

Statement
Of
The Federation of Tax Administrators
On
Simplified Administration of State Sales Taxes

Before the
Subcommittee on Commercial and Administrative Law

Of the
Committee on the Judiciary

December 6, 2007

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The Federation of Tax Administrators (FTA) is an association of the tax administration agencies in each of the 50 states, the District of Columbia, Puerto Rico, and New York City. We are pleased to have the opportunity to present our views on legislation that would authorize states to require certain remote sellers to collect state and local sales taxes on goods and services sold into a state.

FTA is very pleased to be able to support The Sales Tax Fairness and Simplification Act, H.R. 3396. We believe the bill and its counterpart S. 34 in the Senate offer a solid basis for proceeding through the legislative process to enact legislation that will authorize states to require remote sellers to collect sales and use taxes on goods and services sold customers in the state.

The legislation affirms the accomplishments that states have made in simplifying the administration of sales and use taxes for multistate sellers and builds on the structure they have put in place.

The collection of state and local sales taxes on remote sales has a long history. The U.S. Supreme Court held in 1992 (*Quill Corp. v. North Dakota*, 504 US 298) that a state may not require a seller that does not have a physical presence in the state to collect tax on sales into the

state. The decision was based in part on the complexity of the sales tax system for remote sellers, i.e., nonresident sellers without a physical presence in the state of purchase. The Court also said clearly that Congress could authorize states to require remote sellers to collect tax.

To address the complexity of sales tax administration, states have worked with the business community over the last six years develop methods of simplifying administration of sales and use taxes for fixed-base retailers as well as for remote sellers. This effort led to the creation of the Streamlined Sales and Use Tax Agreement. The Agreement contains a number of provisions that when adopted by Member States substantially simplify sales tax collection in those states. Congress should authorize Member States, i.e., those that have adopted the Agreement, to require remote sellers to collect sales taxes.

The Streamlined Sales and Use Tax Agreement took effect on October 1, 2005, with 19 states, representing over 20 percent of the population, participating. There are now 22 full member states that have incorporated the simplification provisions of the Agreement into their sales and use tax codes. The Agreement uses several strategies to drastically simplify sales tax administration, including: (a) requiring simpler and more uniform sales tax provisions; (b) shifting greater responsibilities to the states; and (c) providing sellers with information, data bases and technologies to simplify the task of complying with sales tax laws. Among the key, specific simplifications in the Agreement are:

- State-level administration of all local sales and use taxes;
- Limits on the frequency of local rate changes and local boundary changes and required notice of same;

- Requirements for states to provide data to attach tax rates to addresses if local option sales taxes are allowed;
- Hold harmless provision for sellers using state-provided rate data;
- Relaxation of the “good faith” standard for exemptions and simplified exemption administration;
- Uniform sales tax returns, remittance forms and procedures;
- Single point of registration for sellers volunteering under the Agreement;
- Uniformity in the base of state sales and use taxes and local sales and use taxes (within a single state);
- Uniform definitions for commonly exempted products as well as other terms used in state sales taxes such as lease, tangible personal property, medical equipment and devices, drugs, software and related products, specified digital products, food and ingredient products, and telecommunications services;
- Uniform bad debt recovery rule;
- Requirement that there be a single statewide state sales tax rate for all transactions except that the state may have one other rate (which could be zero) on food and drugs;
- Local jurisdictions limited to a single tax rate per jurisdiction;
- Uniform rounding algorithm and repeal of rate bracket charts;
- Prohibition on sales tax “caps and thresholds” among the states in the Agreement;
- Allowing sales tax holidays under certain conditions;
- Privacy protections;
- Authorization for a single audit of a seller;
- Amnesty for non-nexus sellers volunteering to collect;

- Provisions to authorize certification of software and service providers and hold harmless for sellers using certified systems;
- Uniform procedures for customer remedies in event of over-charging of sales and use tax;
- Requirements for direct pay procedures.

Taken together, these provisions create a substantially more uniform sales tax across participating states and provide remote sellers with an array of tools that enable them to reasonably comply with state and local sales tax obligations. Congress should now affirm the efforts of these states to simplify their sales taxes by authorizing those states that are members of the Agreement to require collections of tax by remote sellers on sales into a state.

These simplified state tax systems are the road map to the future. The new simplified system substantially reduces the compliance burden faced by remote sellers and is sufficient to satisfy the Constitutional standard for remote sales tax collections established by the Supreme Court. The next step is for Congress, pursuant to its Constitutional authority, to authorize states that are members of the simplified system to require remote sellers to collect tax under the new simplified sales tax systems.

If these steps are not take there will be a steady erosion of state and local sales tax collections. Remote retail sales are increasing annually by 20 to 25 percent a year, while overall retail sales overall are increasing sales by only 3 to 4 percent a year. In-state sellers, their employees, and related businesses such as the owners of shopping malls will be disadvantaged because of the tax differential between remote sellers and in-state businesses. In order to maintain state revenues

and protect “bricks and mortar” businesses there must be a level playing field where all retail sales in a state are subject to the same rules. FTA believes that advancing this legislation should be the top state tax priority issue of the Judiciary Committee through its Commercial and Administrative Law Subcommittee.

A significant growth in the number of states participating in SSTA can be expected because of the benefits that will inure to the states. The current voluntary system provides significant administrative relief for businesses, but the 1,000 plus participating businesses in the 22 SSTA states only generate a fraction of the revenues to the states that a mandatory system will. Currently, the voluntary system generates \$95 million annually for the 22 states. This can be expected to increase to \$6.6 to 10.4 billion if the system is mandatory¹.

FTA urges the Subcommittee and full Judiciary Committee to take up Streamlining as a separate and distinct issue. It should be advanced to conclusion this year.

¹ These revenue estimates were developed by Donald Bruce and William F. Fox with the Center for Business and Economic Research, College of Business Administration, at the University of Tennessee in 2004. States have continued to improve their enforcement of sales tax collection under existing law, which these estimates do not reflect.