

Agreement Administration

Authority to administer the Agreement rests with the governing board comprised of representatives of each member state. Each member state may appoint up to four representatives to the board who are members of the executive or legislative branches of the state. Each member state is entitled to one vote on the governing board. Except as otherwise provided in the Agreement, all actions taken by the governing board require an affirmative vote of a majority of the governing board present and voting. The governing board will determine its meeting schedule, but must meet at least once annually. The governing board must provide a public comment period and provide public notice of its meetings at least 30 days in advance of such meetings. The governing board must promulgate rules establishing the public notice requirements for holding emergency meetings on less than 30 day's notice. The governing board may meet electronically.

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

Open Meetings

Each meeting of the governing board and the minutes thereof must be open to the public except as provided below.

Meetings may be closed only for one or more of the following:

- a. Personnel issues.
- b. Information required by the laws of any member state to be protected from public disclosure. In the meeting, the governing board must excuse any attendee to whom confidential taxpayer information cannot be disclosed under the law of any member state.
- c. Proprietary information requested by any business to be protected from disclosure.
- d. The consideration of issues incident to competitive bidding, requests for information, or certification, the disclosure of which would defeat the public interest in a fair and competitive process.
- e. The consideration of pending litigation in a member state the discussion of which in a public session would, in the judgment of the member state engaged in the litigation, adversely affect its interests. In the meeting, the governing board must excuse any attendee to whom confidential taxpayer information cannot be disclosed under the law of any member state.

In addition, a closed session of the board may be convened by the chair or by a majority vote of the board. When a closed session is convened, the reason for the closed session must be noted in a public session. Any actions taken in the closed session must be reported immediately upon the reconvening of a public session.

Withdrawal of Membership or Expulsion of a Member

With respect to each member state, the Agreement will continue in full force and effect until the state withdraws its membership or is expelled. A state's withdrawal or expulsion cannot be effective until the first day of a calendar quarter after a minimum of 60 days' notice. A member state must submit notice of its intent to withdraw to the governing board and the chief executive of each member state's tax agency. The member state must also provide public notice of its intent to withdraw and post its notice of intent to withdraw on its web site.

The withdrawal by or expulsion of a state does not affect the validity of the Agreement among other member states. A state that withdraws or is expelled from the Agreement remains liable for its share of any financial or contractual obligations that were incurred by the governing board prior to the effective date of that state's withdrawal or expulsion. The appropriate share of any financial or contractual obligation will be determined by the state and the governing board in good faith based on the relative benefits received and burdens incurred by the parties.

Sanction of Member States

If a member state is found to be out of compliance, the governing board may consider sanctions against the state. Potential sanctions include expulsion from the Agreement, or other penalties as determined by the governing board. The adoption of a resolution to sanction a member state for noncompliance requires the affirmative vote of three-fourths of the entire governing board, excluding the state that is the subject of the resolution. The member state that is the subject of the resolution may not vote on such resolution. Resolutions seeking sanctions must be acted upon by the board within a reasonable period of time as set forth in the board's rules. The board must provide an opportunity for public comment prior to action on a proposed sanction.

Advisory Councils

The governing board would have to create a State and Local Government Advisory Council and a Business and Taxpayer Advisory Council from the private sector to advise it on matters pertaining to the administration of the Agreement. The membership of the Government Advisory Council would include at least one representative from each state that is a participating member of the Streamlined Sales Tax Project. In addition, the governing board will be required to appoint local government officials to the Council, and the board could appoint other state officials as it deems appropriate. The Agreement does not specify the membership of the Business and Taxpayer Advisory Council. These Councils would be required to advise and assist each other in performing their duties.

AMENDMENTS AND INTERPRETATIONS

Amendments to the Agreement

Amendments to the Agreement may be brought before the governing board by any member state. The Agreement may be amended by a three-fourths vote of the entire governing board. The governing board must give the Governor and presiding officer of each legislative house of each member state notice of proposed amendments at least 60 days prior to consideration. The governing board must also give public notice of proposed amendments at least 60 days prior to consideration, and provide an opportunity for public comment prior to action on an amendment.

Interpretations of Agreement

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

Definition Requests

Any member state or any other person may make requests for additional definitions or for interpretations on how an individual product or service fits within a definition. Such requests will be referred to the State and Local Government Advisory Council or other group under guidelines and procedures as set forth in the governing board's rules. The entity to which the request was referred must post notice of the request and provide for input from the public and the member states as directed by the governing board. Within 180 days after receiving the request, they would have to report to the governing board one of the following recommendations: (a) that no action be taken on the request; (b) that a proposed amendment to the Library be submitted; (c) that an interpretation request be submitted; or (d) that additional time is needed to review the request.

If either an amendment or an interpretation is recommended, the entity to which the request was referred would have to provide the appropriate language as required by the governing board. The governing board would have to take action on the recommendation at the next board meeting. Action by the governing board to approve a recommendation for no action would be considered the final disposition of the request. These provisions would not prohibit a state from directly submitting a proposed amendment or an interpretation request to the governing board.

ISSUE RESOLUTION PROCESS

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

Any member state or person may petition the governing board to invoke the issue resolution process to resolve matters of: (a) membership of a state; (b) matters of compliance; (c) possibilities of sanctions of a member state; (d) amendments to the Agreement; (e) interpretation issues, including differing interpretations among the member states; or (f) other matters at the discretion of the board.

The governing board must consider any recommendations resulting from the issue resolution process before making its decision, which would be final and not subject to further review.

None of these provisions could be construed to substitute for, stay or extend, limit, expand, or otherwise affect, in any manner, any right or duty that any person or governmental body has under the laws of any member state or local government body.

RELATIONSHIP OF AGREEMENT TO MEMBER STATES AND PERSONS

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

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

The Agreement binds and inures only to the benefit of the member states, and no person, other than a member state, is an intended beneficiary of the Agreement. Any benefit to a person other than a state is established by the laws of the member states and not by the terms of the Agreement.

No person may have any cause of action or defense under the Agreement or by virtue of a member state's approval of the Agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of any member state, or any political subdivision of a member state on the ground that the action or inaction is inconsistent with the Agreement. In addition, no law of a member state, or the

application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement.

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

REVIEW OF COSTS AND BENEFITS ASSOCIATED WITH THE AGREEMENT

The governing board will review costs and benefits of administration and collection of sales and use taxes incurred by states and sellers under the existing sales and use tax laws at the time of adoption of the Agreement and the proposed Streamlined Sales Tax Agreement.

TREATMENT OF VENDING MACHINES

The provisions of the Agreement do not apply to vending machines sales and the Agreement does not restrict how member states tax vending machine sales.

Sen. Brown -
Leg. Colleagues

This is in response to information regarding AB 547 + SB 267. The information being distributed far exceeds what the two bills do. I would like to clarify the differences.

First regarding the information of this being a tax increase. The concerns of these individuals is not inaccurate of these bills were the 4 steps of the 4 step process, this would only happen if step three occurred which is the passage of federal legislation allowing states to collect sales tax for purchases done by residents of another state doing purchases over the internet. Step 4 is then the passage of each state wanting to participate ~~in~~ legislation to conform with federal law. It is at this point states decide to implement federal law or not participate. At this time states can make the decision to consider the revenue effect.

What the two bills ^{AB 547 - SB 267} actually do is ~~to increase~~

① In 2001 legislation was passed to have the state of Wisconsin participate in

setting up standards if federal law is passed and states agree with passage of legislation. to comply. If this legislation ^{AB 547 SB 267} does not pass we are not in compliance with the coalition and would not have input into any further decisions. Right now Wisconsin has significant input.

② This bill otherwise would address inconsistencies of our present sale taxable items by creating clearer definitions.

③ It makes reporting of tax collection simpler by local businesses.

④ Those who qualify for exemptions from paying sales tax if incorrectly stated the state would have to correct versus the business.

⑤ It allows for a process to rectify mispayment of disputed sales tax collection vs going directly to class action law suits.

I believe most agree changes of clarity of reporting law needs to be done. Hopefully fears of what can in the future don't cloud what these two bills accomplish.

Rep. Becky Weber Questions on Streamlined Sales Tax

1. This is more a statement than a question. She said that she's gotten mixed responses to concerns she's raised and feels that DOR is not giving a complete, unbiased representation of how our state will be affected by the SSTP.

DOR certainly has an interest in the project, but we provide only factual information on the project and Wisconsin's streamlined bills. We are always willing to provide any data we have and we have made a real effort to show the true impact. See the fiscal estimate, which goes item by item showing fiscal effect on goods and services in Wisconsin. It may be that some of the information provided by DOR and the information provided by Americans for Tax Reform differs – probably because ATR is not as familiar with the streamlined provisions as DOR is. We have noted some factual errors in their materials.

2. She wants to know if it's possible to pass this legislation and not be part of the coalition.

We are already part of the coalition based on legislation passed in 2001 Act 16, which allowed the department to participate in the project, have a vote, do joint audits with other SST states and contract using certified service providers (CSPs). However, the agreement requires that we must certify compliance to be part of the Governing Board. I would assume that we could choose not to certify compliance, although there wouldn't be any benefit to Wisconsin in doing that. (Also, the federal legislation under consideration would give only SST-compliant states the option of requiring remote sellers to collect state sales tax.) Perhaps a separate but related question is "is it possible to pass the legislation and become a participant in the Agreement but not enact a Wisconsin law to require remote sellers to collect Wisconsin sales tax?" The answer to that question is yes.

3. She has concerns about costs to the state and businesses for software.

Regarding retailer software costs, the agreement provides for a study of retailer costs of compliance and for retailer compensation for those costs. The compliance cost study has not been completed and, therefore, the monetary allowance has not yet been negotiated. Under the Wisconsin bills (AB 547 and SB 267), in addition to the 0.5% retailer's discount under current law, sellers that use a certified automated system or proprietary system would receive monetary allowances based on the compliance cost study and subsequent negotiations. The aim is to relieve retailer burdens with respect to tax collection.

4. Re: Ebay, she wants to know what the potential effect would be on individuals sellers.

Under current law, because Ebay is not registered in Wisconsin (has no Wisconsin nexus), tax liability falls to the seller if they are required to be registered in Wisconsin. The purchaser is liable if the seller fails to collect. If Ebay had nexus in Wisconsin, they would be required to collect under current law.

However, if Ebay were required to register due to a future Wisconsin law change, the liability to collect would fall on Ebay for those items that are taxable. This is because under Wisconsin law Ebay is considered an auctioneer. If Ebay failed to collect, the purchaser would be subject to use tax. If Ebay were registered, the individual seller's liability to collect sales or use tax would only apply to items they sold by means other than an auctioneer (e.g. Ebay).

5. She believes that there are one or two states (Montana, Wyoming) that are looking at repealing their earlier passage of phase 2, and she mentioned that ALEC has sample legislation on how to do so for lawmakers from other states who may be interested.

Wyoming passed the streamlined legislation 2 legislative sessions ago – they were one of the first. So they have been using the new law for over 2 years. Our staff are not aware of any problems in Wyoming or any movement to repeal. It would be surprising to us if they would repeal since it appears to be working well for them.

Montana currently does not impose a state sales or use tax. A bill introduced in 2003 (SB 470) would have created a general sales tax using many of the uniform definitions in the SSTP agreement. Montana is not involved in the streamlined project at this point. No one from that state attends meetings.

6. How do small sellers get information on what they should be charging to various taxing jurisdictions?

Under current law, DOR provides a list of jurisdictions (counties and special districts), and the rates that apply in each of those jurisdictions, online and in various publications. If a seller has a question of what county the purchaser is in, the seller must find that out from the purchaser or some seller's purchase software from companies that have developed rate packages by 5 digit zip code. These rate packages are not always correct because 5-digit zip codes cross county lines in Wisconsin.

Under the streamlined provisions, the department would be required to provide a database of 9-digit zip codes and the rate that applies to each and post that online. To our knowledge, no 9-digit zip code crosses a county line.

7. What is the threshold dollar amount in sales for small businesses to be required to comply?

There is no dollar threshold in Wisconsin's streamlined bills. The tax base changes and administrative simplifications would apply to all businesses.

The "small business exception" in federal legislation that has been introduced because of SSTP provides that a remote seller may not be required to collect and remit tax on remote sales if it meets either of the following criteria:

- the seller and its affiliates collectively had gross remote taxable sales nationwide of less than \$5,000,000 in the calendar year preceding the date of such sale; or
- if the seller and its affiliates meet the \$5 million threshold, but the seller itself has less than \$100,000 in remote taxable sales nationally in the prior calendar year.

8. Is DOR aware of any states that may be considering repeal legislation?

None that we know of.

The Kansas Governor (Kathleen Sebelius – Dem) has written to the SST steering committee and asked that states be given more flexibility regarding implementation of sourcing rules. Kansas has passed the streamlined legislation, along with the destination-based sourcing rules. But prior Kansas law generally used an origin-based sourcing rules, applying the local sales tax in effect at the retailer's business location. The Kansas DOR's approach to the change has been to use a slow implementation plan, allowing six months before full compliance is required. Diane's conversations with Kansas DOR officials indicate that there is no movement to repeal the SST legislation, though.



AMERICANS FOR TAX REFORM

POLICY BRIEF

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"The Lawmakers' Guide:"

Ignoring Taxpayers

Streamlined Sales Tax Project (SSTP) operatives frequently distribute copies of "The Lawmakers' Guide," subtitled "2003, The Year of Decision." This booklet uses three years of manipulative rhetoric and misleading recommendations by the Multistate Tax Commission (MTC) to provide talking points and outline a plan to implement the SSTP.

Because the SSTP is the first and essential step to create a stealth tax hike that would extend a national state sales tax to out-of-state Internet and other remote purchases, costing consumers hundreds of millions of dollars, all pro-taxpayer lawmakers should oppose the creation of this tax-and-spend cartel.

Organizations such as the National Governors' Association (NGA) and the National Council of State Legislatures (NCSL) support the creation of a Streamlined Sales and Use Tax Agreement (SSTP). Supporters of the plan claim that the agreement, which has been entered into by 34 states, is merely an effort to allow states to participate in national discussions about how to "simplify" and "streamline" their sales and use tax system.

However, every major free-market and pro-growth association opposes the SSTP. These groups include Americans for Tax Reform, the National Taxpayers Union, Citizens for a Sound Economy, Club for Growth, Citizens Against Government Waste, the Cato Institute, the Heritage Foundation, the American Enterprise Institute and dozens of state-based think tanks across the nation.

These groups oppose the adoption of the SSTP because the history of the movement does not support a commitment to tax neutrality, and because its present proponents cannot guarantee that the net impact on taxpayers in every state will be zero. Proponents of SSTP include state tax commissioners and their staffs, multi-state accounting firms, who stand to benefit from the compliance complexity SSTP induces, and tax-and-spend lawmakers desperate to ease the process of collecting taxes - so as to more easily increase taxes.

As a legislator you should oppose this tax harmonization scheme for the reasons cited below, and also because SSTP is not providing an honest analysis of the plan's impact on taxpayers.

Increasing taxes should not be easy. All efforts to reform tax collection must ensure that competition among states and localities is protected and encouraged. Legislators, especially pledge signers, must work to minimize the impact of taxation to the greatest extent possible. Simplifying or streamlining the process is a very laudable goal and should be done to limit the paperwork and bureaucratic nonsense that taxpayers face each year when filing their taxes. A lawmaker's first priority should be to create a method that benefits taxpayers first and accounting firms second, while promoting economic growth and improving the efficiency of commerce.

Behind the scenes, the Streamlined Sales Tax Project is not benign. The SSTP movement has printed a national park's worth of paper about its benign intentions, but none of its operatives will attest to the net taxpayer impact of SSTP, now and in the future.

At its quarterly meetings, held in various geographic locations across the country to allow as many budget-constrained tax commissioners to attend as possible, SSTP planning committees debate various tax changes while members of the audience work to agree in consensus. Taxpayers - and most lawmakers - would have a hard time understanding many of the minutia discussed at these meetings. These minutias are precisely the problem; many tax code changes could make tax increases easier to implement and exemptions more difficult.

For example, implementing a sales tax in a state like Oregon would be much easier if the code is readily available and previously agreed upon by every state, or a majority of states.

To clarify our position, ATR will refute four of the MTC's seven goals. These four goals cause taxpayers to suffer directly and/or afford taxpayers no protection from future harassment. ATR will quote directly from the SSTP text and rebut.

TAX NEUTRALITY

SSTP

Tax-and-Spenders:

"Legislatures will choose what is taxable or exempt in their states. However, participating states will agree to use the common definitions for key items in the tax base and will not deviate from these definitions. As states move from their current definitions to the SSTP definitions, a certain amount of impact on state revenues is inevitable. However, it is the intent of the Project to provide states with the ability to closely mirror their existing tax bases through common definitions." (page ii, Lawmakers' Guide: 2003).

Taxpayers rebut:

A good example of how the SSTP will remove your autonomy to shape your own tax code and how the plan will harm taxpayers is provided by the changes Minnesota made to conform

to the SSTP. Prior to adopting the SSTP, Minnesota imposed sales taxes only upon the price of each product purchased from a seller that had nexus in the state. The new SSTP definition of "sales tax" broadened Minnesota's sales tax to include shipping, handling, and postage. Now, thanks to the SSTP, the people of Minnesota pay a new tax on goods purchased outside the state, but they also get the added bonus of paying a higher price for goods bought from in-state vendors.

In the second sentence the SSTP booklet uses the term "key items" to explain how the plan will simplify the tax code by ensuring that each state applies an equal sales tax to these items. However, SSTP supporters do not define or clarify what the taxable "key items" are. In fact SSTP supporters have changed or manipulated the plan in order to gain the support of politically powerful states, such as Texas and New York. Therefore, the stated goal that the plan will "simplify and streamline" the tax code is completely false.

In addition, the MTC admits that the possibility of "impact" will occur when states implement SSTP tax code recommendations. Exemptions provide no long-term relief for taxpayers; adopting an exemption is more difficult than implementing the code in its entirety. Any effort to "reform" the tax code in each state must begin with the policy that the code will offset any possible tax increase by a dollar-for-dollar tax reduction.

It is clear, from this example, that supporters of the SSTP tax cartel are not upfront or honest about the negative impact of extending sales taxes to include many currently untaxed online transactions.

RATE SIMPLIFICATION

SSTP Tax-and-Spenders:

"States will be allowed one state rate and a second state rate in limited circumstances (food and drugs). Each local jurisdiction will be allowed one local rate. A state or local government may not choose to tax telecommunications services, for example, at one rate and all other items of tangible personal property or taxable services at another rate. State and local governments will accept responsibility for notice of rate and boundary changes at restricted times" (page ii, Lawmakers' Guide 2003).

Taxpayers rebut:

The booklet does not explain that allowing each state and local government to have its own tax rate compounds the current problem of tax simplification.

The free market, free enterprise movement has a long record of supporting fundamental tax reform and competitive tax jurisdictions. Rate simplification towards one flat rate is a commendable goal. The SSTP does not accomplish this objective!

If enacted the SSTP would force each merchant in the U.S. to collect a national sales tax. This means that a vendor would be forced to monitor and calculate up to 7,500 different tax rates on any and all sales. Furthermore, merchants would be responsible for determining each customer's nine-digit zip code, since many zip codes cross local jurisdictions.

The SSTP does not achieve simplification. In fact, the plan adds a new tax and regulatory burden on every business in America.

ADMINISTRATION of ALL STATE and LOCAL SALES and USE TAXES

SSTP Tax-and-Spenders:

"Businesses will no longer file tax returns with each local government within which it conducts business in a state. Each state will provide a central point of administration for all state and local sales and use taxes and the distribution of the local taxes to the local governments. A state and its local governments will use common tax bases."

Taxpayers rebut:

Several states have looked at reducing compliance costs to reduce local jurisdictions' liability. Taxpayers' concern is that this will reduce competition between local jurisdictions to attract businesses and homeowners, and increase the likelihood of a tax cartel in which counties, cities, and towns are subject to the special interests of a central tax collector.

Taxpayers do not benefit from centralized power, when the purpose of that power is to collect and redistribute their tax dollars. For example, in Maine, some localities sent more tax dollars to Augusta than were returned to them, causing massive taxpayer dissatisfaction *and eventual overturn of the law*.

UNIFORM SOURCING RULES

SSTP Tax-and-Spenders:

"The states will have uniform and simple rules how they will source transactions to state and local governments. The uniform rules will be destination/delivery-based and uniform for tangible personal property, digital property, and services."

Taxpayers rebut:

A single entity responsible for all destination/delivery-based transactions and resulting tax compliance in each state will create more bureaucracies to consume more taxpayer dollars.

The same argument made against a single state tax collection agency can be made in opposing a central third-party tax collection agency. The central collection of all sales taxes again increases the likelihood of a tax cartel that will limit competition among states and ensures that individual states are subject to the special interests of a central tax-collecting agency.

Furthermore, defining source transactions to conform to a uniform definition will open a Pandora's box for privacy watchdogs. Authorizing a central tax collection agency to integrate the new SSTP created tax collection software into the business mainframe of every merchant in America raises numerous questions about the protection of consumer privacy.

The central agency would have access to an individual's home address, phone number, financial information, and other pieces of information that are highly sensitive and confidential.

CONCLUSION:

The SSTP was created to implement a tax harmonization scheme that would allow states the authority to implement a predetermined and already-designed system for taxing consumers. Under the guise of tax simplification, SSTP supporters want to override a Supreme Court decision that prevents states from taxing interstate commerce without explicit congressional permission. Thus creating a "stealth tax" that extends the sales tax to currently untaxed products, services, and sales.

In addition, the plan forces state legislatures to cede important control over aspects of their state's sovereign tax system in deference to a national tax cartel. This is the first and essential step to implement a quiet tax hike and extend a national state sales tax to out-of-state Internet and other remote purchases, costing both buyers and sellers millions of dollars. In sum, the SSTP diminishes states from having the autonomy to shape their own tax policy, costs each state's economy jobs, and devastates their technology sector.

It is time for taxpayer advocates to speak out against expanded sales taxes on consumers, and for state legislators to regain and protect their ability to control their own tax structure and refute the notion that sales tax competition among states is counterproductive.

Questions & Answers: Streamlined Sales Tax

(AB 547 & SB 267)

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

No. State legislatures still determine what is taxable or exempt and the rate of tax in their state. Uniformity in the Streamlined Sales Tax (SST) System requires uniform definitions and uniform administrative procedures—not uniform taxes.

The U.S. Supreme Court (*Quill versus North Dakota, 1992*) has said that the complicated state and local sales tax systems across this country have created an undue burden on sellers. If states are unwilling to accept uniformity in definitions and administrative procedures to reduce or eliminate burdens on sellers, it is likely that Congress may impose far more stringent requirements on the states that could further limit states' ability to collect sales taxes in the future.

2. How does Wisconsin become a participant in the Streamlined Sales Tax Agreement?

Wisconsin can become a participant in the SST Agreement by enacting state laws that conform to the Agreement. The Agreement is a formal, multi-state document that outlines basic administrative tax procedures and broadly defines categories of services and property for taxation or exemption by individual states. Participating in the Agreement is not an independent choice made by the Department of Revenue. DOR would certify to the SST Governing Board that Wisconsin's laws are in compliance with the Agreement.

3. The Streamlined Sales and Use Tax Agreement establishes a Governing Board made up of representatives of states whose laws are in compliance with the SST Agreement. What will the Governing Board do?

- Respond to questions regarding administration of the Agreement.
- Coordinate the certification process for Certified Service Providers – CSPs (companies that provide tax collection and remittance services to sellers).
- Coordinate joint audits for member states.
- Coordinate software and CSP contracts for member states and providers.
- Approve a new state for membership once that state meets the requirements of the Agreement (e.g. review state laws to ensure conformance).
- Employ staff, advisors, consultants, or agents and allocate the cost of administration among member states.
- Create a State and Local Advisory Council and a Business and Taxpayer Advisory Council.

4. How will the Agreement be amended and what happens if a state legislature does not want to be bound by an amendment?

Amendments to the Agreement may be brought before the Governing Board by any member state. The Agreement can only be amended by a three-fourths vote of the entire Governing Board (one vote per state). The Governing Board must give public notice of proposed amendments to the Agreement at least 60 days prior to consideration. If adopted, the Governing Board must give notice of amendments at least 60 days prior to consideration to the Governor and presiding officer of each house in the legislature of each member state.

A state legislature can opt out of the Agreement at any point if the Agreement is amended to include a provision that is contrary to state law and/or rules. State laws control in every state -- the Agreement does not take precedence. Any amendment to the Agreement that would change how Wisconsin administers its sales tax would require a legislative action to conform; the Department of Revenue could not make those changes administratively.

5. Do the Streamlined bills increase Wisconsin taxes now or in the future?

No. DOR and the Legislative Fiscal Bureau agree that the bills would result in a tax reduction of \$3.3 million annually. The tax reduction comes as a result of implementing uniform definitions in the Streamlined Sales and Use Tax Agreement.

Even though purchases made over the Internet are taxable to the purchaser now, Wisconsin law doesn't allow DOR to require Internet and mail order sellers to collect the sales tax on behalf of those purchasers. Wisconsin's Streamlined bills don't change that. The Legislature could choose to enact that requirement in the future.

The Wisconsin Legislature could make the Streamlined bills revenue neutral by choosing to rescind some the sales tax exemptions available in current law.

6. If the Wisconsin Legislature chooses in the future to require Internet and mail order sellers (who have no physical presence here) to collect sales taxes, is this taxation without representation?

No. The sales tax is a tax on consumers, not sellers; sellers just collect the tax from consumers who owe it. The focus of the Streamlined project is making it easier for those sellers to collect the tax through administrative simplifications and common definitions across states.

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

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

8. How could the Streamlined Sales Tax System and related legislation help Wisconsin's small businesses?

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

- Simplifies exemption processing with protection for sellers that accept exemption certificates.
- Provides one uniform tax return for all states with the elimination of local tax returns.
- Allows a small business the option to use state-certified software or a Certified Service Provider to reduce or eliminate sales tax administration burdens.
- Makes it easier for businesses to expand to markets in other states or via the Internet because all states will use the uniform definitions and administrative procedures.
- Gives the Legislature the option of considering future legislation requiring Internet and mail order sellers to collect our sales tax. Wisconsin's main street businesses believe this would level the playing field between small businesses who collect sales taxes now and large, multi-state businesses that are not required to collect sales taxes because they have no physical presence in Wisconsin.



State of Wisconsin • DEPARTMENT OF REVENUE

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Jim Doyle
Governor

Michael L. Morgan
Secretary of Revenue

The Streamlined Sales Tax Project in Wisconsin

What It Does & Why It's Important

- Leveling the Playing Field: Equity between businesses that now collect sales tax (small main street businesses or any business with physical presence in many states) and those who don't (large Internet or mail-order businesses without physical presence in most states).
- Making Tax Administration & Collection Easier: The project's goal is to make it easy for merchants to calculate and remit sales and use tax to the states. The administrative and cost burdens on merchants will be substantially reduced or eliminated under SST. New technology will make many improvements possible. Merchants will even have the option of using private, state-sanctioned providers to collect and remit sales taxes.
- Developing Common Definitions: SST has developed common definitions for key items in the tax base like food and clothing; states are being asked to adopt those definitions in their statutes. Legislatures would still decide what's taxable, but states would use common definitions for items (for example, what percentage of fruit juice a drink can contain and still be considered soft drink --- and thus taxable). The goal is some measure of uniformity among states, making tax collection more simple for merchants nationwide.

What's In It For Businesses

- Uniform sales tax returns nationwide that can be filed electronically. Requirements for filing separate tax returns for local sales and use taxes will be eliminated.
- A central registration system that will provide one-stop service for sellers who voluntarily collect sales tax.
- New technology options for sellers who collect sales tax. State-certified tax collection software will be available as well as new Certified Service Providers (CSPs). These CSPs will act as a tax processing entity for sellers (including filing all sales tax returns) at no charge to sellers.
- States will assume liability for errors in tax collection related to two new state-certified data bases: (1) matching tax rates to tax jurisdictions, and (2) matching items and services taxable in each tax jurisdiction. Sellers who use these state-certified data bases will not be held responsible for errors in tax collection.
- Simplified tax exemption processing with protection for sellers that accept exemption certificates or exemption information.
- Easier expansion into markets in other states or via the Internet because all states will use the uniform definitions and administrative procedures.

Supporters of Streamlined Sales Tax Legislation

Wisconsin Grocers Association

Wisconsin Merchants Federation

Midwest Hardware Association

Wisconsin Counties Association

JC Penney Company

Sears/Lands End

General Electric

Kohl's Department Stores

EDS

Wal-Mart

Target

Best Buy

Ward Brodt Music Mall

AT&T

Verizon

Sprint

RR Donnelley

Apria Healthcare, Inc.

Council on State Taxation (COST)

National Retail Federation

International Mass Retail Association

Equipment Leasing Association

Former Secretaries of Revenue Mark Bugher and Richard Chandler

Technical Corrections to AB 547 and SB 267 – Streamlined Sales Tax Bills

- **Correct Statutory Placement of Home Use Limitation for Medical Equipment Exemption**

The Streamlined Sales Tax Agreement sets forth a uniform definition of durable medical equipment. It also gives states the option of limiting an exemption for durable medical equipment to equipment that is for use in a person's home. Rather than placing the home use limitation in the exemption, DOR inadvertently put the limitation in the definition, such that Wisconsin's definition is not uniform with other states.

The amendment moves the home use limitation from the definition of durable medical equipment to the exemption for such equipment. This amendment has no substantive effect to the original bill that was introduced.

Page 9, lines 23 and 24: delete the words "that is for use in a person's home"

Page 50, line 2: after the word "equipment" insert the words: "That is for use in a person's home"

- **Replace "and" with "or" in the Definition of Prepared Food Relating to Utensils**

The Streamlined Sales Tax Agreement sets forth a uniform definition of prepared food that includes food sold with utensils. In the list of utensils, DOR used the word "and" rather than the word "or" that is used in the uniform definition.

Without the amendment, the definition in the bill could be read as requiring that all of the eight utensils listed to be provided in order for an item to be prepared food, rather than any one of the eight.

Page 12, line 18: after the word "napkins" delete the word "and" and insert the word "or"

10/17/03



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an, Times, serif" size="3">**Streamlined sales tax merits state's support**

2:20 PM 10/12/03

A sales tax system that had standard definitions and procedures applied by every state and local government would ease headaches for consumers, businesses and tax collectors. That's why Wisconsin lawmakers should pass legislation to adopt the changes proposed by the Streamlined Sales Tax Project. <

The goal of the Streamlined Sales Tax Project is to standardize, simplify and modernize the collection and administration of sales and use taxes, now subject to state-by-state variations. It also would smooth the way for the systematic collection of taxes on Internet and catalog sales, which would help Wisconsin collect an estimated \$150 million in sales taxes that now go unpaid each year. <

The most significant change proposed by the project is in the definitions of items subject to sales and use taxes. Under the current patchwork, an item that one state exempts from sales tax as "food" might be taxable in another state that leaves the same item off its list of "food." The same variations exist in medical devices, clothing and other items. <

Under the streamlined system, each state would continue to control what categories to tax or make exempt, but the definitions of what belongs in each category would be standard. In other words, if popcorn is "food" in one state, it would be "food" in all states. <

In Wisconsin the new definitions would save consumers about \$5.3 million a year. That's because some items now taxed, from licorice to diabetic patient supplies, would move into categories where they would be exempt from sales tax. That savings for consumers would be a cost to the state treasury, but a good bargain nonetheless when you consider the nationwide benefits of less red tape and less confusion. <

Furthermore, the streamlined, standardized system offers an opportunity to eliminate unfairness and, ultimately, to boost state revenue by collecting sales taxes that now escape collection. <

The lack of standard definitions has hindered the systematic collection of sales taxes on Internet and catalog sales, costing states hundreds of millions of dollars. It's estimated that Wisconsin loses \$150 million in sales taxes each year because out-of-state Internet and catalog sellers do not collect on products shipped to Wisconsin residents, even though a Wisconsin store would be required to charge a sales tax on the same item. <

The problem is that federal law prohibits any state from requiring out-of-state sellers to collect sales taxes. <

Congress could change the law, but such a change would demand that sellers go through the nightmare of figuring out what items are subject to sales tax in which states. The simplified system would end that nightmare and make it more likely that Congress would change the law so that Internet and catalog retailers are treated the same as brick-and-mortar retail stores. <

Wisconsin has helped to shape the streamlining project. Wisconsin is one of 39 states participating, along with the District of Columbia. An administrator in the Wisconsin Department of Revenue, Diane Hardt, is co-chair of the project's steering committee. <

Now it's up to the Legislature to pass Assembly Bill 547, which would implement the proposed changes. It's time for a streamlined sales tax system.

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Streamlined Sales and Use Tax Agreement Provisions Bill Summary

A. Local Rate and Boundary Changes – Notification and Databases

- 120 days notice prior to first day of a calendar quarter for all local sales taxes.
- Downloadable database of tax rate and jurisdiction by 9-digit zip code.
- Web application will allow user to key in street address to arrive at 9-digit zip code.

B. Uniform Sourcing

- Retail sales of tangible personal property for state purposes generally unchanged.
- Retail sales of motor vehicles, boats, mobile homes not exceeding 45 feet in length, and aircraft for local tax purposes generally unchanged (where customarily kept).
- Retail sales of snowmobiles, trailers, semitrailers, and all-terrain vehicles will be sourced in the same manner as other tangible personal property.
- Leases of tangible personal property, other than motor vehicles, semitrailers, and aircraft – first payment sourced to destination. Subsequent lease payments are sourced to primary location per lessor's records (state and local).
- Leases of motor vehicles, semitrailers, and aircraft that are not transportation equipment – sourced to primary location (state and local).
- Special rules for direct mail.
- Uniform rules for telecommunications.
- Services sold at location where first use of the service is made, which is generally what Wisconsin law provides currently. Services beginning and ending at different locations (e.g., towing) will most likely be sourced to location where they begin.
- Multiple points of use procedure for concurrent use of digital goods, software delivered electronically, and services. Allows purchaser to pay use tax where service, software electronically delivered, and services are stored, used, or consumed.

C. Uniform Exemption Administration

- Good faith requirement relaxed if seller takes required information.
- Uniform exemption certificate.
- Penalty on purchasers for furnishing exemption certificate to claim invalid exemption.
- Repeal drop shipment provision allowing full acceptance of another state's resale certificate.

D. Simplified Returns, Remittances, and Registration

- Provides for a payment coupon with jurisdiction information; additional return information may be required by state not more than two times each year.
- Online simplified registration for voluntary sellers.
- Amnesty for voluntary sellers.

E. Uniform Tax Procedures

- Bad debts recovery - federal definition, deduction, collection allocation).
- Rounding - current tax treatment, except retail may compute tax on a per item or per invoice basis.

F. Uniform Customer Refund Procedures

- Must go to seller first and let seller act appropriately – then follow legal channels.
- Intended to protect retailers from class action lawsuits.

G. Taxability Matrix

- Database of tax treatment of defined items and services by state.
- Sellers relieved if tax treatment listed is incorrect.

H. Uniform Definitions

1. Delivery charges

Replaces “transportation,” however, tax treatment is unchanged.

2. Direct mail

- Allows for exemption of delivery charges.
- Sellers of direct mail to be relieved of collecting tax (purchasers would pay use tax based on where stored, used, or consumed).
- Reverse *J.C. Penney* decision.

3. Lease or rental

- Codifies conditional sale versus lease distinction when there is a bargain purchase option.
- Tangible personal property with an operator will be deemed a service.
- Prospective only for leases entered into or modified after the effective date of law change.

4. Sales price and purchase price

- "Gross receipts" changed to "sales price" and "sales price" changed to "purchase price."
- No change in treatment of rebates or discounts.
- No change for trade-ins.
- A bundle of taxable tangible personal property with exempt tangible personal property for single price requires tax on entire bundle (sold as a single item).
- No changes for interest, financing, or insurance.
- Only taxes legally imposed directly on the consumer that are separately stated may be removed from gross receipts.
- Fair market value not allowed as measure of tax when property is converted from exempt use to taxable use, except for certain motor vehicles used by motor vehicle dealers.

5. Tangible personal property

- While there is major change in wording, there is no significant change in application.
- Items in current definition but not SSTP definition are moved to a specific imposition section (e.g., stamps and coins sold above face value).

6. Prewritten computer software

- Instead of "computer software, except custom software" being in definition of tangible personal property, uses "prewritten computer software."
- Prewritten computer software that is modified will be taxed at the retail level. Modifications will still remain nontaxable.

7. Food

- Exemption of food and food ingredients, except candy, prepared food, soft drinks, and dietary supplements.
- Soft drinks defined by sweetener content, percentage of juice, and absence of milk products.
- Candy defined by form and absence of flour and required refrigeration.
- Prepared food defined by (1) preparation by retailer with exceptions for bakery, food sold by weight or volume, manufacturer retail sales, and raw form and (2) distribution with utensils.
- Exemptions retained for sales by universities, hospitals and nursing homes, and professional football teams.
- Same base (taxable and exempt) for local exposition district tax on food products.

8. Medical

- Extend exemption to durable medical equipment for home use.
- Repeal exemptions outside of medical definitions for antiembolism hose.
- Exemptions for prosthetic devices and mobility enhancing equipment are similar to current tax treatment.
- Term medicine is changed to drug with no substantive treatment.
- Drug definition extends to animals and does not include food.

9. Retail sale

Uniform definition required moving provisions to definitions of sale or resale.

I. Miscellaneous

Retailers registered to collect tax will collect on sales of registered items, even though not a licensed dealer.

J. Technology Models and Monetary Compensation

July 28, 2003

To: Assembly Republican Caucus

From: Rep. Mickey Lehman

RE: AB 547 & SB 267 – Streamlined Sales Tax Project

I'd like to take this opportunity to address some of the questions raised in our October 30th caucus on AB 547, the streamlined sales tax bill.

In 2001 our biennial budget bill authorized the Department of Revenue to participate in interstate discussions about simplifying sales tax laws and making them more uniform. AB 547 would adopt those simplifications to our sales tax system. This bill makes the changes to Wisconsin law that we need to participate in the national streamlined sales tax project. Specifically, the focus of the bill (and companion SB 267 by Senator Brown) is twofold:

- **Making Tax Administration and Collection Easier:** Simplifications in collection and remittance procedures, uniform forms, a central registration system, reduced audit exposure and new technology options will all make it easier for merchants to collect the sales tax for the State of Wisconsin. These merchants are doing our collection work for us and we should make every effort to make it simple for them.
- **Adopting Common Product Definitions:** The national streamlined project has developed common definitions for key items in the sales tax base like food and clothing. AB 547 adopts those definitions for Wisconsin. We in the Legislature would still decide what's taxable, but under my bill we would use common definitions for items (for example, popcorn would be considered a food under the streamlined project and thus would become exempt from sales tax in Wisconsin). The goal is some measure of uniformity among states, making tax collection more simple for merchants nationwide.

I have no hidden agenda. This bill is solely about simplifying tax collection and uniformity with other states so that businesses and the public can better understand what's taxable and what's not. We as a Legislature can choose to withdraw from the interstate agreement at any time that we decide it doesn't meet our needs.

The Dept. of Revenue and the Legislative Fiscal Bureau agree on the fiscal impact of AB 547. **This bill does not raise taxes.** It's a tax cut of \$5.37 million annually for Wisconsin residents. Two of the biggest tax cuts come from reductions related to food and a few miscellaneous items (\$2.37 million) and from an expanded tax exemption for medical equipment (\$3 million). That means that if AB 547 passes, things like bed rails, hospital beds, I.V. stands, stethoscopes and patient lifts used in homes will become exempt.

The fiscal estimates for this bill make no assumptions about future legislative action in Wisconsin. Right now Wisconsin statutes don't allow us to require Internet and mail order sellers to collect our sales tax. My bill won't change that. For Wisconsin to require those sellers to collect our sales tax (estimated at \$150 million annually), two more pieces of legislation would have to pass – one at the federal level and one at the state level:

- Congress would have to act to reverse U.S. Supreme Court rulings; and
- The Wisconsin Legislature would have to amend state tax laws to require collection of tax by out-of-state sellers (internet and mail order marketers) who have no physical presence in Wisconsin.

I've been following the progress of the streamlined sales tax project for over three years as well as the Department of Revenue's work on the project. State officials from across the country have brought their dedication and high ethical standards to bear on this project. It's been a lot of hard work to come up with a package of simplifications that are acceptable to all the participating states as well as the businesses involved with the project, but the package we have before us is just that.

Small and large businesses have been equal partners in the project with state officials, so there is widespread support for our end product from the business community. You may have received letters of support from a variety of businesses, but I'll list just a few of those who support AB 547:

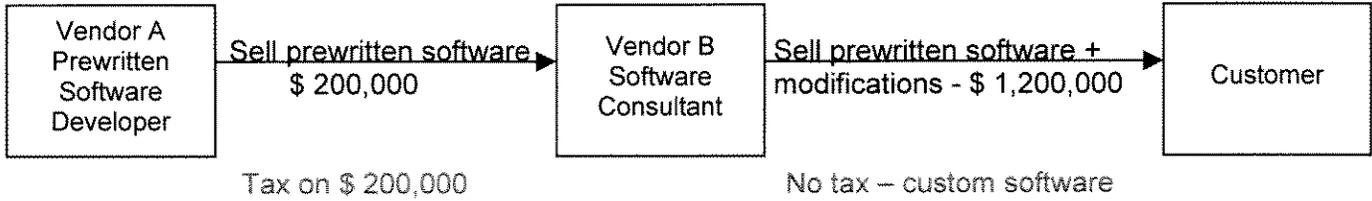
Wisconsin Grocers Association
Wisconsin Merchants Federation
Midwest Hardware Association
JC Penny Company
Shopko
Sears / Lands End
Printing Industries of Wisconsin
Banta
Quadgraphics
General Electric
EDS
Wal-Mart
Target
Ward Brodt Music Mall
AT&T
Verizon
Sprint
RR Donnelley (printing industry)
Apria Healthcare, Inc
National Retail Federation
Equipment Leasing Association

The streamlined project's work with the business community means AB 547 is full of administrative simplifications to our sales tax collection system. Simplifications businesses have been asking for. But these simplifications can't happen without legislative action. We need AB 547 to participate in the streamlined sales tax project, and I would like Wisconsin to maintain its leadership role in the project by passing my bill during this legislative session.

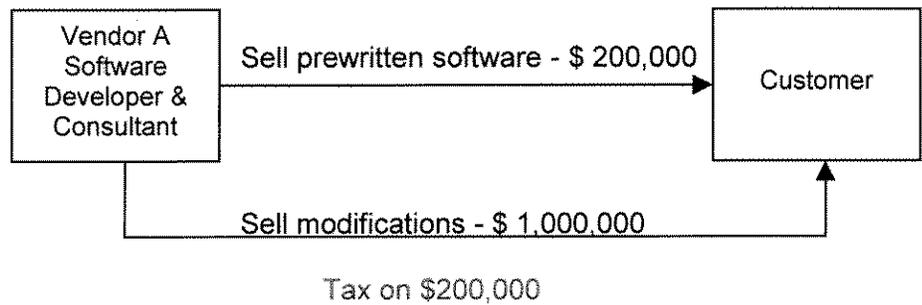
Thank you for your support.

Treatment of Modified Prewritten Computer Software – Current Law

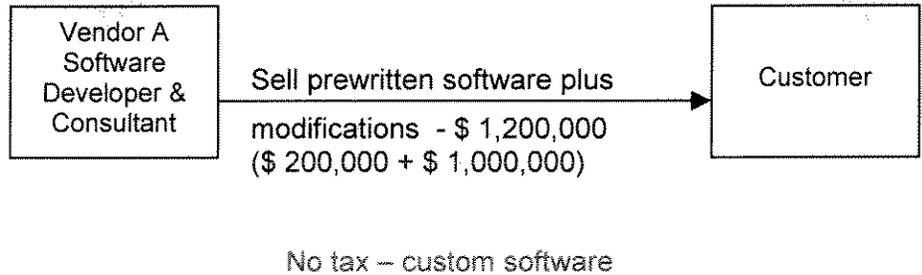
Scenario 1 – Third Party (Not Software Developer) Modifies Prewritten Software



Scenario 2 – Software Developer Modifies Prewritten Software Under Separate Contract



Scenario 3 – Software Developer Sells and Modifies Prewritten Software in a Single Transaction



Treatment of Modified Prewritten Computer Software – Under SSTP Bill

Scenarios 1, 2, and 3

The transfer to the Customer of the prewritten software for \$200,000 is taxable. There is no tax in Scenario 1 for the transfer of the prewritten software to Vendor B because it is for resale.

**Report Card
on the
Streamlined Sales Tax
Implementing States'
Agreement**

October 11, 2002

Prepared by

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**COST Report Card on the
Streamlined Sales Tax Implementing States' Agreement** **Page 7**

Framing the Question

The delegates to the Streamlined Sales Tax Implementing States (SSTIS) have spent the last year reviewing the recommendations of the Streamlined Sales Tax Project (SSTP) and have developed an Agreement which will be voted on by the SSTIS during its November 2002 meeting. This Agreement, if legislatively adopted by the states, will define the manner in which businesses collect and pay sales and use tax throughout the country. In some states the Agreement will require minor changes; in others, radical modifications of the sales and use tax law will be necessary for compliance. In all states the Agreement would represent a major step towards a uniform and simpler sales and use tax structure. The question arises then whether the sales tax structure under the Agreement is sufficiently simple and uniform to justify congressional action permitting conforming states to require remote vendors to collect their sales and use tax. If so, it is essential that Congress simultaneously act to protect remote businesses from states' overreaching imposition of business activity taxes.

The Council On State Taxation (COST) issued its first report card on the SSTP's recommendations in November, 2001. That report card identified COST's standard for requiring remote vendors to collect sales and use tax and evaluated each of the SSTP's proposals against the standard. Since November 2001, the SSTIS has made many modifications to the proposals. COST is now reissuing its report card to indicate whether the SSTIS Agreement meets the standard of radical simplification, to identify areas of concern that remain, and discuss the relationship between business activity tax nexus standards and sales tax collection by remote vendors.

Sales Tax Simplification—While the sales tax should be nondiscriminatory – i.e., imposed on similarly situated vendors and goods, the remote vendors must not be subject to the burden imposed by thousands of taxing jurisdictions with thousands of disparate rules. Only if states have a truly simple, uniform system can remote vendors be required to collect their taxes. Radical simplification of the current sales tax is therefore required before Congress should consider removing existing limitations on the authority of states to require remote vendors to collect sales and use tax. The SSTIS Agreement defines the level of simplification and uniformity required of states in a voluntary collection system.¹ Should Congress consider making this system mandatory it must require states to meet the radical simplification standard and must uphold the standard over time by imposing an independent review of state compliance. The report card therefore indicates the necessity for federal oversight of state compliance with and governance of the Agreement should Congress require remote vendors to collect sales and use tax.

The report card compares the SSTIS Agreement with COST's Policy Statement on Simplification of the State and Local Sales and Use Tax System. The report card judges whether the requirements of the Agreement provide radical simplification of the current sales and use tax structure. In some instances the report card indicates that work is still being performed or that the assigned grade would change pending methods chosen to implement the requirement.

Radical Simplification— The word "radical" is used throughout this document because it conveys the level of change necessary to simplify the extraordinarily complex sales tax system we have today. As noted by Utah Governor Michael Leavitt, "The existing system is a mess...[and] it needs to be radically simplified."² According to Webster, "radical" means: fundamental; marked by a considerable departure from the usual or traditional; tending or disposed to make extreme changes in existing institutions.

¹ The current Agreement anticipates that remote vendors will voluntarily collect sales and use tax for each member state if that state's laws are consistent with the Agreement and the state provides a reasonable level of vendor compensation.

² Congressional Advisory Commission on Electronic Commerce, September 15, 1999.

The Relevance of Business Activity Tax Nexus Standards—Should Congress act to remove existing limitations on the authority of states to require remote vendors to collect sales and use tax, it is essential that it also formally recognize that a State has no right to impose a business activity tax on any business that does not have a physical presence in that jurisdiction. Businesses are concerned that the elimination of current protections for sales tax collection would encourage and abet the already inappropriate state efforts to impose business activity taxes on out-of-state companies with no physical presence in the state. To prevent overreaching by states, Congress should specifically recognize that states may not impose a business activity tax on a business unless that company has substantial nexus as a result of physical presence in the State (i.e., when the company is receiving the benefits and protections offered by the state). Sales tax simplification and the propriety of requiring remote vendors to collect sales tax cannot be evaluated in a vacuum. Should Congress choose to address sales tax collection responsibility, it must consider and address the implications for business activity tax nexus. This report card does not seek to evaluate current proposals for business activity tax nexus clarification; it simply articulates the need for congressional resolution of the business activity tax nexus issue along with sales tax collection responsibility.

Simplification of the State and Local Sales and Use Tax System

Policy Position of 2001-2002

Position: *A sales and use tax should be easily administered by both vendors and taxing authorities, widely understood by consumers, and nondiscriminatory between similarly situated vendors and goods. State governments relying on a sales and use tax should make it a priority to ensure these criteria are met.*

Explanation: The existing state and local sales and use tax system is widely recognized as unnecessarily complex and burdensome by representatives of state and local government and business. This unnecessary complexity imposes real costs on vendors, states, and consumers. A simple sales tax system offers the potential to increase state revenue, reduce tax rates for consumers, reduce administrative burdens for both business and the states, and increase voluntary compliance.

A simple sales and use tax system would have the following characteristics:

- **Neutrality** – Taxability should be independent of the method of commerce used in a transaction.
- **Efficiency** – Administrative costs should be minimized for both business and government.
- **Certainty and Simplicity** – Tax rules should be clear and simple.
- **Effectiveness and Fairness** – Taxation systems should minimize the possibility of evasion.
- **Flexibility** – Taxation systems should keep pace with changes in the economy.

A simple sales and use tax system would incorporate the following elements*:

- **Uniform Tax Base Definitions** – A uniform set of simple definitions from which individual states would determine their tax base.
- **Uniform Exemption Rules** – Removal of the good faith requirement for a vendor accepting an exemption certificate and allowance of a uniform, electronic exemption certificate.
- **Uniform and Centralized Administration** – A centralized, multistate vendor registration system; uniform tax returns and remittance forms; filing dates timed to allow collection of all relevant information; adequate notice of changes in law (at least 90 days); uniform audit procedures; uniform refund forms and procedures; and state administration of all local taxes.
- **One Rate and Base Per State** – Substantial rate simplification—preferably one rate per state—and a single tax base per state (including local taxes) that applies to taxable transactions in the state.
- **Uniform Sourcing Rules** – Uniform, simple rules sourcing transactions, with certain exceptions, on a destination/delivery basis. Where the destination/delivery location is unknown, sourcing rules should be based on information available to the vendor through its regular business activities with the consumer.
- **Bad Debt Deduction/Refund** – Uniform rules allowing a bad debt deduction/refund to vendors, assignees, or other third parties.
- **Uniform Direct Pay Permits and Registration Requirements.**
- **Technology Certification** – Uniform and technology-neutral procedures for certification of software that vendors may rely upon to determine their sales and use tax obligations.
- **Hold Harmless** – Elimination of liability for over or under collection of tax for vendors relying on state data or state-certified software.
- **Vendor Allowance** – Reasonable compensation to all vendors for their actual collection costs, to be determined by a study designed jointly by business and the States.

**This policy addresses the sales and use tax system as it impacts typical vendors selling consumer goods to individuals for personal use or consumption. Elements different from these may be useful or necessary in the context of business purchases.*

Jurisdiction to Tax—Constitutional

Policy Position of 2001-2002

Position: *In order for a State to impose a business activity tax on a business, that business must have a physical presence in that State.*

Explanation: There currently is a great amount of discussion and debate throughout the tax community, in the Congress, and elsewhere regarding the appropriate extent of state and local tax jurisdiction. This issue has become increasingly important in recent years due to the significant changes in the economy brought about by electronic commerce.¹

Determinations of jurisdiction to tax should be guided by one fundamental principle: a government has the right to impose burdens—economic as well as administrative—only on businesses that receive meaningful benefits or protections from that government. In the context of business activity taxes, this guiding principle means that businesses that are not present in a jurisdiction and are therefore not receiving any benefits or protections from the jurisdiction, should not be required to pay tax to that jurisdiction.

In the area of sales and use tax, the U.S. Supreme Court has ruled that substantial nexus requires physical presence. Although the Court has not made any similar ruling in the area of business activity taxes, numerous state courts at all levels have affirmed that the nexus standard for business activity taxes can be no less than the standard for sales and use tax.

Governments and taxpayers should work together to enact bright line nexus rules explaining both constitutional and practical nexus guidelines.

“Business activity tax” refers to a tax imposed directly on businesses and not generally passed directly on to consumers, such as corporate income taxes, franchise taxes, single business taxes, capital stock taxes, net worth taxes, gross receipts taxes, and business and occupation taxes.

¹ The appropriate extent of state and local tax jurisdiction was discussed at length during the proceedings of both the National Tax Association’s Communications and Electronic Commerce Tax Project (1997-99) and the federal Advisory Commission on Electronic Commerce (1999-2000).

Obligation to Collect State and Local Sales and Use Taxes

Policy Position of 2001-2002

Position: *If Congress chooses to remove existing federal limitations on the authority of States to compel remote vendors to collect sales and use tax, Congress should also: (1) require the States to radically simplify and reform the sales and use tax system for all vendors; and (2) formally recognize that a State has no right to impose a business activity tax on any business that does not have a physical presence in that jurisdiction.*

Explanation: There has been a tremendous amount of rhetoric and misinformation in the popular press about whether sales over the Internet are subject to state and local sales and use tax. The current law is succinct: vendors having a physical presence (“substantial nexus” as defined in *Quill*¹) in a state must collect and remit sales tax on all taxable sales in that state, and consumers are required to pay a use tax on all taxable purchases on which no tax was collected by the vendor. The law makes no distinction in tax application based on method of sale, whether in a store, through a catalogue, or over the Internet.

Remote vendors—vendors that do not have such physical presence in a state—are not required to collect sales or use tax for that state. States cannot compel remote vendors to collect sales or use tax on their behalf, in part, because the existing sales and use tax system is sufficiently complex as to constitute an unreasonable burden upon interstate commerce and, in part, because existing law has engendered substantial reliance by taxpayers.

The Congress has the authority to remove this existing limitation and allow states to compel remote vendors to collect and remit use tax. If Congress chooses to exercise such authority, it is appropriate for Congress to address the other issues raised in the *Quill* decision. First, Congress should require the states to radically simplify the sales and use tax system for all vendors, thus removing the existing unreasonable burden upon interstate commerce.³ Second, Congress should formally recognize that a State has no right to impose a business activity tax on any business that does not have substantial nexus with that jurisdiction.⁴

¹ *Quill Corporation v. North Dakota*, 504 U.S. 298 (1992).

³ Please see *Simplification of the State and Local Sales and Use Tax System*, COST Policy Position of 2001-2002.

⁴ Please see *Jurisdiction to Tax—Constitutional*, COST Policy Position of 2001-2002.

COST Report Card on the Streamlined Sales Tax Implementing States' Agreement

October 11, 2002

COST commends the state government executive branch officials participating in the Streamlined Sales Tax Project (SSTP) and the delegates to the Streamlined Sales Tax Implementing States (SSTIS). This simplification effort has gone further and made a more sincere effort to simplify our complex sales and use tax system than have all previous groups that have grappled with this issue. State officials have listened to COST's concerns and have modified many of their proposals as a result of these comments. We recognize the genuine effort that state participants have made and applaud it.

The following report card evaluates the difficult substantive and administrative issues that must be addressed to realize a truly simple and uniform sales and use tax system. The tax simplification proposals included in the SSTIS version of the Agreement, which will be voted on during the November 2002 meeting, are compared against COST's policy position on state and local sales and use tax simplification. The provisions of the Agreement which govern the interstate compact aspect of this effort are analyzed based on COST's experience and understanding of similar multistate efforts, both tax and non-tax.

We have graded the various elements within each category on an A-F scale. The following is a description of the meaning behind each grade:

- A—Radical simplification
- B—Significant simplification
- C—Some simplification
- D—Insignificant simplification
- F—Not addressed by the Agreement, no simplification, or new complexity
- INC—Addressed by the Agreement, but too early to grade

What constitutes an acceptable grade? From the standpoint of simplification alone, any grade better than "D" indicates an improvement over the current system and thus ought to receive consideration. Thus, under a voluntary system, COST would support any real state effort to reduce complexity in the sales tax arena. If the context is not simplification for its own sake but instead Congressional legislation to permit states to impose a sales tax collection obligation on remote sellers, then a grade of B+ or better—meaning radical simplification—is necessary.

Category	COST Policy Statement	Previous Grade	Current Grade	Comments on Current SSTIS Agreement
Uniform Tax Base Definitions	A uniform set of simple definitions from which individual states would determine their tax base.	INC	B	The Agreement includes product definitions for items typically sold at retail for final consumption. Although the definitions result in occasionally ludicrous results (i.e., candy does not include licorice), they provide bright-line guidance necessary for retailers to make taxability decisions. The Agreement requires that member states develop and provide retailers with a taxability matrix, which, if used, will hold them harmless. The Agreement however does not require that states adopt definitions by statute and requires only that each states' law use <i>substantially</i> the same language as that adopted by the SSTIS. Numerous definitions, including "digital goods," are still under development. This grade would change from B to F if these definitions are overbroad. The Agreement also fails to adequately discourage states from using simplification as a justification for expanding their tax base.
Uniform Exemption Rules	Removal of the good faith requirement for a vendor accepting an exemption certificate and allowance of a uniform, electronic exemption certificate.	A	A	The Agreement provides radical simplification of exemption administration by eliminating the good faith requirement, shifting the burden to the states to monitor improper claims of exemption. This grade would change from A to F if the states implement the new exemption system by requiring vendors to keep, electronically, line-item detail on every exempt purchase.
Uniform and Centralized Administration	A centralized, multistate vendor registration system; uniform tax returns and remittance forms; filing dates timed to allow collection of all relevant information; adequate notice of changes in law (at least 90 days); uniform	A-	B / INC	The Agreement provides significant simplification of sales tax administration. While many of the implementing details have not been resolved, the Agreement provides a basic framework for administration that could significantly ease the burden on multistate sellers. Our grade would change from B to F based on the quality of implementation

	audit procedures; uniform refund forms/procedures; and state administration of all local taxes.			of the administrative provisions; specifically, the Agreement lacks current funding for administrative processes and standards are not yet developed for audits, returns, and centralized registration. The Agreement protects sellers from imposition of business activity taxes based on the sellers' registration, but not their <i>activities</i> during registration, under the Agreement. Congress should not require remote collection if the states fail to adequately fund and implement the administrative simplifications.
One Rate Per State	Substantial rate simplification--preferably one rate per state (including local taxes)--that applies to taxable transactions in the state.	C+	B-	The Agreement limits local taxing jurisdictions to a single tax rate, constrains their ability to change rates without proper notice, and eliminates all caps and thresholds unless their burden is borne by the consumer (except under sales tax holidays). The Agreement limits states to a single sales tax rate on tangible personal property and allows states to have a second rate only on food or drugs. While a single rate per state is preferable, it is unlikely that some of the larger states could participate if such a rule were adopted. The Agreement provides for a uniform rounding rule and makes tax boundaries coincident with nine-digit zip code boundaries. These simplifications could be improved by restricting state rate changes similar to local rate changes, mandating five-digit zip code jurisdictional boundaries or mandating a single tax rate per state (including local taxes). Congress should not require remote collection until the states have developed address-based jurisdictional databases and after the phase-out on caps and thresholds is complete.
One Base Per State	A single tax base per state (including local taxes) that applies to taxable transactions in the state.	B	B / INC	The Agreement requires state and local tax bases to be identical by 2006. While such a phase-in may be necessary in a voluntary agreement, Congress should

				not require remote collection until the phase-in is complete. States should also be prohibited from moving complexity out of the sales tax to transaction taxes not covered by the Agreement. Congress should not require remote collection if the states simply shift the complexity to new taxes. Rules for bundling, allocation of discounts, shipping and handling, and treatment of returns are not complete. Congress should not require remote collection until these issues are resolved.
Uniform Sourcing Rules	Uniform, simple rules sourcing transactions, with certain exceptions, on a destination/delivery basis. Where the destination/delivery location is unknown, sourcing rules should be based on information available to the vendor through its regular business activities with the consumer.	B+	B+	The sourcing rules in the Agreement represent a significant advance over current practice by providing uniformity in a critical area. These rules would benefit from clarifying any due diligence standards relating to the maintenance of addresses in general business records; and clarifying that payment processors and other third party participants in a transaction are not required to provide information to the vendor for sourcing purposes.
Bad Debt Deduction/Refund	Uniform rules allowing a bad debt deduction/refund to vendors, assignees, or other third parties.	B	B	Uniform provisions for bad debts are a necessary part of simplification, and the Project worked closely with industry to find the least objectionable language possible. As a matter of policy, though, the bad debt provisions remain inequitable in that they do not require bad debt assigned to a third party to be treated in the same way as debt held by the original vendor.
Uniform Direct Pay Permits and Registration Requirements	Uniform direct pay permits and centralized registration should be required.	INC	A	The Agreement requires member states to allow businesses to direct pay their sales tax liability on their own purchases. The Agreement also provides for a single point of registration. Each of these requirements constitutes radical simplification.
Technology Certification	Uniform and technology-neutral procedures for certification of software that vendors may rely upon	C	B / INC	The Agreement allows for certification of proprietary software in addition to certification of third party service providers who can administer a vendor's

	to determine their sales and use tax obligations.			sales tax responsibility. Unfortunately, the software certification standards remain undefined. Reasonable vendor compensation (see below) must still be addressed to compensate vendors who have invested in such systems.
Hold Harmless	Elimination of liability for over or under collection of tax for vendors relying on state data or state-certified software.	B-	A-	The Agreement protects vendors from liability for under-collected tax and now provides a remedy for customers who have been over-charged sales or use tax, requiring customers to utilize a specific procedure to seek a return of the tax before filing a class-action suit against the seller. In addition, the Agreement creates a presumption that a vendor's use of a certified system constitutes a reasonable business practice, making it more difficult for consumers to bring frivolous class-action suits. In summary, the Agreement radically simplifies the burden on vendors by holding them harmless from under-collection and providing protection for vendors who have inadvertently over-collected tax. The Agreement could be improved by requiring member states to allow customers the right to obtain a refund from the state.
Vendor Allowance	Reasonable compensation to all vendors for their actual collection costs, to be determined by a study designed jointly by business and the States.	INC	F / INC	The Agreement fails to explicitly mandate reasonable vendor allowance for all vendors based on the findings of the Joint Collection Cost Study (JCCS). Were it not for the SSTP's participation in the JCCS, this category would receive a straight F. Congress should not require remote collection without requiring that vendors receive a reasonable allowance. The cost of credit card processing alone is at least 2.5% - 3% and could be adopted today as a minimum base for vendor compensation. Because any vendor allowance should also be based on the complexity of the sales tax system, a mandated allowance should provide a built-in incentive to further reduce residual complexity.

Governance	Not separately addressed by COST policy statement.	F	A-/ INC	<p>The Agreement contains an acceptable governance mechanism, keeping in mind that the Agreement is currently a voluntary association of states and vendors. Congress should not require remote collection without providing for federal oversight of state compliance and governance of the Agreement. The current system allows taxpayers and interested government groups to have input into the decision making process; open meetings and public comment are required. While the current Agreement provides a solid, basic structure for governance, our grade would change from A- to F based on the quality of implementation. Without adequate state funding the governance mechanism will not work. Further, because the governance provisions are written for a voluntary Agreement, and should be rewritten if Congress mandates collection by remote vendors, we have indicated that the governance structure for a mandatory system is incomplete. Congress should not require remote collection without defining a governance model that provides for limited but meaningful federal oversight.</p>
Interpretation	Not separately addressed by COST policy statement.	F	A-/ INC	<p>The Agreement contains an acceptable mechanism for taxpayers to obtain interpretations of definitions or other provisions of the Agreement itself. Any person may request an interpretation or request that additional definitions be developed. While the current Agreement provides a solid, basic structure for issues of interpretation, our grade would change from A- to F based on the quality of implementation. Without adequate state funding the interpretation mechanism will not work. Further, because the interpretation provisions are written for a voluntary Agreement, and should be rewritten if Congress mandates collection by remote vendors, we have</p>

				indicated that the interpretation structure for a mandatory system is incomplete. Congress should not require remote collection without defining an interpretation process that will resolve questions on a timely basis without drastically infringing on state sovereignty. Limited but meaningful federal oversight is necessary to ensure timely uniform application of interpretations.
Issue Resolution Process	Not separately addressed by COST policy statement.	NA	A-/ INC	Questions of state membership, matters of compliance, the possibility of sanctions, and issues of amendments and interpretation of the agreement, including differing interpretations among member states, can be brought by any person before an issue resolution process. This process includes independent review by a neutral third party or non-binding arbitration. While the current Agreement provides a solid, basic structure for issue resolution, our grade would change from A- to F based on the quality of implementation. Without adequate state funding the issue resolution process will not work. Further, because the issue resolution provisions are written for a voluntary Agreement, and should be rewritten if Congress mandates collection by remote vendors, we have indicated that the issue resolution procedures for a mandatory system are incomplete. Congress should not require remote collection without defining an issue resolution model that provides for limited but meaningful federal oversight.
Replacement Taxes	Not separately addressed by COST policy statement.	NA	F	The Agreement fails to discourage member states from shifting sales tax complexity into other transaction taxes. For example, Minnesota generally exempts clothing but taxes clothing made from fur. Because the Agreement does not provide a separate definition for clothing made from fur, Minnesota had

				to exempt such items from sales tax if it wanted to continue to exempt clothing. The State's "solution" was to create a separate "fur tax" identical to the previous sales tax. The Agreement also allows states to exclude certain sales taxes from coverage. Alabama has indicated that it will exclude its rental tax from the provisions of the Agreement. The result is additional complexity and the potential for double taxation. The Agreement fails to prohibit states from employing tactics so contrary to the goal of simplification.
Expansion of Tax Base	Not separately addressed by COST policy statement.	NA	C	The Agreement fails to discourage member states from using simplification as a reason for expanding their tax base. While the Agreement itself, and utilization of the uniform definitions required by the Agreement will undoubtedly have some minor revenue impact, and states are within their sovereign right to achieve revenue neutrality by increasing taxes or expanding the base, states should avoid the temptation to raise additional revenue by expanding their tax base as part of the simplification effort. The Agreement currently indicates that it is not the intent of the Agreement to indicate whether states should tax or exempt any particular product. This language should be strengthened to discourage states from expanding their tax base under the guise of simplification unless required incident to complying with the Agreement.

**Compensation for Certified Service Providers (CSPs) and Sellers
Under Streamlined Sale and Use Tax Agreement**

Status	Provision
Retailer's discount continues for all sellers; not CSPs	77.61(4)(c) Sellers may deduct 0.5% or \$10 per reporting period, whichever is greater, as administration expenses if the payment of taxes is not delinquent
New compensation for technology of CSPs and sellers using CAS	77.63 Certified Service Providers (CSPs) and sellers using a Certified Automated Section (CAS) may retain a portion of sales/use taxes collected on retail sales in an amount determined by the department and by contracts under the agreement.
New compensation for sellers who voluntarily register before there is a federal mandate	77.63 For voluntary sellers who register under the Agreement, they will be allowed to keep a <u>percentage</u> of tax revenue generated for a <u>period not to exceed 24 months</u> following registration. The percentage will be determined after contracts are negotiated with Certified Service Providers.
Retailer's discount repealed for sellers who voluntarily register.	77.63 The department may enter into agreements with out-of-state direct marketers to voluntarily collect. The marketers can retain 5% of the first \$1 million of taxes collected in a year and 6% of the taxes collected in excess of \$1 million in a year. This provision does not apply to a direct marketer who is required to collect.
	(The department must certify to the department of health and family services an amount equal to 1/11 of the taxes voluntarily collected for grants to counties under sec. 46.513.)



State Senator Ronald Brown, Chair
Senate Committee on Homeland Security,
Veterans and Military Affairs and Government Reform
104 South
State Capitol
Madison, WI 53702

State Representative Mickey Lehman, Chair
Assembly Committee on Ways and Means
103 West
State Capitol
Madison, WI 53702

RE: Support Streamlined Sales Tax/SB 267 & AB 547

Dear Senator Brown and Representative Lehman and Committee Members:

Lands' End Inc. primary operations are located in Wisconsin, with headquarters in Dodgeville along with a phone center and distribution facilities. In addition, the company has a combination phone center and distribution center in Reedsburg and Stevens Point. Cross Plains contains a phone center and we have 7 outlet stores spread throughout Wisconsin. In total Lands' End Inc. employs approximately 7,000 throughout the state. Lands' End is a wholly owned subsidiary of Sears Roebuck & Co. which employs approximately 3,000 across the state bringing the total number of jobs to approximately 10,000. Lands End also sells merchandise over the internet where it is one of the leaders in the USA, through its landsend.com web site. We are very strong supporters of this bill and the substance of the streamlined sales and use tax agreement.

This bill is a step in the right direction as the current sales tax laws are very complex and approach the complexity of the federal income tax regulations. Lands' End Inc. currently collects and remits in all sales tax jurisdictions throughout the country which totals approximately 1,300 jurisdictions when considering all state, county and local taxes throughout the US. In the past year as a part of Sears Roebuck, Lands' End has gone through the costly and time consuming process of implementing software to collect and remit in all jurisdictions, this process is complex due to all the nuances of what product carries what classification and what boundaries exist. This bill will move toward a system that is endorsed and certified by each state. In addition, after the fact we are now subject to audit by each of the 45 states where we now collect and remit, we are hopeful that in the future this may also be simplified and consolidated to ease the administrative burden of such audits.

This is a tax fairness issue for Wisconsin businesses. All retailers who do business in the state should be collecting sales taxes, but they are not. Those of us with a physical presence in the state are forced to collect and remit sales tax, while those companies that do not have a physical presence here are often selling goods in Wisconsin without collecting or paying sales tax. These out-of-state on-line and other mail-order merchants that do not collect sales tax have an unfair advantage over Wisconsin businesses.

Lands' End supports a level playing field for all merchants, regardless of whether they sell their merchandise from a storefront, through a catalog or over the Internet. We believe that tax policy should be channel-neutral, and that all retailers should be required to play by the same rules. We are fully aware that such tax is due and has always been due as a use tax when not collected, but are aware that few consumers are either aware or decide to not comply.

Lands' End sees this as a very positive move for business in Wisconsin. Once the state is able to collect sales taxes that are owed from remote vendors (an estimated revenue loss of \$150 million each year and growing) who do not now collect these taxes, the Legislature should be able to enact tax reductions, economic development measures or other important legislation to strengthen our statewide economy and overall business environment.

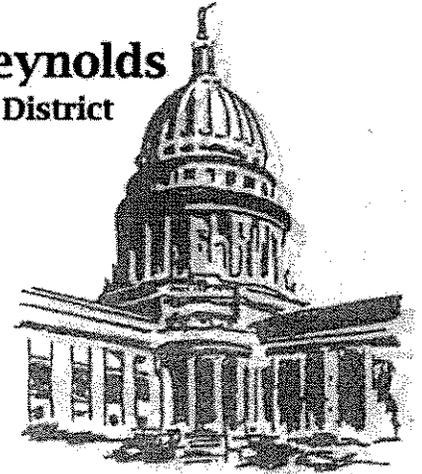
This bill is a major tax simplification for all companies because it moves us closer to having uniform sales tax definitions in all states, which will eventually give the state the ability to collect taxes that are due under current law. We urge the State of Wisconsin to be the 21st state to adopt such legislation.

Sincerely,



Donald R. Hughes
Senior Vice President & Chief Financial Officer
Lands' End Inc.

State Senator Tom Reynolds
5th Senate District



MEMO

To: Senate Republican Colleagues
From: Senator Tom Reynolds
Date: November 5, 2003
Re: Streamlined Sales Tax Project

I would encourage you all to review the materials I have attached regarding the Streamlined Sales Tax Project proposal. In this session, this proposal has been introduced as Senate Bill 267 and Assembly Bill 547.

While the immediate fiscal impact is a revenue reduction, this so-called "streamlining" proposal is being spearheaded by revenue bureaucrats across the country – people who have a very definite interest in expanding the sales tax base and in increasing the tax burden on our state's citizens.

Regrettably, it is no secret that the ultimate goal of this project is to impose the sales tax on Internet commerce. Beyond the obvious concerns of turning over to an extraterritorial body our legislative sovereignty and our constituents' right to be represented when it comes to their state's tax policy, I also believe that our constituents are already overtaxed. It was my understanding, based on the public positions our caucus has taken on issues such as the property tax freeze, that this was our caucus position as well.

Yet, this proposal in its current form kicks off by taking a whack at new parents, withdrawing the sales tax exemption on *cloth diapers*. It expands collections of sales tax from non-nexus sellers, claiming another \$2.2 million from Wisconsin residents. In these times of huge budget deficits, it is not at all difficult to imagine that the eventual goal of increasing taxes on Wisconsin residents by taxing all Internet commerce will come to fruition.

Some will argue that Internet and non-nexus commerce is already subject to taxation, inasmuch as state taxpayers are required to remit use tax on these purchases on their income tax returns. I would submit, however, that it has long been the policy of revenue regulators to "turn a blind eye" to underreporting in this area. In fact, the Governor's order to the Department of Revenue to forego collection actions in the recent lawn parking issue near Lambeau Field is strong evidence that the state does not actively enforce the voluntary reporting of use tax by individuals. Make no mistake – the move toward destination-based collection of sales tax by retailers represents a significant policy change. This will be viewed as a tax increase by your constituents, and they will not be impressed.

While some of the proposals in this bill are worthwhile, I would encourage you to oppose this heavy-handed effort to turn over our sovereignty over state sales tax policy to an unelected body of out-of-state bureaucrats, while starting us down the road to huge tax increases on Internet commerce.

A Guide for
State Legislators

ALEC



By Aaron Thierer and Aaron Lukas, *The Cato Institute*

With almost every state legislature as well as Congress debating the taxation of electronic commerce, it remains one of America's hottest technology policy issues. It appears likely that Congress will renew, at least for two more years, the moratorium it put in place under the Internet Tax Freedom Act of 1998. This moratorium, which has been the subject of intense and often acrimonious debate, merely prohibits state and local government from imposing "multiple or discriminatory" taxes on the Internet as well as taxes on Internet access.

Importantly, however, the ITFA moratorium does not prohibit state and local governments from attempting to collect sales taxes on goods purchased over the Internet. What currently ties the hands of state and local governments is not the ITFA, but rather 30 years of Supreme Court jurisprudence surrounding "remote" (i.e., interstate) commerce.

In *National Bellas Hess v. Illinois* (1967), *Complete Auto Transit, Inc. v. Brady* (1977), and *Quill v. North Dakota* (1992), the Supreme Court ruled that states could only require firms physically present in their jurisdiction to collect taxes on their behalf. Those decisions, which have never been overturned or altered by Congress, provide a sensible guideline for taxing remote sales. In essence, the logic of the Court's jurisprudence can be summarized by the classic phrase used by the Founders: "No taxation without representation." More specifically, a state or local government may only place tax collection obligations on companies or

consumers that receive something in return for those taxes. Forcing companies to collect taxes for jurisdictions they receive few benefits from would be blatantly unfair and massively inefficient given the complexity of the sales tax system in America (currently over 7,000 taxing jurisdictions with a multiplicity of rates and product definitions).

This explains why interstate mail order and catalog companies are not required to pay taxes in states where they have no physical commercial presence, or "nexus" as the Court refers to it. Companies are required to collect taxes only in the states where they have tangible business operations. Their customers, however, are expected to remit taxes to their state or local governments. That compliment to the sales tax is called the "use tax," but enforcement remains problematic, if not impossible, given the difficulty associated with tracking direct-to-the-door sales.

Largely because of use tax collection problems, many state and local officials have undertaken a new effort to collectively "simplify" their sales tax systems. Specifically, they hope to establish a multi-state compact to jointly set sales tax policies such as rates, definitions, and collection obligations. Eventually they hope that simplification will render the Supreme Court nexus requirement moot. The effort has been dubbed the "Streamlined Sales Tax Project" (SSTP) and its promoters say it is the pro-"states' rights" solution to the Net tax debate.

But state and local officials who have a proper understanding of the Constitution will quickly realize that this version of "states' rights" is not consistent with the vision of American federal-



ism that the Founding Fathers conceived of long ago. Their federalism established the world's first free trade agreement by ensuring that different levels of government would rule within different spheres. Those few matters that truly involved a national scope would be administered by the federal government; all other parochial matters were left to state and local governments. The dynamic tension among various levels of government and among the states helped ensure that no level of government would grow too large or encroach the liberties of the citizenry.

By proposing an interstate tax cartel, the supporters of the SSTP project are, in reality, proposing to scrap the constitutional framework and revert back to an Articles of Confederation-style arrangement for interstate commerce. Under the Articles, few barriers existed to prevent state taxation and regulation of interstate commerce. As a result, economic anarchy existed among the states with every commercial dispute having the potential to ignite a full-blown trade war. To remedy that, the Founders abandoned the "anything goes" vision of untrammelled "states' rights" and included several clauses within the Constitution to help keep the commercial peace within the union. Article 1, Section 8, Clause 3, "the Commerce Clause," is the most well-known in this regard, but the Founders also made it clear in Article 1, Section 10, Clause 3, "the Compacts Clause," that states were not to enter into compacts that might unduly burden the free flow of commerce.

The beauty of this constitutional system is that it helps ensure commercial harmony among the states while

also encouraging them to establish distinct policies within their own domain. This allows consumers and companies to "vote with their feet" and find more hospitable tax and regulatory jurisdictions when they feel burdened by their current government.

That model should also be applied to the debate over Internet taxation. Policymakers should not simply drop all barriers on the taxation of the interstate marketplace and allow state and local governments to collude and craft a multi-state tax authority. Such a de facto national sales tax cartel would not only be a slap in the face of the Founding Fathers, it would also have disturbing economic consequences for the future governance of the interstate marketplace. Thus, state and local policymakers who uphold the Jeffersonian and Madisonian vision would do well to consider the proposed ALEC model legislation, *The Interstate Compact Sunshine Act*, which would shine light on current efforts to craft such a system.

Moreover, while some pro-tax state and local officials would have us believe that the Internet and electronic commerce are drastically eroding their sales tax bases, the reality is something much different. Electronic commerce sales constituted only about 0.8 percent of aggregate retail sales in 2000, according to U.S. Department of Commerce data. In fact, the correlation between tax revenues and spending is the opposite of what Internet tax supporters assert: when online retailers were thriving, tax revenues soared; when retailers were hurting, revenues declined. In light of those trends, it's hard to see how the Internet is to blame for revenue short-