

Hardt, Diane L

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From: Neal Osten [neal.osten@ncsl.org]
Sent: Monday, January 29, 2001 3:06 PM
To: zeroburden-l@mtc.gov
Subject: NCSL Meeting in Savannah



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As you are aware the NCSL Task Force on State and Local Taxation of Telecommunications and Electronic Commerce and NCSL's Executive Meeting met this past weekend in Savannah, Georgia to review the Uniform Sales and Use Tax Administration Act and the Streamlined Sales and Use Tax Agreement.

It is our understanding that some of you have already received word about the actions taken by the legislators and to avoid any misunderstandings we are sending you a summary of our legislators' actions.

Attached is a file containing the summary of the Task Force and Executive Committee's action, the list of amendments and motions considered by the Task Force and press release issued this afternoon.

If you have any questions, please let us know.

Neal Osten
Graham Williams
NCSL

**Resolution to the NCSL Executive Committee
from the Special Task Force on State and Local Taxation of
Telecommunications and Electronic Commerce**

The Executive Task Force on State and Local Taxation of Telecommunications and Electronic Commerce respectfully requests the Executive Committee approval for the following:

- 1) Endorse the Uniform Sales and Use Tax Administration Act and the Streamlined Sales Tax Agreement as unanimously adopted by the Task Force on January 27, 2001.

The Task Force amended as follows the Act and Agreement as adopted by the Streamlined Sales Tax Project on January 24, 2001:

- ◆ **Governance:** The Task Force established a governing structure that would allow states to pass either the model act as amended by the Task Force or the model act as amended by the Task Force and the agreement as amended by the Task Force. Under the new structure, all states that pass the model act may send up to four representatives (one vote per state), to participate in multistate discussions to finalize the terms of the agreement and for purposes of this resolution referred to go as "governing states.". Each state will have equal voting authority on changes to the agreement until July 1, 2003. After July 1, 2003 states only passing the model act and the agreement will have voting authority.
- ◆ **Base/Rate:** The Task Force provided additional flexibility to state and local governments on the issue of uniform base by allowing states within a uniform base to levy a lower rate (that rate may be zero) on food, clothing, electricity and gas, and other items specified in the Agreement.
- ◆ **Additional Review:** The Task Force deleted the following elements of the model agreement for further review and/or modification by the governing states that pass the model act:
 - a) All Uniform Definitions (Including Food)
 - b) Uniform Bad Debt Provisions
 - c) Uniform Rounding Rule
 - d) Limitations on caps, thresholds and sales tax holidays for both state and local governments.

**Resolution to the NCSL Executive Committee
from the Special Task Force on State and Local Taxation of
Telecommunications and Electronic Commerce
PAGE 2.**

- ◆ **Vendor Compensation:** The Task Force recommended leaving the existing language for monetary allowances for certified service providers and sellers, pending the completion of a joint public and private study of compliance costs on sellers to collect sales tax for state and local governments under various levels of complexity. NCSL will participate in the study with the Executive Committee's approval. The study is to be completed no later than July 1, 2002, and will be used by the governing states to review the issue of vendor compensation.
 - ◆ **Relationship of SSTP to States:** The Task Force amended the agreement to recognize the Streamlined Sales Tax Project as an advisory group to the governing states, and affirms that no changes adopted by the SSTP from this day forward (January 27, 2001) will bind the governing states or the agreement.
- 2) Respectfully request that the NCSL Officers communicate NCSL's appreciation to the Streamlined Sales Tax Project for their efficient, diligent and hard work in the formulation of the initial Act and Agreement.

**Amendments
by the NCSL Task Force on States and Local Taxation of
Telecommunications and Electronic Commerce**

**to the Uniform Sales and Use Tax Administration Act and the
Streamlined Sales and Use Tax Agreement as adopted by the
Streamlined Sales Tax Project on January 24, 2001**

Amendment on Governance: APPROVED

States can pass the Act only or the Act and Agreement

When five states pass the Act and Agreement, those states can enter into contracts with vendors with the stipulation that the contracts can only be in effect for one year.

Other states that pass only the Act have until July 1, 2003 to join/pass the Agreement.

All states will have equal voting rights except on matters on which a contract exists between the complying states and vendors.

It will take a simple majority of all the states enacting either the Act or the Act and Agreement until July 1, 2003 to change the Agreement. After July 1, 2003 the member states will decide the vote margin needed to change the Agreement.

Each state will be allowed to appoint no more than four delegates chosen according to state law with each state having only one vote on matters affecting the Agreement.

Amendment on Base/Rate: APPROVED

To modify Sec. 304, 308

To allow states within a uniform base to levy a lower rate (that rate may be zero) on food, clothing, electricity and gas, and other items specified in the Agreement.

Amendments

by the NCSL Task Force on States and Local Taxation of
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to the Uniform Sales and Use Tax Administration Act and the
Streamlined Sales and Use Tax Agreement as adopted by the
Streamlined Sales Tax Project on January 24, 2001

Page 2.

Amendment to delete Uniform Definitions: **APPROVED**

Remove Section 312 (all paragraphs) from the Agreement.

Amendment to delete Section 308 (a) (5): **APPROVED**

Removes language on a uniform rounding rule for sales tax rates.

Amendment to delete Section 308 (a) (3-6): **APPROVED**

Removes all references to elimination of caps and thresholds and language prohibiting multiple state rates.

Amendment to delete Section 308 (b) (1-2): **APPROVED**

Removes all references to elimination of caps and thresholds and language prohibiting multiple local rates.

Amendment to delete Section 308 (g); **APPROVED**

Removes language establishing restrictions on sales tax holidays.

Amendment to delete Section 318: **APPROVED**

Removes the entire section with regard to uniform procedures for deductions for bad debt.

Amendment to delete Section 310: **WITHDRAWN**

Would have removed language with regard to uniform sourcing.

Amendment to delete Article 6: **WITHDRAWN**

And add language to:

Recommendation to NCSL Executive Committee that NCSL should participate in a study with the private sector and other governmental entities to determine the collection costs under the current system and a simplified system.

Amendments

by the NCSL Task Force on States and Local Taxation of
Telecommunications and Electronic Commerce
to the Uniform Sales and Use Tax Administration Act and the
Streamlined Sales and Use Tax Agreement as adopted by the
Streamlined Sales Tax Project on January 24, 2001
Page 3.

Amendment to add the following to Article VI: APPROVED
NCSL will participate in a joint public and private sector study of
compliance costs on sellers to collect sales and use taxes for state and local
governments under various levels of complexity. The study is to be
completed no later than July 1, 2002, and will be used by the states passing
the Act or the Act and Agreement to review the issue of vendor
compensation.

Amend Article 7 Section 714 (Governance): APPROVED
Change the relationship of the Streamlined Sales Tax Project to an advisory
role to the states passing either the Act or the Act and the Agreement as of
January 27, 2001. Nothing that the SSTP changes from January 27, 2001
forward will be binding either on the Agreement or the states passing the Act
or the Act and the Agreement.

**Motion to adopt the Uniform Sales and Use Tax Administration Act and
the Streamlined Sales Tax Agreement of January 24, 2001, as amended by
the NCSL task Force on State and Local Taxation of Telecommunications
and Electronic Commerce on January 27, 2001.**

APPROVED UNANIMOUSLY

Motion: Title to read: APPROVED UNANIMOUSLY
Upon approval of the Task Force's recommendation to the Executive
Committee, both the model act and the agreement will be referred to as
Uniform Sales and Use Tax Administration Act and the Streamlined Sales
Tax Agreement of January 24, 2001, as amended by the NCSL Executive
Committee on January 27, 2001.

Motion: APPROVED UNANIMOUSLY
Respectfully request that the NCSL Officers communicate the appreciation
of the Task Force and NCSL to the Streamlined Sales Tax Project
participants.

Neal Osten

From: <Doug_Sheppard@tax.org>
To: "Neal Osten" <neal.osten@ncsl.org>; "Scott Mackey" <mackey@kse50.com>
Sent: Tuesday, January 30, 2001 1:10 AM
Subject: In case you missed it

Actually, you couldn't have missed it, because it was your event. But here's my article as your reward for the free lunch/taxi. Pay close attention to the end for reaction from the Streamlined Sales Tax Projectors themselves (which you may not have heard).

Thanks,
Doug

Code Section: Miscellaneous
 Author: Sheppard, Doug
 Institutional Author: Tax Analysts
 Citations: (January 29, 2001)
 Tax Analysts Reference: 2001 STT 20-37

NCSL Executive Panel Approves Amended Streamlined Legislation

The National Conference of State Legislatures (NCSL) Executive Committee approved by unanimous voice vote amended versions of the Streamlined Sales Tax Project's act and agreement at its meeting in Savannah, Ga. on January 27. (For the most recent coverage of the Streamlined Sales Tax Project, see State Tax Notes, Jan 29, 2001, p. 335; 2001 STT 17-49; or Doc 2001-2532 (4 original pages).)

The NCSL Executive Committee's approval followed the actions of its Task Force on State and Local Taxation of Telecommunications and Electronic Commerce. The task force approved the amended versions of the Streamlined Project's Uniform Sales and Use Tax Administration Act and corresponding Streamlined Sales and Use Tax Agreement and submitted them in the form of a resolution after discussion on January 26 and 27. The task force moved to change sections on governance and base/rate, while setting aside for further review (via deletion from its approved version) uniform definitions, uniform bad debt provisions, the uniform rounding rule, and limitations on caps, thresholds, and sales tax holidays for state and local governments.

According to Illinois state Sen. Steven J. Rauschenberger (R), the task force's cochair, the changes stemmed from a desire to get the act and agreement passed in as many states as possible without controversy. In that regard, several task force members said that one of the most problematic areas is the agreement's uniform-definitions section, in which the definitions of "food" have sparked controversy from private-sector interests seeking to protect existing exemptions. The motion to delete this section carried by voice vote with two dissensions.

Summing up the general view of those in favor of deletion, Rauschenberger said the definitions amounted to "needlessly provoking the private sector." On January 26, Stephen Lodge, National Confectioners Association vice president of

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legislative affairs, reiterated his group's concern that defining "candy" separately could encourage states that currently don't tax candy to begin doing so; Lodge alleged that an attempt is already being made in North Carolina, which is among the states attempting to move on the Streamlined Project's model legislation.

"For us to recommend hard definitions in a model statute to move the process forward exposes us unnecessarily to a lot of discussion," Rauschenberger said. "A lot of the frustration with the definitions as they're written has been the structure of the streamlined group; the streamlined group is composed of revenue people by some participating states, many of whom are not the revenue directors of their states and aren't subject to a lot of input from the private sector. Even if these definitions turn out to be what the final product is, putting them through a public process and allowing a lot more input will improve them and improve the exemptions. I think if you put these definitions in as proposed by Streamlined, you're guaranteeing that we don't pass it in a lot of states." (The day before, Rauschenberger warned legislators that America Online Inc. had "bought the best lobbyist in Springfield [Ill.]" to kill the model legislation in his state.)

Maryland state Del. Nancy Kopp (D) and Michigan state Sen. Joanne Emmons (R) concurred with Rauschenberger.

"The most important thing right now is to get the basic framework out there, but get a lot of states to jump in," Kopp said. "I don't think we should adopt definitions for some objects and not others."

"I believe the definitions have to be worked out at once," Emmons added. "This is the only section I have been bombarded by -- the only one. And if I can get rid of this one, it will help me move this process forward."

Prior to approval of the motion to remove the definitions, Wisconsin state Sen. Robert Jauch (D) had made a motion for retention, which he withdrew following the objections of other legislators.

The task force addressed another controversial area, compensation, with its approval of an amendment to the agreement's section on "monetary allowances for new technological models for sales tax collection." Under the amended version, the NCSL "will participate in a joint public- and private-sector study of compliance costs on sellers to collect sales and use taxes for state and local governments under various levels of complexity. The study is to be completed no later than July 1, 2002, and will be used by the states passing the Act or the Act and Agreement to review the issue of vendor compensation."

Undoubtedly, the amendment was a response to one of the project's main conceptual allies, the retail sector. On January 26, Maureen Riehl, National Retail Federation vice president and state and industry relations counsel, said her organization would remain neutral on the proposal as currently drafted "until some very significant substantive changes are made to the act." Those changes retailers would like to see, Riehl said, are not limited to compensation for collection, but also include provisions on bad debt, privacy, and the treatment of caps and thresholds.

"Retailers would like to see politicians driving the bus," Riehl added, expressing a common industry sentiment on governance.

The task force, in fact, addressed that very issue by affirming that the

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Streamlined Project would be an advisory body to NCSL and state legislators, not the other way around, in amendments passed on January 27.

The first amendment on governance, approved by voice vote without objection, established the following:

- o "States can pass the act only or the act and agreement;
- o "When five states pass the act and agreement, those states can enter into contracts with vendors with the stipulation that the contracts can only be in effect for one year;
- o "Other states that pass only the act have until July 1, 2003, to join [or] pass the agreement;
- o "All states will have equal voting rights except on matters on which a contract exists between the complying states and vendors;
- o "It will take a simple majority of all the states enacting either the act or the act and agreement until July 1, 2003, to change the agreement. After July 1, 2003, the member states will decide the vote margin needed to change the agreement;
- o "Each state will be allowed to appoint no more than four delegates chosen according to state law with each state having only one vote on matters affecting the agreement."

Another amendment on governance to the agreement itself, also approved without objection, stated that the Streamlined Project will henceforth serve in "an advisory role to the states passing either the act or the act and the agreement Nothing that the [Streamlined Project] changes from January 27, 2001, forward will be binding either on the agreement or the states passing the act or the agreement."

The task force also dealt with caps and thresholds by removing language eliminating them and prohibiting multiple state and local rates via amendments approved by voice vote. Indiana state Sen. Lawrence Borst (R) said that the amendment stemmed from the concerns of various legislators.

"They would have to get rid of sales tax holidays [and] they would have to get rid of thresholds," Borst said. "We feel that this is not the time to put these people to the test."

Utah state Sen. Lyle Hillyard (R), on the other hand, objected, arguing that the task force would be undermining the case for equity and universal collection of sales taxes "every time we do anything that makes it more complicated."

An amendment to remove language on a uniform rounding rule for sales tax rates from the same section covering caps and thresholds passed without objection, however, as did one to remove the entire section outlining uniform procedures for deductions of bad debt.

In other business, Tennessee state Rep. Matthew H. Kisber (D), the task force's cochair, withdrew his motion for an amendment to remove language on uniform sourcing. Ultimately, the sourcing rules were retained.

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Kisber argued that "to a state like mine -- where food, clothing, and candy don't matter, because we tax it all -- this probably is one of the most significant provisions because it would radically redistribute moneys for the sales tax, which is such a major contributor of revenue." Because other states "primarily in the South" have a similar problem, Kisber advocated removing the provision for additional review via another task force.

"I would argue that it would be beneficial to have this new group that's being proposed have the opportunity to review," Kisber added.

Without taking a position, NCSL consultant Scott Mackey, economist/associate with Kimbell, Sherman & Ellis of Montpelier, Vt., also said that adoption of the sourcing rule would not be painless. "Potentially, it could mean that revenues that one local jurisdiction is currently getting may go to another one," Mackey said. "And that, in my experience, provokes significant discussion at the state level."

"Alternatively, if the project does not have a uniform sourcing rule, the whole thing for a multistate seller, if you have different rules in each state and when you involve transactions involving multiple states -- you've got to have a uniform sourcing rule at some point to go forward with this project," Mackey added. "The only question, because of the controversy, is do you take it out and throw it in with everything else that's going to continue to be discussed, or do you go with what the project has recommended -- knowing that in some states, it's going to cause some controversy?"

Ohio state Sen. Richard H. Finan (R) disagreed with Kisber, arguing that based on discussions he's had with local jurisdictions, local officials are "ready to compromise on all kinds of things so they can [collect] revenue."

"It seems to me it could cut both ways for the local jurisdiction," Finan said. "One day, you get the bear; one day, the bear gets you. I really think we ought to keep the sourcing rule in. I can't believe that that's going to be such a huge hurdle in our states to getting it done. How do you get the first five states off the dime without a sourcing rule?"

In other action, the task force approved by voice vote an amendment to two sections on base/rate in order to "allow states within a uniform base to levy a lower rate (that rate may be zero) on food, clothing, electricity and gas, and other items specified in the agreement."

In the January 26 discussions that preceded approval of the amendments the following day, the task force had considered the options of approving the act and agreement outright without amendment or recommending that states pass an amended version this year of the act alone. Both options were rejected.

Reaction by Streamlined Project

Streamlined Project Cochair Diane Hardt, administrator for the Wisconsin Department of Revenue, told State Tax Notes in a phone interview on January 29 that the project would take the NCSL amendments under advisement.

"We're taking it as suggestions, just as we have received a lot of suggestions and recommendations from others," Hardt said. "I'm sure we'll be discussing it further at our March meeting. We'll review all of the suggestions and determine what we should do with them -- and it's not just [Cochair] Charles

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[Collins Jr., director of the North Carolina Department of Revenue's Sales and Use Tax Division] and I; it's a project of 29 states that have to review these."

Asked about Lodge's allegation that North Carolina was attempting to tax something (candy) that it previously had not taxed under its version of the streamlined legislation, Collins responded: "Candy today is taxable at 2 percent local, and it's also taxable at the state level depending upon where you buy it. The current version of the [North Carolina] legislation is to tax candy, so that would be in places like grocery stores, where today it's taxed at 2 percent rather than 6 [percent]. In a service station, in a vending machine, or at an athletic event, it's taxable at 6 percent. So if we exempted it all, we'd take a pretty severe revenue hit. If we tax it all, we are taxing a little bit more in certain locations."

-Doug Sheppard

1/30/01

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PAGE 7

TO: NCSL EXEC DIR
FAX: 3038390265
NCSL EXEC DIR

PAGE 8

JAN-30-01 TUE 03:58 PM

Back to Highlights Search Contents

BNA, Inc.

Daily Report for Executives

No. 20
Tuesday January 30, 2001
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Page GG-1

Lead Tax Report

Electronic Commerce

NCSL Task Force Approves Own Version Of SSTP Measure With Sweeping Changes

A special task force of the National Conference of State Legislatures Jan. 27 voted to approve a version of model simplified state sales tax legislation giving states far broader flexibility than the measure developed by the Streamlined Sales Tax Project, leaving the future of the original SSTP draft in doubt.

After meeting in Savannah, Ga., for a day and a half, state legislators on the NCSL electronic commerce task force approved a version of the model legislation that altered or deleted large chunks of the SSTP's work product, including language on governance, tax bases and rates, and definitions.

"We're just trying to get a measure that can pass in the state legislatures," NCSL spokesman Neal Osten said Jan. 29. "This is not a power play."

The move by the task force made the outcome of an already complex debate even more uncertain, as states try to design a system simple and convenient enough to entice remote sellers to collect sales and use taxes on out-of-state purchases.

Big Changes

Among sweeping changes to the original bill and uniform participation agreement produced in a nine-month simplification effort by tax administrators from 29 states, legislators approved a version that would:

- establish a much more flexible governing structure giving all states passing the model act the initial status of "governing states" with voting authority;
- provide more leeway in the tax base area by allowing states within a uniform base to levy a lower rate, including a zero rate, on food, clothing, electricity, and other items;
- delete four major elements of the SSTP model act altogether for "further review and modification," including all language on definitions, the bill's provisions on the uniform treatment of bad debt, its uniform rounding rule, and its limitations on caps, thresholds, and sales tax holidays for both state and local governments;
- relegate the Streamlined Sales Tax Project itself to the status of an advisory group as states work to simplify their sales tax systems, with no authority to make binding changes to the model legislation.

New Version of Bill

Osten explained the task force's action did not result in direct changes to the model sales tax bill and uniform participation agreement produced by SSTP, whose final language was approved by the project Jan. 24 (17 DTR G-8, L-1, L-14, 1/25/01).

Rather, NCSL members approved their own, "new" version of the documents and recommended that version to the NCSL Executive Committee. From there, Osten said, the NCSL-endorsed version of the bill and agreement will be sent to the legislative leaders and chairs of revenue committees in all the state legislatures.

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PAGE 1

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Osten said that while NCSL has no direct power over the streamlined project or the documents it produces, it is asking SSTP officials to support the changes advocated by the task force to avoid a nationwide competition between two different versions of simplified sales tax legislation.

"The lawmakers are the people who have to carry the legislation in their states and we feel their requests should be honored," Osten said.

SSTP Still Evaluating

But on Jan. 29, with a late meeting scheduled between SSTP and NCSL officials to discuss the task force vote, SSTP Co-Chairs Charles Collins and Diane Hardt said they are still evaluating the situation.

"The act and the agreement are the product of 29 states," Hardt said. "The act and agreement are the project's work at this point, and that's not going to change."

Hardt and Collins stressed that the project plans to continue its work regardless of the outcome of the NCSL action and has a meeting scheduled March 5 and 6 in Dallas.

"Before we have a response, we owe it to the states that have been working for the past nine months to talk this over and understand what NCSL is recommending," Collins said.

Support From Retailers

Maureen Riehl, chief state lobbyist for the National Retail Federation, said her group supports the changes made by state legislators in Savannah. "We're positive about it," she said. "We were very concerned that the SSTP document could not pass the dual test of simplification and political reality."

Riehl told BNA Jan. 29 that, by removing controversial portions of the act and agreement and tabling them for future action, NCSL members have created legislative measures that are politically viable and the retail community will stand behind that effort.

"We have deadlines looming in the state legislatures," she said. "It doesn't do us any good to build a perfect document that nobody can pass."

Text of the changes approved by the NCSL task force are in BNA TaxCore.

By Alison Bennett

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Back to Highlights Search Contents

 Search

 Contents

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Tuesday January 30, 2001

Primary Source Material
Miscellaneous Documents**Miscellaneous Documents****Changes to Streamlined Sales Tax Project Model Legislation and Uniform Agreement Backed Jan. 27 by National Conference of State Legislatures' Electronic Commerce Task Force**

Document Date: January 27, 2001

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Streamlined Sales and Use Tax Agreement as adopted by the
Streamlined Sales Tax Project on January 24, 2001**

Amendment on Governance: APPROVED

States can pass the Act only or the Act and Agreement

When five states pass the Act and Agreement, those states can enter into contracts with vendors with the stipulation that the contracts can only be in effect for one year.

Other states that pass only the Act have until July 1, 2003 to join/pass the Agreement.

All states will have equal voting rights except on matters on which a

Contract exists between the complying states and vendors.

It will take a simple majority of all the states enacting either the Act or the Act and Agreement until July 1, 2003 to change the Agreement. After July 1, 2003 the member states will decide the vote margin needed to change the Agreement.

Each state will be allowed to appoint no more than four delegates chosen according to state law with each state having only one vote on matters affecting the Agreement.

Amendment on Base/Rate: APPROVED

To modify Sec. 304, 308

To allow states within a uniform base to levy a lower rate (that rate may be zero) on food, clothing, electricity and gas, and other items specified in the Agreement.

Amendment to delete Uniform Definitions: APPROVED

Remove Section 312 (all paragraphs) from the Agreement.

Amendment to delete Section 308(a)(5): APPROVED

Removes language on a uniform rounding rule for sales tax rates.

Amendment to delete Section 308(a) (3-6): APPROVED

Removes all references to elimination of caps and thresholds and language prohibiting multiple state rates.

Amendment to delete Section 308(b) (1-2): APPROVED

Removes all references to elimination of caps and thresholds and language prohibiting multiple local rates.

Amendment to delete Section 308(g); APPROVED

Removes language establishing restrictions on sales tax holidays.

Amendment to delete Section 318: APPROVED

Removes the entire section with regard to uniform procedures for deductions for bad debt.

Amendment to delete Section 310: WITHDRAWN

Would have removed language with regard to uniform sourcing.

Amendment to delete Article 6: WITHDRAWN

And add language to:

Recommendation to NCSL Executive Committee that NCSL should participate in a study with the private sector and other governmental entities to determine the collection costs under the current system and a simplified system.

Amendment to add the following to Article VI: APPROVED

NCSL will participate in a joint public and private sector study of compliance costs on sellers to

collect sales and use taxes for state and local governments under various levels of complexity. The study is to be complete no later than July 1, 2002, and will be used by the states passing the act or the Act and Agreement to review the issue of vendor compensation.

Amend Article 7 Section 714 (Governance): APPROVED

Change the relationship of the Streamlined Sales Tax Project to an advisory role to the states passing either the Act or the Act and the Agreement as of January 27, 2001. Nothing that the SSTP changes from January 27, 2001 forward will be binding either on the Agreement or the states passing the Act or the Act and the Agreement.

Motion to adopt the Uniform Sales and Use Tax Administration Act and the Streamlined Sales Tax Agreement of January 24, 2001, as amended by the NCSL task Force on State and Local Taxation of Telecommunications and Electronic Commerce on January 27, 2001.

APPROVED UNANIMOUSLY

Motion: Title to read: APPROVED UNANIMOUSLY

Upon approval of the Task Force's recommendation to the Executive Committee, both the model act and the agreement will be referred to as Uniform Sales and Use Tax Administration Act and the Streamlined Sales Tax Agreement of January 24, 2001, as amended by the NCSL Executive Committee on January 27, 2001.

Motion: APPROVED UNANIMOUSLY

Respectfully request that the NCSL Officers communicate the appreciation of the Task Force and NCSL to the Streamlined Sales Tax Project participants.



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January 29, 2001
No. 2001-10

e-taxnewsflash

e-business developments

NCSL Removes Significant Simplification Provisions From Streamlined Project Model Act and Agreement

On Saturday, January 27, the National Conference of State Legislatures (NCSL) approved the model act and related model agreement of the Streamlined Sales Tax Project (SSTP), but only after removing most of the significant sales tax simplification provisions. The NCSL also approved an amendment to the model agreement clarifying that the SSTP is merely an advisory body to the NCSL, and that any future changes to the model legislation made by the SSTP are deemed to be for the NCSL's consideration only.

KPMG Observation

The mission of the SSTP was to develop legislation that would radically reform the sales and use tax system. To that end, the SSTP proposed in December 2000 model legislation that would have required most states to make significant changes to their sales and use tax system. The model legislation, as amended by the NCSL, arguably removes most of the more significant sections -- primarily on the ground that they are politically controversial.

Role of the NCSL

In its action on Saturday, the NCSL attempted to clarify that the SSTP is merely an advisory group to the NCSL, and not a separate policy-making body. The NCSL is a bipartisan organization composed of state legislators that meets regularly to consider policy issues of interest to the states. It remains an open question how the SSTP will respond to the NCSL's assertion of authority. It is also unknown whether the National Governors' Association (NGA) -- an organization that also played a role in establishing the SSTP -- will respond.

Provisions Removed

The NCSL removed from the model legislation and model agreement a number of

significant provisions that would, if enacted, simplify sales and use taxes throughout the country, including measures that would:

- Provide uniform tax base definitions, including uniform definitions for food and clothing
- Prohibit the states from imposing more than one state sales tax rate on taxable items
- Prohibit localities from imposing more than one sales tax rate
- Remove caps and thresholds
- Provide a uniform rule for bad debt deductions
- Provide a uniform rounding rule
- Limit the availability of tax holidays (after 2003).

Although the NCSL removed the uniform tax base definitions that would have applied to all the states that enacted the model act and model agreement, the NCSL retained a provision in the model agreement that would require the localities within each state to have a sales tax base identical to the state's sales tax base by December 31, 2005, subject to certain exceptions.

KPMG Observation

On its face, the decision to retain the requirement of a uniform base would appear significant. In fact, however, the revisions approved by the NCSL permit an end-run around the provision. Under the revised act and agreement, states and localities can continue to impose multiple sales tax rates -- including a rate of zero -- within their jurisdiction. This means effectively that a locality can charge a "zero rate" on, for instance, food, while the state of which it is a part can charge sales tax of, for instance, 5% on food. Therefore, meaningful convergence of the tax bases is not, in fact, required.

What's Left?

Although many significant provisions of the model legislation and agreement have been removed, there are several provisions that have been retained, including, most significantly, a uniform sourcing rule.

Most states use a "destination based" sourcing rule -- that is, sales taxes are imposed in the jurisdiction where the taxable item is delivered to the purchaser. Vendors usually know the delivery address of tangible items sold. Intangible items and services subject to sales tax present the most difficult sourcing issues.

The model legislation and agreement provide a series of hierarchal rules for determining the taxing jurisdiction of a transaction. For a fuller description of the sourcing rules, see [e-TaxNewsFlash 2001-06](#).

KPMG Observation

The proposed sourcing rule will help vendors determine how to tax remote sales of digitized goods and services. Digitized goods and services may be sent to an email address, rather than a fixed location, and may be paid for with a credit card rather than a check or other payment instrument that indicates an address. Under these circumstances, the vendor may not know where "delivery" of the taxable product or service occurs. In certain circumstances, the vendor may not even have a billing address or other record of the purchaser's location. The proposed model legislation provides a series of ordering rules that should provide greater certainty than the existing disparate tax regimes.

* * * * *

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Taxes

Decision On Uniform Sales-Tax Plan Questioned

Some call the decision by the National Conference of State Legislatures (NCSL) to put a moratorium on any changes to model legislation that would simplify the state sales-tax structure "spontaneously self-combusting," but NCSL officials say they had no choice if state lawmakers were to consider measures based on the model legislation this year.

"There is a lot of head-scratching that went on over what happened," **Mark Nebergall**, president of the Software Finance Tax Executives Council, said about NCSL's decision last weekend to approve draft legislation but also to halt any changes to it, to eliminate the hard-fought product definitions and to cut the limitations on caps, thresholds and sales-tax holidays for both state and local governments.

But Illinois Sen. **Steve Rauschenberger**, R, said NCSL had two choices: Do nothing until next year, or eliminate controversial issues, halt the amendments and take the bills to the state legislatures. He thought it was important to bring

Index

- [Sales-Tax Plan Decision Questioned](#)
- [Group Eyes Benefits of State Privacy](#)
- [Digital Copyright Act Spurs Protest](#)
- [Panel Urges Better Defense Security](#)
- [Fight Over EU Copyright Crescendo](#)
- [Officials Tackle IP Jurisdiction](#)
- [Joel Klein Heads To Bertelsmann](#)
- [Committee Appointments Named](#)
- [E-briefs](#)

legislation to the states for approval.

The Streamlined Sales Tax Project (SSTP) should continue its work and modify the proposals, Rauschenberger said, but state lawmakers had no choice but to "set a version of the agreement in stone" for it to be considered back home.

The SSTP proposal includes two pieces of legislation. One is an administrative act that would stipulate that a state legislature wishes to enter a multi-state agreement to reduce the burden of sales-tax compliance for retailers, and the second is an agreement that would limit the number of state tax rates and in greater detail stipulate what those tax systems would look like.

NCSL decided instead that states should be allowed to approve the bill expressing a desire to participate without also approving the changes to the law.

Nebergall fears the decision could spark infighting among state legislators and state revenue officials serving on SSTP.

"I respectfully and gently couldn't disagree more," Rauschenberger said. "Our biggest danger is not upsetting the Streamlined Sales Tax Project; our biggest danger is to have it defeated and then for everybody to say the states

*Ball -
A good story
wherein Sen.
Rauschenberger
takes an olive
branch to SSTP.
Cw 1*

aren't ready. The states aren't ready for some of the things we took out. That is a next-year thing."

Frank Shafroth, director of state and federal relations at the National Governors' Association, said the NCSL decision "is not constructively helpful." The decision complicates the independent effort, he said, and time is of the essence because Congress will consider legislation this year to extend the Internet tax moratorium, which has become intertwined with the debate about taxing e-commerce.

That is just why NCSL wanted to act now, Rauschenberger said. He attributed the concerns to a misunderstanding of the legislative schedule, noting that 11 states have early February filing deadlines for considering legislation and that state lawmakers at NCSL wanted to get the proposal on the floor for consideration.

Once the legislation is approved, he said, then NCSL can go back and work on incorporating any changes SSTP makes to the bills and amend them next session.



- by Teri Rucker

Hardt, Diane L

From: MATT TOMALIS [matt.tomalis@taxadmin.org]
Sent: Wednesday, January 31, 2001 7:00 AM
To: HARLEY DUNCAN; Diane Hardt; Charles Collins
Subject: CCH account

Here's what was in CCH's Tax News Direct today about the NCSL action:

All States--Sales and Use Tax: NCSL Endorses Streamlined Agreement with Modifications

On January 27, 2001, the Executive Committee of the National Conference of State Legislatures (NCSL) unanimously endorsed the Uniform Sales and Use Tax Administration Act and the Streamlined Sales and Use Tax Agreement, with significant reservations. The Act and Agreement are the products of the Streamlined Sales Tax Project (SSTP), a collaborative effort of states to simplify sales and use tax laws and administration.

Amendments on Governance

The Executive Committee approved several amendments to the Agreement that were proposed by the NCSL Task Force on State and Local Taxation of Telecommunications and Electronic Commerce. The amendments would add several provisions on governance. (1) States can pass the Act only, or the Act and Agreement. (2) Once five states have passed the Act and Agreement, those states can enter into one-year contracts with vendors. (3) States that pass only the Act will have until July 1, 2003, to join the Agreement. (4) All states will have equal voting rights, except on matters covered by a contract between states and vendors. (5) Prior to July 1, 2003, a simple majority of states enacting the Act can change the Agreement. After July 1, 2003, the member states will decide the vote margin needed for such changes. (6) Each state may appoint no more than four delegates, with each state having only one vote on matters affecting the Agreement.

The NCSL amendments would also change the SSTP's role to an advisory one and provide that any changes made by the SSTP from January 27, 2001, forward will not be binding on the Agreement or the states passing the Act.

Provisions Deleted

The NCSL amendments would also allow states, within a uniform tax base, to levy a lower rate on food, clothing, electricity, gas, and other items specified in the Agreement and would remove from the Agreement references to (1) uniform definitions, (2) uniform rounding rules for sales tax rates, (3) elimination of caps and thresholds, (4) prohibitions on multiple state rates, (5) restrictions on sales tax holidays, and (6) uniform procedures for deductions for bad debt.

Study on Costs

The NCSL intends to participate in a joint public and private sector study of compliance costs on sellers collecting sales and use taxes for state and local governments under various levels of complexity. The study, to be completed no later than July 1, 2002, will be used by the states passing the Act to review the issue of vendor compensation.

Reaction by Participants

In an interview with CCH, Illinois State Senator Steven Rauschenberger, co-chair of the NCSL Task Force, said that he was "encouraged" by the NCSL Executive Committee vote. The SSTP agenda was a "tad bit too ambitious" for legislative sessions that will also be dealing with redistricting, according to Senator Rauschenberger, so the NCSL "took a good starting product" developed by the SSTP, "retained their structural template," and modified it to suit a more manageable agenda.

Diane Hardt, co-chair of the SSTP, told CCH that the Steering Committee of the SSTP is still reviewing and discussing the NCSL action. Representatives of the two organizations had a conversation on January 29, 2001, and the SSTP Steering Committee plans to hold a teleconference on January 30, 2001. Hardt said that the SSTP "will probably keep going forward." (Press Release, National Conference of State Legislatures, January 29, 2001; Telephone conversations with Illinois State Senator Steven Rauschenberger and Diane Hardt, January 30, 2001.)



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
NCSL Executive Committee

William T. Pound
Executive Director

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

DATE: February 2, 2001

SUBJECT: **Simplified Sales and Use Tax Administration Act and Streamlined
Sales Tax Agreement as amended by NCSL January 27, 2001**

Enclosed you will find a copy of the Simplified Sales and Use Tax Administration Act and the Streamlined Sales and Use Tax Agreement as amended and adopted by our Task Force on January 27 and approved later that day by the Executive Committee of the National Conference of State Legislatures.

We believe these documents, as crafted in Savannah last week, represent a major step toward sales tax simplification in the states. We urge you now to work with us and the NCSL staff to speed passage of the act and the agreement in your state.

We appreciate the dedication, hard work, frank discussions and creativity that all of you contributed to this final product. We are also deeply grateful to the NCSL leadership and Executive Committee for their unstinting support of the Task Force's efforts.

As you may be aware, the leadership of the Streamlined Sales Tax Project and others have expressed concern about the Task Force and Executive Committee actions. They, naturally, were hoping that we would have endorsed the project's work in its entirety. Although that was not possible, we remain committed to working with the SSTP and look forward to their continued advice and expertise to secure sales tax simplification through state actions—the overriding goal that NCSL and the project share.

We firmly believe that the simplifications included in the Task Force's act and agreement are important to enact now. These simplifications—for example, central registration for sellers, administration of exemptions, uniform tax returns, and uniform rules for remittances of funds—are very important in their own right. They will also demonstrate that state legislatures are determined to achieve sales tax simplification over the next two years. States enacting just the act, or enacting both the act and agreement will then begin the task of achieving consensus on the remaining simplification items—such as, uniform definitions, rounding rules and further rate simplification.

We are enthusiastic about the progress the Task Force has made and are pleased to forward the act and agreement to you for consideration in your legislature. We hope that you will call either of us or our NCSL staff resources (Neal Osten, Graham Williams, and Gerri Madrid, all in the NCSL Washington office) if you have any questions or if we can help in any way in your efforts in support of this package in your legislature.

2 **SIMPLIFIED SALES AND USE TAX**
3 **ADMINISTRATION ACT**

4
5 **AS AMENDED AND ADOPTED ON JANUARY 27, 2001**
6 **By the National Conference of State Legislatures'**
7 **Special Task Force on State and Local Taxation of**
8 **Telecommunications and Electronic Commerce**
9 **and unanimously adopted by the NCSL Executive Committee**

10
11 **SECTION 1 TITLE**

12 Section 1 through Section 10 shall be known as and referred to as the "Simplified Sales
13 and Use Tax Administration Act."

14 **SECTION 2 DEFINITIONS**

15 As used in this Act:

- 16 a. "Agreement" means the Streamlined Sales and Use Tax Agreement.
- 17 b. "Certified Automated System" means software certified jointly by the
18 states that are signatories to the Agreement to calculate the tax imposed by
19 each jurisdiction on a transaction, determine the amount of tax to remit to
20 the appropriate state, and maintain a record of the transaction.
- 21 c. "Certified Service Provider" means an agent certified jointly by the states
22 that are signatories to the Agreement to perform all of the seller's sales tax
23 functions.
- 24 d. "Person" means an individual, trust, estate, fiduciary, partnership, limited
25 liability company, limited liability partnership, corporation, or any other
26 legal entity.

- 1 e. "Sales Tax" means the tax levied under (CITE SPECIFIC STATUTE).
- 2 f. "Seller" means any person making sales, leases, or rentals of personal
- 3 property or services.
- 4 g. "State" means any state of the United States and the District of Columbia.
- 5 h. "Use Tax" means the tax levied under (CITE SPECIFIC STATUTE).

6

7 **SECTION 3 LEGISLATIVE FINDING (OPTIONAL)**

8 The (LEGISLATIVE BODY) finds that a simplified sales and use tax system will reduce
9 and over time eliminate the burden and cost for all vendors to collect this state's sales and
10 use tax. The (Legislative Body) further finds that this state should participate in
11 multistate discussions to review and/or amend the terms of the Agreement to simplify and
12 modernize sales and use tax administration in order to substantially reduce the burden of
13 tax compliance for all sellers and for all types of commerce.

14

15 **SECTION 4 AUTHORITY TO PARTICIPATE IN MULTISTATE**
16 **NEGOTIATIONS**

17 For the purposes of reviewing and/or amending the Agreement embodying the
18 simplification requirements as contained in Section 5 of this Act, the State
19 shall enter into multistate discussions. For purposes of such discussions, the
20 State shall be represented by no more than four delegates (Language appointing delegates
21 is left to each state to determine.)

1 **SECTION 5 AUTHORITY TO ENTER AGREEMENT**

2 The (STATE TAXING AUTHORITY) is authorized and directed to enter into the
3 Streamlined Sales and Use Tax Agreement with one or more states to simplify and
4 modernize sales and use tax administration in order to substantially reduce the burden of
5 tax compliance for all sellers and for all types of commerce. In furtherance of the
6 Agreement, the (STATE TAXING AUTHORITY) is authorized to act jointly with other
7 states that are members of the Agreement to establish standards for certification of a
8 certified service provider and certified automated system and establish performance
9 standards for multistate sellers.

10 The (STATE TAXING AUTHORITY) is further authorized to take other actions
11 reasonably required to implement the provisions set forth in this Act. Other actions
12 authorized by this section include, but are not limited to, the adoption of rules and
13 regulations and the joint procurement, with other member states, of goods and services in
14 furtherance of the cooperative agreement.

15 The (STATE TAXING AUTHORITY) or the (AUTHORITY'S) designee is authorized
16 to represent this state before the other states that are signatories to the Agreement.

17
18 **SECTION 6 RELATIONSHIP TO STATE LAW**

19 No provision of the Agreement authorized by this Act in whole or part invalidates or
20 amends any provision of the law of this state. Adoption of the Agreement by this State
21 does not amend or modify any law of this State. Implementation of any condition of the
22 Agreement in this state, whether adopted before, at, or after membership of this state in
23 the Agreement, must be by the action of this state.

1 **SECTION 7 AGREEMENT REQUIREMENTS**

2 The (STATE TAXING AUTHORITY) shall not enter into the Streamlined Sales and Use
3 Tax Agreement unless the Agreement requires each state to abide by the following
4 requirements:

5 a. Simplified State Rate. The Agreement must set restricitions
6 to limit over time the number of state rates.

7 b. Uniform Standards. The Agreement must establish uniform standards for the
8 following:

9 1. The sourcing of transactions to
10 taxing jurisdictions.

11 2. The administration of exempt
12 sales.

13 3. Sales and use tax returns and
14 remittances.

15 c. Central Registration. The Agreement must provide a central, electronic
16 registration system that allows a seller to register to collect and remit sales and
17 use taxes for all signatory states.

18 d. No Nexus Attribution. The Agreement must provide that registration with
19 the central registration system and the collection of sales and use taxes in the
20 signatory states will not be used as a factor in determining whether the seller
21 has nexus with a state for any tax.

1 e. Local Sales and Use Taxes. The Agreement must provide for reduction of
2 the burdens of complying with local sales and use taxes through the following:

3 1. Restricting variances between the
4 state and local tax bases.

5 2. Requiring states to administer
6 any sales and use taxes levied by
7 local jurisdictions within the state
8 so that sellers collecting and
9 remitting these taxes will not
10 have to register or file returns
11 with, remit funds to, or be subject
12 to independent audits from local
13 taxing jurisdictions.

14 3. Restricting the frequency of
15 changes in the local sales and use
16 tax rates and setting effective
17 dates for the application of local
18 jurisdictional boundary changes
19 to local sales and use taxes.

20 4. Providing notice of changes in
21 local sales and use tax rates and
22 of changes in the boundaries of

1 local taxing jurisdictions.

2 f. Monetary Allowances. The Agreement must outline any monetary
3 allowances that are to be provided by the states to sellers or certified
4 service providers. The Agreement must allow for a joint public and private
5 sector study of the compliance cost on sellers and certified service
6 providers to collect sales and use taxes for state and local governments
7 under various levels of complexity to be completed by July 1, 2002.

8 g. State Compliance. The Agreement must require each state to certify
9 compliance with the terms of the Agreement prior to joining and to
10 maintain compliance, under the laws of the member state, with all
11 provisions of the Agreement while a member.

12 h. Consumer Privacy. The Agreement must require each state to adopt a
13 uniform policy for Certified Service Providers that protects the privacy of
14 consumers and maintains the confidentiality of tax information.

15 i. Advisory Councils. The Agreement must provide for the appointment of
16 an advisory council of private sector representatives and an advisory
17 council of non-member state representatives to consult with in the
18 administration of the Agreement.

19
20 **SECTION 8 COOPERATING SOVEREIGNS**

21 The Agreement authorized by this Act is an accord among individual cooperating
22 sovereigns in furtherance of their governmental functions. The Agreement provides a

1 mechanism among the member states to establish and maintain a cooperative, simplified
2 system for the application and administration of sales and use taxes under the duly
3 adopted law of each member state.

4

5 **SECTION 9 LIMITED BINDING AND BENEFICIAL EFFECT**

6 a. The Agreement authorized by this Act binds and inures only to the benefit of this State
7 and the other member states. No person, other than a member state, is an intended
8 beneficiary of the Agreement. Any benefit to a person other than a state is established by
9 the law of this State and the other member states and not by the terms of the Agreement.

10 b. Consistent with subsection (a), no person shall have any cause of action or defense
11 under the Agreement or by virtue of this State's approval of the Agreement. No person
12 may challenge, in any action brought under any provision of law, any action or inaction
13 by any department, agency, or other instrumentality of this State, or any political
14 subdivision of this State on the ground that the action or inaction is inconsistent with the
15 Agreement.

16 c. No law of this state, or the application thereof, may be declared invalid as to any
17 person or circumstance on the ground that the provision or application is inconsistent
18 with the Agreement.

19

20 **SECTION 10 SELLER AND THIRD PARTY LIABILITY**

21 a. A Certified Service Provider is the agent of a seller, with whom the Certified Service
22 Provider has contracted, for the collection and remittance of sales and use taxes. As the
23 seller's agent, the Certified Service Provider is liable for sales and use tax due each

1 member state on all sales transactions it processes for the seller except as set out in this
2 section.

3 A seller that contracts with a Certified Service Provider is not liable to the state for sales
4 or use tax due on transactions processed by the Certified Service Provider unless the
5 seller misrepresented the type of items it sells or committed fraud. In the absence of
6 probable cause to believe that the seller has committed fraud or made a material
7 misrepresentation, the seller is not subject to audit on the transactions processed by the
8 Certified Service Provider. A seller is subject to audit for transactions not processed by
9 the Certified Service Provider. The member states acting jointly may perform a system
10 check of the seller and review the seller's procedures to determine if the Certified Service
11 Provider's system is functioning properly and the extent to which the seller's transactions
12 are being processed by the Certified Service Provider.

13 b. A person that provides a Certified Automated System is responsible for the proper
14 functioning of that system and is liable to the state for underpayments of tax attributable
15 to errors in the functioning of the Certified Automated System. A seller that uses a
16 Certified Automated System remains responsible and is liable to the state for reporting
17 and remitting tax.

18 c. A seller that has a proprietary system for determining the amount of tax due on
19 transactions and has signed an agreement establishing a performance standard for that
20 system is liable for the failure of the system to meet the performance standard.

1 **SECTIONS 11 THROUGH ___ INDIVIDUAL STATE**
2 **AMENDMENTS**

3 These sections are reserved for each individual state to make statutory amendments
4 necessary to bring it into compliance with the Streamlined Sales and Use Tax Agreement.
5 Some examples would be amending the state's current sourcing rule to comply with the
6 new uniform rule, making the effective dates of local rate changes to the first day of a
7 calendar quarter and providing for a sixty (60) day notice, or enacting exemptions
8 necessary to preserve current non-taxability of various goods and services.

9

10 **SECTION ___ EFFECTIVE DATE (OPTIONAL)**

11 Sections 1 through 9 of this Act are effective upon ratification (or whatever phrase is
12 used in the state to indicate that the act is effective immediately) or specific date.

13 Sections 10 through ___ of this Act becomes effective on the date this State becomes a
14 member of the Streamlined Sales and Use Tax Agreement.

1 (3:00 pm -2/1/01)

2 **STREAMLINED SALES AND USE TAX**
3 **AGREEMENT**

4
5 **AS AMENDED AND ADOPTED ON JANUARY 27, 2001**
6 **By the National Conference of State Legislatures'**
7 **Special Task Force on State and Local Taxation of**
8 **Telecommunications and Electronic Commerce**
9 **and unanimously adopted by the NCSL Executive Committee**
10

11 **TABLE OF CONTENTS**

12 **Article I Purpose and Principle**

13 100 Title

14 102 Fundamental Purpose

15 104 Application

16 **Article II Definitions**

17 200 Agent

18 202 Agreement

19 204 Certified Automated System (CAS)

20 206 Certified Service Provider (CSP)

21 208 Model 1 Seller

22 210 Model 2 Seller

23 212 Model 3 Seller

24 214 Person

25 216 Purchaser

26 218 Registered Under This Agreement

27 220 Seller

28 222 State

1 **Article III Requirements Each State Must Accept to Participate**

- 2 300 Compliance
- 3 302 State Administration
- 4 304 State and Local Tax Bases
- 5 306 Seller Registration
- 6 308 State and Local Tax Levies
- 7 310 Uniform Sourcing Rules
- 8 312 Administration of Exemptions
- 9 314 Uniform Tax Returns
- 10 316 Uniform Rules for Remittances of Funds
- 11 318 Confidentiality and Privacy Protections

12 **Article IV Seller Registration**

- 13 400 Seller Participation
- 14 402 Amnesty for Registration
- 15 404 Method of Remittance
- 16 406 Registration by an Agent

17 **Article V Provider and System Certification**

- 18 500 Certification of Service Providers and Automated Systems

19 **Article VI Monetary Allowances for Participation**

- 20 601 Monetary Allowances for CSPs and Sellers
- 21 602 Monetary Allowance Under Model 1
- 22 604 Monetary Allowance for Model 2 Sellers
- 23 606 Monetary Allowance for Model 3 Sellers and All Other Sellers Not Under Models 1 or 2

24

25

1	<u>Article VII - Interim Governance</u>
2	700 Participating States
3	702 Amending the Agreement
4	704 Contracts
5	<u>Article VIII - State Entry and Withdrawal</u>
6	800 Entry Into Agreement
7	802 Certification of Compliance
8	804 Initial Adopting States
9	806 Conditions for Membership
10	808 Agreement Administration
11	810 Withdrawal of Membership
12	812 Expulsion of Member States
13	814 Continued Role of Streamlined Sales Tax Project and State Advisory Committee
14	816 Effective Date
15	<u>Article IX - Amendments and Interpretations</u>
16	900 Amendments to Agreement
17	902 Interpretations of Agreement
18	<u>Article X - Relationship of Agreement to Member States and Persons</u>
19	1000 Cooperating Sovereigns
20	1002 Relationship to State Law
21	1004 Limited Binding and Beneficial Effect
22	1006 Final Determinations
23	<u>Article XI - Review of Costs and Benefits Associated with the System</u>
24	1100 Review of Costs and Benefits
25	<u>Appendix A</u>
26	Letter of Intent
27	

ARTICLE II
DEFINITIONS

The following definitions apply in this Agreement:

200 AGENT

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

202 AGREEMENT

The Streamlined Sales and Use Tax Agreement as amended as of January 27, 2001 and as subsequently amended.

204 CERTIFIED AUTOMATED SYSTEM (CAS)

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

206 CERTIFIED SERVICE PROVIDER (CSP)

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

208 MODEL 1 SELLER

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

210 MODEL 2 SELLER

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

212 MODEL 3 SELLER

A seller that has sales in at least five member states, has total annual sales revenue of at least five

1 hundred million dollars (or a lower amount which may be agreed to by the states acting jointly),
2 has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered
3 into a performance agreement with the member states that establishes a tax performance standard
4 for the seller. As used in this section, a seller includes an affiliated group of sellers using the
5 same proprietary system.

6 **214 PERSON**

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

9 **216 PURCHASER**

10 A person to whom a sale of personal property is made or to whom a service is furnished.

11 **218 REGISTERED UNDER THIS AGREEMENT**

12 Registration by a seller with the member states under the central registration system provided in
13 Article IV of this Agreement.

14 **220 SELLER**

15 A person making sales, leases, or rentals of personal property or services.

16 **222 STATE**

17 Any state of the United States and the District of Columbia.

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4

ARTICLE III
REQUIREMENTS EACH STATE MUST
ACCEPT TO PARTICIPATE

5

300 COMPLIANCE

6 As a requisite to entering into and remaining a member of the Agreement, each State must
7 comply with the provisions of this Agreement in accordance with the provisions of Article VIII
8 of this Agreement.

9

302 STATE ADMINISTRATION

10 Each State must provide state level administration of sales and use taxes. Sellers are only
11 required to register with, file returns with, and remit funds to the state taxing authority. The State
12 must collect any local taxes and distribute them to the appropriate taxing jurisdictions. Member
13 states must conduct, or authorize others to conduct on their behalf, all audits of the sellers
14 registered under this Agreement, and local jurisdictions shall not conduct independent sales or
15 use tax audits of sellers registered under this Agreement.

16

304 STATE AND LOCAL TAX BASES

17 a. Through December 31, 2005, if a member state has local jurisdictions that levy a sales or use
18 tax, all local jurisdictions in the State must have a common tax base. After December 31, 2005,
19 the tax base for local jurisdictions must be identical to the state tax base, unless federal law
20 prohibits the local jurisdictions from taxing a transaction taxed by the State.

21 b. This section does not apply to sales or use taxes levied on the transfer of motor vehicles,
22 aircraft, watercraft, modular home, manufactured home or mobile home.

23

306 SELLER REGISTRATION

24 Each State must participate in an online sales and use tax registration system in cooperation with
25 the other member states. Under this system:

- 26 a. A seller registering under the Agreement is registered in each of the member
states.

- 1 b. The member states agree not to require the payment of any registration fees or
2 other charges for a seller to register in a State in which the seller has no legal
3 requirement to register.
- 4 c. A written signature from the seller is not required.
- 5 d. An agent may register a seller under uniform procedures adopted by the member
6 states.
- 7 e. A seller may cancel its registration under the system at any time under uniform
8 procedures adopted by the member states. Cancellation does not relieve the seller
9 of its liability for remitting to the proper states any taxes collected.

10308 STATE AND LOCAL TAX LEVIES

- 11 a. To reduce the complexity and administrative burden of collecting sales and use taxes, all
12 member states must:
 - 13 1. Lessen the difficulties faced by sellers when there is a change in a state sales or use tax
14 rate or base by making a reasonable effort to do all of the following:
 - 15 a. Provide sellers with as much advance notice as practicable of a rate change.
 - 16 b. Limit the effective date of a rate change to the first day of a calendar quarter.
 - 17 c. Notify sellers of legislative changes in the tax base and amendments to sales and
18 use tax rules and regulations.
- 19 Failure of a seller to receive notice or failure of a State to provide notice or limit the effective
20 date of a rate change shall not relieve the seller of its obligation to collect sales or use
21 taxes for that member state.
- 22 2. Provide that the effective date of rate changes for services covering a period starting
23 before and ending after the statutory effective date shall be as follows:
 - 24 a. For a rate increase, the new rate shall apply to the first billing period

1 starting on or after the effective date.

2 b. For a rate decrease, the new rate shall apply to bills rendered on or after
3 the effective date.

4 3. After December 31, 2005, states must have only one state tax rate for items of personal
5 property or services, except that for food, clothing, electricity, gas and other items
6 specifically added to this Agreement, states may impose one additional lower rate, and
7 that rate may be zero. A state may continue to have a generally applicable state tax rate
8 and additional state rates until that date.

9 4. The provisions of paragraph (3) of this subsection does not apply to sales or use taxes
10 levied on the transfer of motor vehicles, aircraft, watercraft, modular home, manufactured
11 home or mobile home.

12 b. Member states that have local jurisdictions that levy a sales or use tax must:

13 1. Provide that local rate changes will be effective only on the first day of a calendar quarter
14 after a minimum of sixty (60) days' notice to sellers.

15 2. Apply local sales tax rate changes to purchases from printed catalogs wherein the
16 purchaser computed the tax based upon local tax rates published in the catalog only on
17 the first day of a calendar quarter after a minimum of 120 days notice to sellers.

18 3. For sales and use tax purposes only, apply local jurisdiction boundary changes only on
19 the first day of a calendar quarter after a minimum of sixty (60) days notice to sellers.

20 4. Provide and maintain a database that describes boundary changes for all taxing
21 jurisdictions. This database must include a description of the change and the effective
22 date of the change for sales and use tax purposes.

23 5. Provide and maintain a database of all sales and use tax rates for all of the jurisdictions
24 levying taxes within the State. For the identification of states, counties, cities, and
25 parishes, codes corresponding to the rates must be provided according to Federal
26 Information Processing Standards (FIPS) as developed by the National Institute of

1 Standards and Technology. For the identification of all other jurisdictions, codes
2 corresponding to the rates must be in the format determined jointly by the member states.

- 3 6 Provide and maintain a database that assigns each five (5) digit and nine (9) digit zip code
4 within the State to the proper tax rates and jurisdictions. The State must apply the lowest
5 combined tax rate imposed in the zip code area if the area includes more than one tax rate
6 in any level of taxing jurisdictions. If a nine (9) digit zip code designation is not available
7 for a street address or if a seller is unable to determine the nine (9) digit zip code
8 designation of a purchaser after exercising due diligence to determine the designation, the
9 seller may apply the rate for the five (5) digit zip code area. For the purposes of this
10 section, there is a rebuttable presumption that a seller has exercised due diligence if the
11 seller has attempted to determine the nine (9) digit zip code designation by utilizing
12 software approved by the member states that makes this designation from the street
13 address and the five (5) digit zip code of the purchaser.
14

15 7 Participate with other member states in the development of an address-based system for
16 assigning taxing jurisdictions. The system must meet the requirements developed pursuant
17 to the federal Mobile Telecommunications Sourcing Act, at 4 U.S.C.A. § 119. At a future
18 date, member states acting jointly may allow a member state to require sellers register
19 under this agreement to use an address-based system provided by that member state. If any
20 State develops an address-based assignment system pursuant to the Mobile
21 Telecommunications Sourcing Act, a seller may use that system in place of the system
22 provided for in paragraph 6 of this section.

- 23 c. The member states must relieve sellers and Certified Service Providers from liability to
24 the State or local jurisdictions for having charged and collected the incorrect amount of
25 sales or use tax resulting from the seller or Certified Service Provider relying on
26 erroneous data provided by a State on tax rates, boundaries, or taxing jurisdiction
27 assignments. A State that provides an address-based system for assigning taxing
28 jurisdictions pursuant to paragraph (b) (7) of this section or pursuant to the federal
29 Mobile Telecommunications Sourcing Act will not be required to provide liability relief

1 for errors resulting from the reliance on the information provided by the State under the
2 provisions of paragraph (b)(6) of this section.

3 d. The electronic databases, provided for in paragraphs (b)(4), (b)(5), (b)(6), and (b)(7) of
4 this section, must be in a downloadable format approved by the member states acting
5 jointly.

6 e. The provisions of paragraphs (b)(6) and (b)(7) do not apply when the purchased product
7 is received by the purchaser at the business location of the seller.

8 f. The databases provided by (b)(4), (b)(5), and (b)(6) are not a requirement of a State prior
9 to entering into the Agreement. The effective dates for availability and use of the
10 databases will be determined by the member states acting jointly.
11

12 **310 UNIFORM SOURCING RULES**

13 The member states agree to require sellers to source the sale (including the lease or rental) of a
14 product in accordance with the following provisions. These provisions apply regardless of the
15 characterization of a product as tangible personal property, a digital good, or a service
16 (excluding, for the present, telecommunications). These provisions only apply to determine a
17 seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's sale of
18 a product. These provisions do not affect the obligation of a seller as purchaser to remit tax on
19 the use of the product to the taxing jurisdictions of that use.

20 a. When the product is received by the purchaser at a business location of the seller, the sale
21 is sourced to that business location.

22 b. When the product is not received by the purchaser at a business location of the seller, the
23 sale is sourced to the location where receipt-by the purchaser (or the purchaser's donee,
24 designated as such by the purchaser) occurs, including the location indicated by
25 instructions for delivery to the purchaser (or donee), known to the seller.

26 c. When (a) and (b) do not apply, the sale is sourced to the location indicated by an address

1 for the purchaser that is available from the business records of the seller that are
2 maintained in the ordinary course of the seller's business when use of this address does
3 not constitute bad faith.

4 d. When (a), (b), and (c) do not apply, the sale is sourced to the location indicated by an
5 address for the purchaser obtained during the consummation of the sale, including the
6 address of a purchaser's payment instrument, if no other address is available, when use of
7 this address does not constitute bad faith.

8 e. When none of the previous rules of (a), (b), (c), or (d) apply, including the circumstance
9 where the seller is without sufficient information to apply the previous rules, then the
10 location will be determined by the address from which tangible personal property was
11 shipped, from which the digital good was first available for transmission by the seller, or
12 from which the service was provided (disregarding for these purposes any location that
13 merely provided the digital transfer of the product sold).

14 f. Notwithstanding the previously stated rules, a business purchaser that is not a holder of a
15 direct pay permit that knows at the time of its purchase of a digital good or a service that
16 the digital good or service will be concurrently available for use in more than one
17 jurisdiction shall deliver to the seller in conjunction with its purchase a form disclosing
18 this fact ("Multiple Points of Use or MPU" Exemption Form).

19 1. Upon receipt of the MPU Exemption Form, the seller is relieved of all obligation
20 to collect, pay, or remit the applicable tax and the purchaser shall be obligated to
21 collect, pay, or remit the applicable tax on a direct pay basis.

22 2. A purchaser delivering the MPU Exemption Form may use any reasonable, but
23 consistent and uniform, method of apportionment that is supported by the
24 purchaser's business records as they exist at the time of the consummation of the
25 sale.

26 3. The MPU Exemption Form will remain in effect for all future sales by the seller
27 to the purchaser (except as to the subsequent sale's specific apportionment that is

1 governed by the principle of subparagraph (f)(2) and the facts existing at the time
2 of the sale) until it is revoked in writing.

- 3 4. A holder of a direct pay permit shall not be required to deliver a MPU Exemption
4 Form to the seller. A direct pay permit holder shall follow the provisions of
5 subparagraph (f)(2) in apportioning the tax due on a digital good or a service that
6 will be concurrently available for use in more than one jurisdiction.

7 g. The terms "receive" and "receipt" mean:

- 8 1. taking possession of tangible personal property,
9 2. making first use of services, or
10 3. taking possession or making first use of digital goods, whichever comes first.

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

13 h. This section is reserved for a specific sourcing rule applicable to telecommunications and
14 possibly additional specific sourcing rules for other services as necessary to effect the
15 intent of providing for uniform sourcing of transactions. Until the specific sourcing rule
16 for telecommunications is adopted, the sourcing rules presently applicable to
17 telecommunications will remain in effect in each State.

18 i. This section does not apply to sales or use taxes levied on the transfer of motor vehicles,
19 aircraft, watercraft, modular home, manufactured home or mobile home. These items
20 must be sourced according to the requirements of each member state.

21 **312 ADMINISTRATION OF EXEMPTIONS**

22 a. To reduce the complexity and administrative burden of transactions exempt from sales or use
23 tax, the following provisions must be followed when a purchaser claims an exemption:

- 24 1. The seller must obtain identifying information of the purchaser and the reason for
25 claiming a tax exemption at the time of the purchase as determined by the member states

1 acting jointly.

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

4 3. The seller must use the standard form for claiming an exemption electronically as
5 adopted jointly by the member states.

6 4. The seller must obtain the same information for proof of a claimed exemption regardless
7 of the medium in which the transaction occurred.

8 5. A member state may utilize a system wherein the purchaser exempt from the payment of
9 the tax is issued an identification number which must be presented to the seller at the time
10 of the sale.

11 6. The seller must maintain proper records of exempt transactions and provide them to a
12 member state when requested.

13 b. The member states must relieve sellers that follow the requirements of this section from any
14 tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption
15 and to hold the purchaser liable for the nonpayment of tax.

16 **314 UNIFORM TAX RETURNS**

17 To reduce the complexity and administrative burden of preparing and filing sales and use tax
18 returns, all member states must:

19 a. Require that only one return per taxing period per seller be filed for the State and all the
20 taxing jurisdictions within the State.

21 b. Require that returns be due no sooner than the 20th day of the month following the month
22 in which the transaction occurred.

23 c. Allow any Model 1, Model 2, or Model 3 seller to submit its sales and use tax returns in a
24 simplified format which does not include more data fields than permitted by the member
25 states acting jointly. States may require additional informational returns to be submitted