases made over the Internet, will that affect funds needed to pay for roads and teachers in our communities?

A: Yes. A University of Tennessee study released in February 2000 showed that continuing to exempt e-commerce sales from sales tax collection requirements would result in a loss of over \$20 billion annually in state revenue by 2003. Funds generated from state sales and use tax revenues sustain communities by contributing to valuable, tangible community services such as education for our children, police and fire services to protect our neighborhoods and transportation services to maintain and repair our roads. Not collecting these taxes means that state and local governments may have to raise income or property taxes to offset their losses or cutback these essential services.

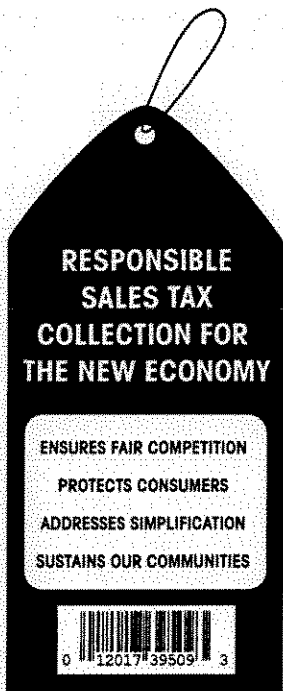
Q: How much does revenue generated from sales and use taxes account for a state's overall budget?

A: According to U.S. Census Bureau statistics, 47.9% of states' revenues come from the collection of sales and use taxes. Of the states that impose a sales and use tax, many rely heavily on funds generated from these revenues for their overall state income.

- Nine states depend on sales and use tax revenue for 40% or more of overall revenue
- 18 states rely on sales and use tax revenue for 30% or more of overall revenue
- 13 states rely on sales and use tax revenue for less than 30% of overall revenue

Q: Didn't Congress already ban Internet taxes?

A. The Internet Tax Freedom Act of 1998 placed a 3-year moratorium on any new and discriminatory taxes on the Internet, such as Internet access fees. Congress did not attempt to infringe on state's ability to charge and collect sales and use taxes on remote purchases.



Q: How many jobs does the traditional retail industry provide for our communities?

A: The retail industry plays a vital role in sustaining communities across the country. In 1999, over 22 million people - one in five Americans - were employed in retail jobs. The retail industry is the second highest employment industry in the United States. 96% of retailers employ less than 50 persons.

Q: Many consumers prefer to shop at "Main Street" stores. Why should consumers who shop online be exempt from paying sales and use taxes?

A: The NRF believes that all consumers should be treated the same, whether they choose to shop in traditional brick-and-mortar stores or through online retailers. A government policy that allows one consumer to benefit from online shopping, while another is placed at a disadvantage, is unfair. The NRF supports an equity-based environment where consumers are treated the same whether they make a purchase at a Main Street retailer, through a catalog or an online retailer.

Q: Won't allowing a permanent ban on sales and use taxes on Internet purchases negatively affect Americans who are part of the "Digital Divide"?

A: Yes. Right now, a large "digital divide" exists between more affluent and lower-income households' access to the Internet. According to the U.S. Department of Commerce, personal computers are present in 80 percent of homes in which families make \$75,000 a year or more, but in fewer than 16 percent of families making less than \$20,000.

Failure to address the existing inequity will result in lower income families bearing the burden of paying sales and use taxes and essentially funding the vital community services that all people use.

Q: Collecting sales and use taxes on online purchases is complicated for e-retailers. Will the process be simplified?

A: Over 14 states have already agreed to simplify their remote sales and use tax system; under current law, 45 states and the District of Columbia impose sales and use taxes on remote commerce and tangible goods. In addition, states have formed their own initiative, "Streamlined Sales Tax System Project," a cooperative effort with local governments, to radically simplify the sales and use tax system. To ensure that all businesses and consumers are treated equally, dramatic restructuring of existing state sales and use tax systems is necessary if collection obligations are expanded.

Retailers believe states that adequately simplify their sales and use tax systems should be authorized to collect existing sales and use taxes from all retail purchases, regardless of the delivery channel.



NATIONAL RETAIL FEDERATION

National Retail Federation
Liberty Place
325 7th Street, NW
Suite 1100
Washington, DC 20004
(202) 783-7971 (ph)
(202) 737-2849 (f)

Q: If states simplify their tax systems, will online sellers be required to collect the sales tax?

A: Currently, Congress is considering extending the moratorium without addressing the sales and use tax inequity. This will have a lasting negative impact on retailers and communities. Retailers urge Congress to expand a states ability to collect sales taxes on out-of-state sellers if states adequately simplify their sales and use tax systems. This will help foster an environment where businesses are allowed to operate in a fair and equitable climate that ensures fair competition.

Q: Are there solutions to this problem?

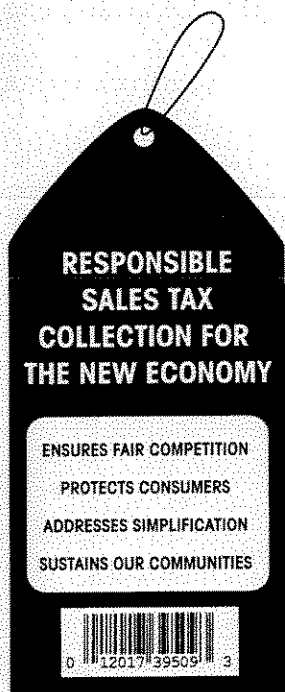
A: Yes. Bipartisan legislation has been introduced in both the House and Senate that would encourage states and localities to simplify their sales and use tax systems, and once a uniform simplified system has been adopted, the legislation would eliminate the loophole that currently exists by allowing states to require all retailers to collect sales and use taxes, regardless of their delivery method. S. 2775, "The Internet Tax Moratorium and Equity Act," has been introduced by Sen. Dorgan (ND) and Sen. Voinovich (OH) in the Senate. In addition, H.R. 4462, "The Fair and Equitable Interstate Tax Compact Simplification Act of 2000," has been introduced in the House by Rep. Spencer Bachus (AL).

As a result of two Court cases that created the sales and use tax inequity, Congressional action is required to remedy this matter. Allowing states to collect sales and use taxes from remote sellers after states simplify their tax systems is the most equitable and prudent course of action. The time to act is now. Congress should work to address the sales and use tax issue in concert with efforts to extend the 3-year ITFA moratorium that expires October 21, 2001.

Q: Doesn't the Internet deserve preferential tax treatment because it is a new industry?

A: No. The Internet has reached 50 million people in four years, compared to its technological counterparts: radio and TV, which took 38 and 13 years respectively, to reach the same number of users. In 1998, Forrester Research projected online retail sales to more than double in the next two years. Requiring online retailers to collect sales taxes like their Main Street counterparts will not harm the growth of the Internet. Current tax policy gives online retailers an unfair competitive advantage over brick-and-mortar retailers who stand ready every day within your communities to provide the best product available at the lowest price manageable. Let retailers operate in the free market, allowing consumers to decide which will survive and which will fail.

DO NOT EXTEND ITFA WITHOUT ELIMINATING CURRENT SALES AND USE TAX INEQUITY



Background

In June, the House passed legislation (H.R. 3709) to extend the Internet Tax Freedom Act (ITFA) for five years. The Senate may consider similar legislation this year. Like most, retailers oppose any new taxes on the Internet, including any new "access" or "bit" taxes. However, while H.R. 3709 extends the moratorium enacted in 1998, it completely ignores a more serious inequity in state sales and use tax systems that creates an unlevel playing field for Main Street retailers and low-income consumers. This loophole exempts out-of-state sellers from having to collect state sales tax on purchases while their Main Street counterparts are required to do so. Therefore, the U.S. retail industry opposes H.R. 3709, or any legislative proposal to extend the ITFA if it does not also address the state sales and use tax inequity that exists today.

Eliminate this Loophole Now

Extending the Internet Tax Freedom Act (ITFA) without also addressing the sales and use tax inequity that exists today unfairly disadvantages Main Street retailers and low-income persons. Retailers oppose any new "bit" or "access" taxes on the Internet. Legislation to prohibit states from imposing these new taxes on the Internet itself is not objectionable as a substantive matter. What is objectionable is that some proposals, like H.R. 3709, do not address the more critical state sales and use tax inequity regarding Internet commerce. Refusing to address the sales and use tax inequity in the same context as other Internet tax issues ensures that an unlevel tax playing field will continue to exist for both retailers and low-income consumers.

Support Mom and Pop

Congressional action is required to remedy this loophole. Bipartisan legislation has been introduced in Congress that would encourage states and localities to simplify their sales and use tax systems, and once a uniform simplified system has been adopted, the legislation would eliminate the existing loophole by allowing states to require all retailers to collect sales and use taxes, regardless of their delivery method. S. 2775, "The Internet Tax Moratorium and Equity Act," has been introduced by Sen. Dorgan (ND) and Sen. Voinovich (OH) in the Senate. In addition, H.R. 4462, "The Fair and Equitable Interstate Tax Compact Simplification Act of 2000," has been introduced in the House by Rep. Spencer Bachus (AL).

Allowing states to collect sales and use taxes from remote sellers once they've simplified their tax systems is the most equitable and prudent course of action. The time to act is now. Congress should work to address the sales and use tax issue in concert with efforts to extend the 3-year ITFA moratorium that expires October 21, 2001. ***Retailers oppose any extension of the ITFA that does not eliminate the current state sales and use tax inequity.***



NATIONAL RETAIL FEDERATION

National Retail Federation
Liberty Place
325 7th Street, NW
Suite 1100
Washington, DC 20004
(202) 783-7971 (ph)
(202) 737-2849 (f)

RETAILERS URGE CONGRESS TO ELIMINATE EXISTING SALES AND USE TAX INEQUITY

- **Current sales and use tax law creates an "unlevel playing field" among retailers.** Presently, 45 states and the District of Columbia impose sales and use taxes on purchases of tangible goods. Under current law, retailers are required by the states to collect these taxes from a customer and immediately remit this sales tax back to the state. However, based on two Supreme Court rulings, some out-of-state retailers (those without a physical presence in the purchaser's state) are not required to collect and remit a state's sales and use tax. Exempting out-of-state sellers from sales and use tax collection obligations creates an "unlevel playing field" for shoppers and businesses. Retailers only want a level playing field – where a product is taxed the same regardless of how it is ordered or delivered.
- **The government should not be in the business of picking winners and losers.** In an industry where a 1-2% profit margin is standard, a 6-8% tax differential (the average states sales and use tax rate) is a significant price advantage. Consumers should pick winners and losers based on factors they decide are important such as selection, service, and convenience. Tax policy shouldn't provide one retailer a pricing advantage over another.
- **A "level playing" field does not mean a new tax – consumers are already required to pay.** Under current law, if sales tax is not paid on an out-of-state purchase at the time of sale, the purchaser is required by state law to pay, or remit, a comparable "use" tax to his or her state. This tax already exists. However, historically states have not adequately enforced collection of their "use" taxes.
- **State and local government services will suffer as their revenue base decreases.** On average, sales and use taxes account for approximately 40% of a state's total tax revenue (more than \$150 billion in 1998). Sales tax revenue is used to fund basic state and local government services such as police and fire protection, schools, etc.
- **An "unlevel playing field" disproportionately hurts the poor.** With an average Internet household income of \$70,000, an "unlevel playing field" would benefit those with higher levels of income and shift the tax burden to lower income individuals who can only buy locally (and thus pay sales tax at the sales counter).
- **THERE IS A SOLUTION !!** S. 2775 and H.R. 4462 would eliminate the existing tax inequity by allowing states to apply collection obligations to both Main Street and remote retailers, once states adequately simplify their sales and use tax systems. Congress should work to eliminate the sales and use tax disparity in concert with efforts to extend the 3-year Internet Tax Freedom Act (ITFA) moratorium that expires October 21, 2001. Retailers oppose an extension of the ITFA if it does not also eliminate the current state sales and use tax inequity.

RESPONSIBLE SALES TAX COLLECTION FOR THE NEW ECONOMY

ENSURES FAIR COMPETITION
PROTECTS CONSUMERS
ADDRESSES SIMPLIFICATION
SUSTAINS OUR COMMUNITIES

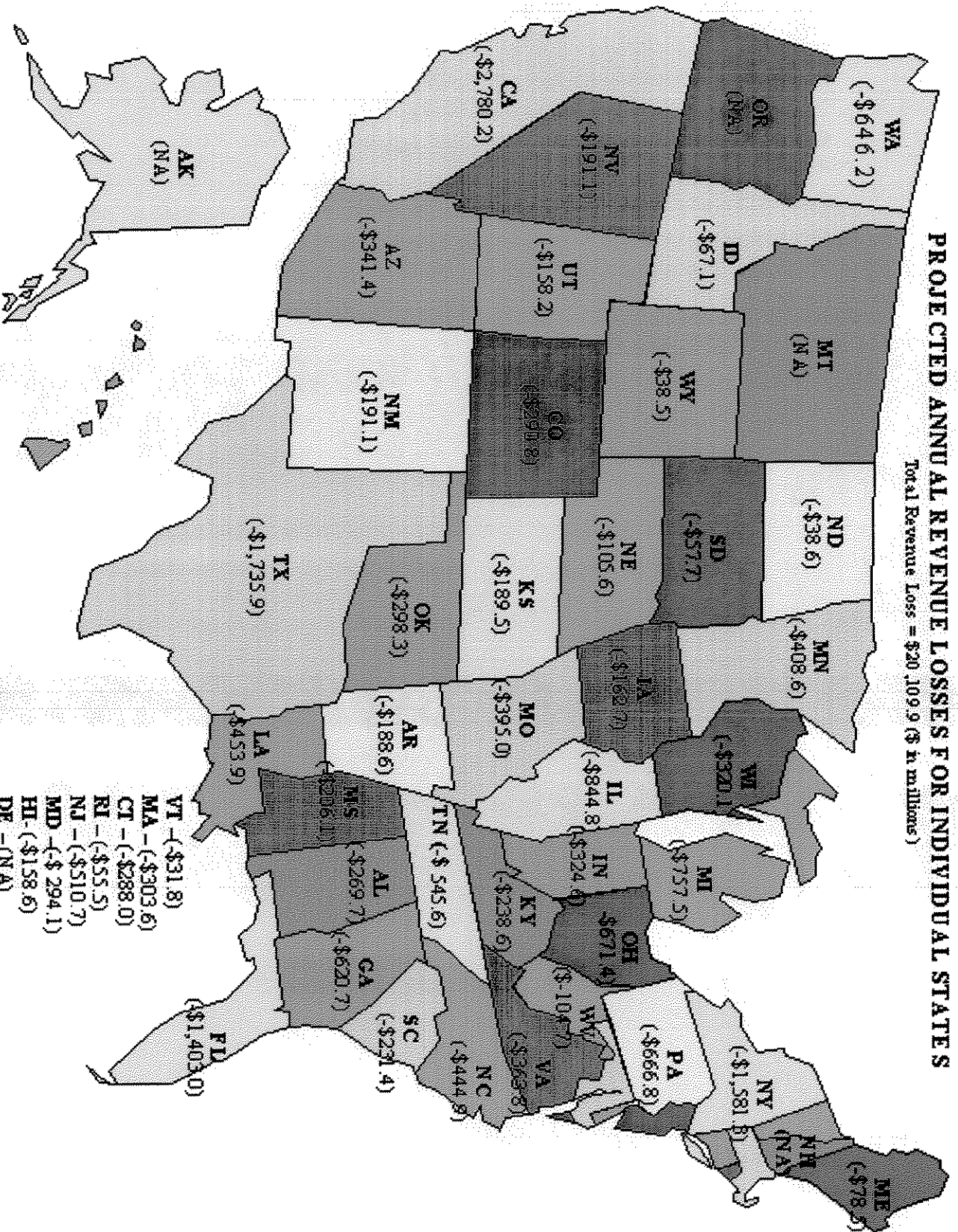


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Liberty Place
325 7th Street, NW
Suite 1100
Washington, DC 20004
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PROJECTED ANNUAL REVENUE LOSSES FOR INDIVIDUAL STATES

Total Revenue Loss = \$20,109.9 (\$ in millions)



Source: "E-Commerce in the Context of Declining State Sales Tax Base", Donald Bruce and William F. For: University of Tennessee, February 2000

Michael O. Leavitt
Governor of Utah
Chairman

Raymond C. Scheppach
Executive Director

Parris N. Glendening
Governor of Maryland
Vice Chairman

Hall of the States
444 North Capitol Street
Washington, D.C. 20001-1512
Telephone (202) 624-5300
<http://www.nga.org>

April 12, 2000

The Honorable Trent Lott
Majority Leader
United States Senate
The Capitol, Room S-230
Washington, D.C. 20510

The Honorable Thomas A. Daschle
Minority Leader
United States Senate
The Capitol, Room S-221
Washington, D.C. 20510

The Honorable J. Dennis Hastert
Speaker
U.S. House of Representatives
The Capitol, Room H-232
Washington, D.C. 20515

The Honorable Richard A. Gephardt
Minority Leader
U.S. House of Representatives
The Capitol, Room H-204
Washington, D.C. 20515

Dear Senator Lott, Senator Daschle, Speaker Hastert, and Representative Gephardt:

We are writing to urge support for a fair and equitable system to ensure that all Main Street retail stores and Internet commerce can compete on a level playing field and to ensure that all Americans can join us in supporting the Internet as part of our new economy. Unfortunately, the Advisory Commission on Electronic Commerce (ACEC) proposal that was included in the Internet Tax Freedom Act (ITFA) commission report, but failed to attain the two-thirds majority required by the Act, does the opposite. Instead of addressing the requirements laid out in the law to recommend a new state and local sales tax system to provide for fairness and balance, the proposal chose to use this opportunity to seek a host of new and expensive special tax breaks. We urge you to reject the report.


As stated in the duties section of the legislation the commission was to "conduct a thorough study of federal, state, local, and international taxation and tariff treatment of transactions using the Internet and Internet access and other comparable intrastate, interstate, or international sales activities." The commission proposal did not focus on Internet transactions, but instead made a recommendation that would reduce other existing state and local tax revenues by over \$25 billion per year.


Not only would the proposal eliminate existing sales taxes on such items as books, movies, music, and magazines that are sold in local "bricks and mortar stores" but also would substantially reduce existing state corporate income and property taxes. The proposal, with a revenue loss of that magnitude, would disrupt the financing of state and local services and likely devastate education funding, which represents over 35 percent of the average state budget. Furthermore, instead of creating a level playing field for all sellers, it would put the federal government in the position of both picking winners and losers and also making the current digital divide more severe.


The most important reason for us to oppose this proposal is that it would substantially interfere with state sovereignty. The U.S. Constitution was very clear in both ensuring state sovereignty and creating a critical balance between federal and state authority. For well over 200 years the federal government has respected state sovereignty and has been extremely careful not to interfere with the states' ability to independently raise revenues. This proposal would dramatically undercut this precedent.

It is hard to think of any more fundamental responsibility of governments and elected officials in our nation than that of determining which taxes and fees are utilized to pay for the services that our citizens want and need. State and local governments rely on sales, property, and income taxes—no two the same, reflecting the enormous diversity of our nation. This proposal would intrude very deeply into the rights and responsibilities of state and local governments.


Sincerely,

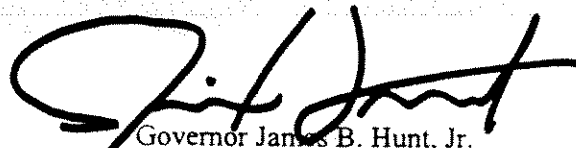

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Utah


Governor Parris N. Glendening, Vice Chairman
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Delaware


Governor Christine Todd Whitman
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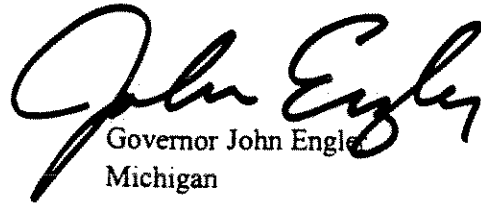

Governor Bill Graves
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Governor Don Sundquist
Tennessee

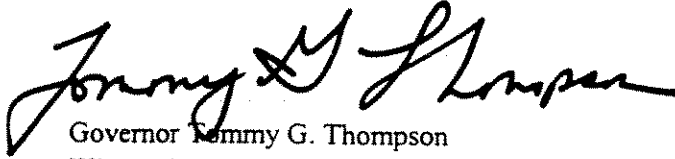

Governor Jane Dee Hull
Arizona



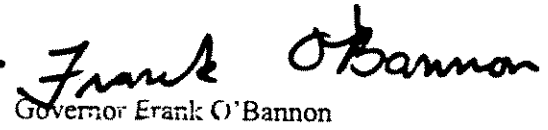
Governor Mike Huckabee
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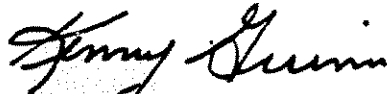
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Governor Kenny Guinn
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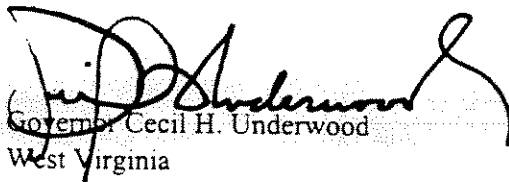
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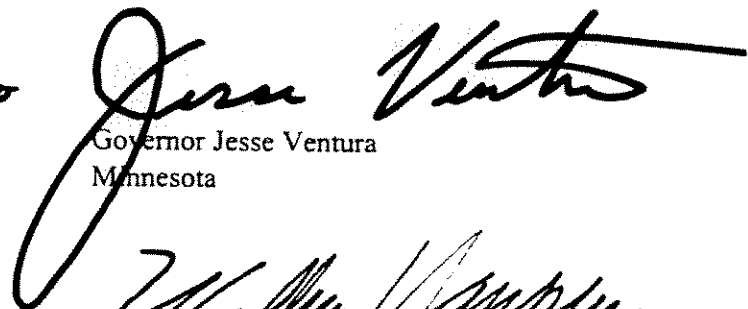
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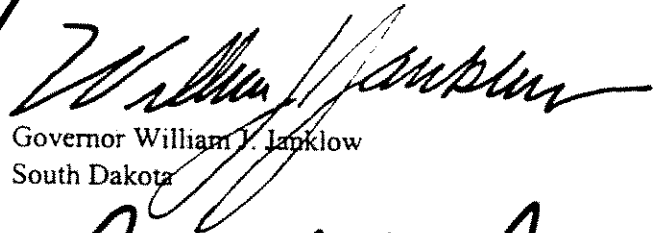
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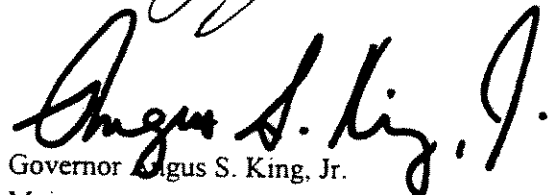
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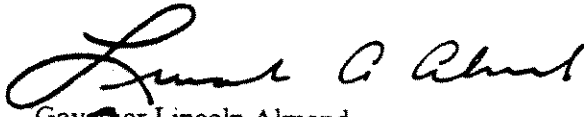
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Maine



Governor Pedro Rosselló
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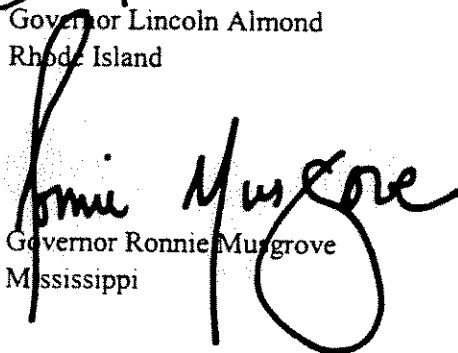
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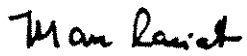
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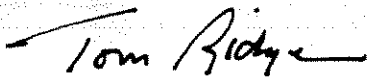
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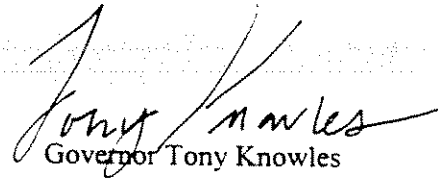
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