

SEATA 2010

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Streamlined Sales Tax Governing Board

Issues

- Today's state budgets
- History of the Streamlined Sales Tax
- Simplification efforts
- Sales tax technology
- Federal legislation
- Vendor compensation

“E-retail puts together back-to-back double-digit growth quarters”

- “The U.S. Commerce Department reported that e-commerce sales grew 14.3% in the first quarter, following the fourth’s quarter 14.6% gain.”
- “E-commerce grew 14.3% compared to the first quarter of 2009, after adjusting for seasonal variations, total retail sales grew only 6.3%.”
- “Counting retail sales of all types, the web accounted for 4.0% of total sales in the first quarter of 2010 versus 3.7% a year earlier.”
- Source: **Internet Retailer’s Daily News Service (May 18, 2010)**

Remote sales: What is at stake?

- "State and Local Government Sales Tax Revenue Losses from Electronic Commerce," April 2009 update to report by professors Bill Fox, Don Bruce and LeAnn Luna at Univ. of Tennessee: State and local governments will fail to collect **\$6.9 billion** in sales tax in 2009 **just** from electronic commerce
- Trend increases: By 2012 the projected loss for state and local governments is **\$23.3 billion**, including **\$11.4 billion** from remote commerce, **\$6.8 billion** from business-to-consumer catalog sales, and **\$5 billion** from business-to-business catalog sales

State Tax Revenues

- State tax revenues dropped for the fifth straight quarter in the fourth quarter of 2009, the longest decline on record, according to the latest update from the Rockefeller Institute of Government
- Preliminary data shows all three major tax types dipped, with individual income dropping 4.5 percent, sales dropping 4.2 percent and corporate income dropping 5.8 percent
- Averaged and adjusted for inflation, the total drop was 4.8 percent
- Revenues dropped in 39 of the 46 states

Effect of the sales tax gap

(in millions – source NCSL)

- Arizona:
 - 2010 budget deficit - \$2,600.0
 - Uncollected use tax - \$636.6
- California:
 - 2010 budget deficit - \$19,500.0
 - Uncollected use tax - \$3,624.0
- Connecticut:
 - 2010 budget deficit - \$2,495.3
 - Uncollected use tax - \$501.2

Effect of the sales tax gap

(in millions – source NCSL)

- Florida:
 - 2010 budget deficit - \$4,650.0
 - Uncollected use tax - \$2,275.5
- Kansas:
 - 2010 budget deficit - \$958.5
 - Uncollected use tax - \$271.5
- National total:
 - 2010 budget deficit - \$68,167.9
 - Uncollected use tax - \$23,300.0

Why doesn't seller always collect sales tax?

- For decades, states have sought to require out-of-state retailers to collect their tax
- 1992 Supreme Court decision in *Quill Corp. v. North Dakota* held: requiring collection of tax by out-of-state retailers **with no physical presence** in a state would be burden on interstate commerce and would therefore violate Commerce Clause of U.S. Constitution

Remote sales: What is at stake?

- Compliance with sales tax laws by multi-state corporations is too complex
- Local merchants suffer from lack of level playing field
- Significant losses of revenue expected due to growth in electronic commerce and inability of states to administer use tax with consumers

What retailer's say makes the system complex

- State and local tax administration in some state
- Unclear rules on who has the right to tax a transaction
- Too many tax rates within each state and locality
- State and locals tax different items
- Too many definitions for the same product
- The retailer is liable when a buyer lies or fails to provide proof of an exempt sale

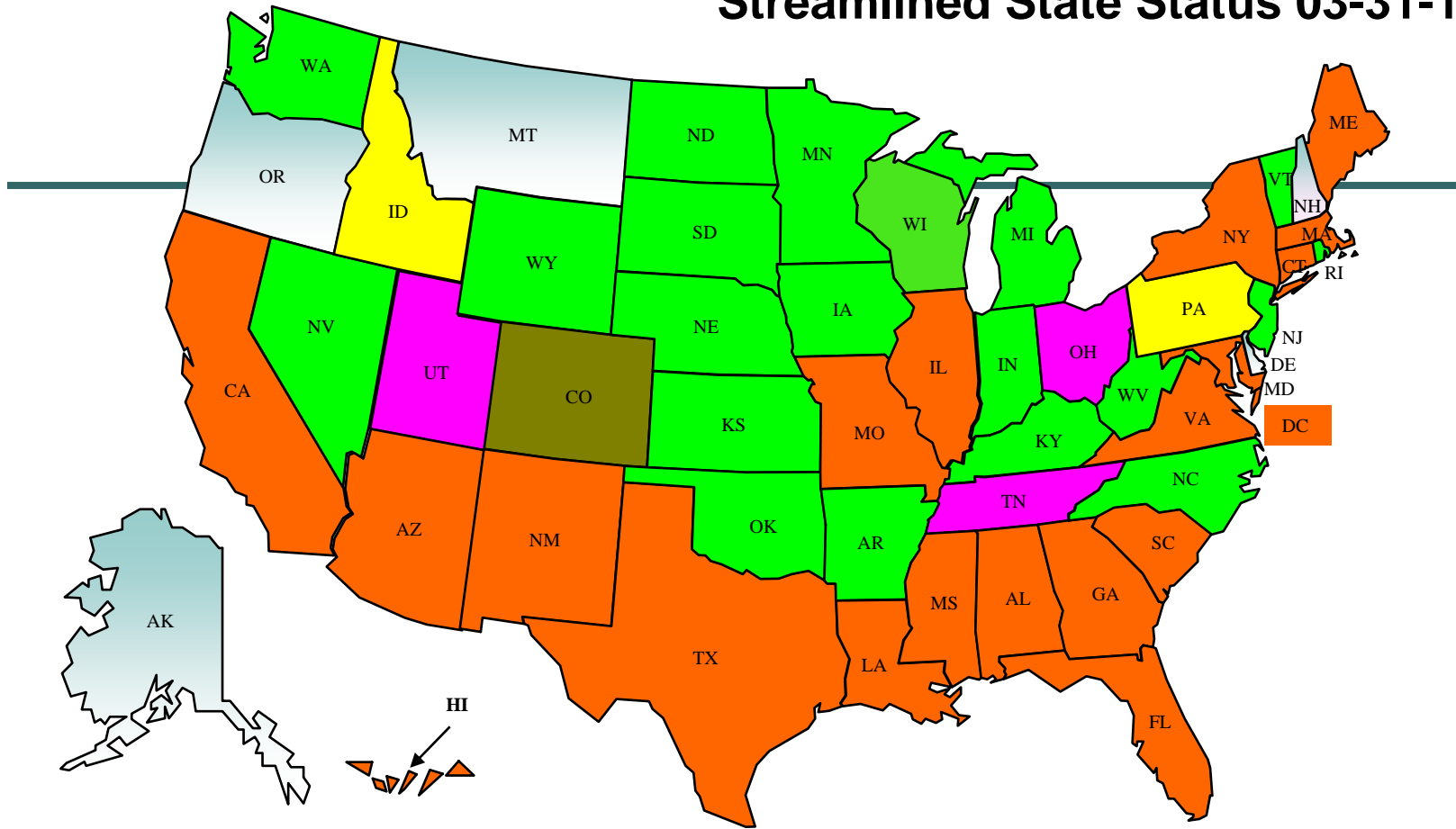
Goals of the Streamlined Effort:







- Create a simpler system for administering the various state and local sales taxes
- Make processes uniform if they cannot be made simple
- Balance the interests of a state's sovereignty. with the interests of simplicity and uniformity
- Leverage the use of technology to ease the retailer's tax collection
- Balance simplicity with state sovereignty

Streamlined Sales and Use Tax Agreement (SSUTA)

- **SSUTA effective October 1, 2005**
- **Current membership:**
 - ◆ **20 Full members**
 - ✓ Arkansas, Kansas, Kentucky, Indiana, Iowa, Michigan, Minnesota, Nebraska, New Jersey, Nevada, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Vermont, Washington, West Virginia, Wisconsin, Wyoming
 - ◆ **3 Associate members**
 - ✓ Ohio, Tennessee, Utah

Streamlined State Status 03-31-10



- | | | | |
|---|--|---|-------------------------------|
|  | Full Member States |  | Non-sales tax states |
|  | Associate Member States - flex to full |  | Project states - Not Advisory |
|  | Advisory States - Not Conforming |  | Non-participating state |

HR 5660: The Main Street Fairness Act

- Grants states and tribal governments the authority to require collection by all retailers
- Requires states to pay compensation to all retailers
- Requires states to establish an exception for small sellers
- Creates Federal court review of Governing Board actions

Vendor Compensation Language

- (14) Effective on the date authority to require collection commences ... each Member State shall provide reasonable compensation for expenses incurred by all sellers in administering, collecting, and remitting sales and use taxes (other than use taxes on goods and services purchased for the consumption of the seller) to that Member State.
- Such compensation may vary in each Member State depending on the complexity of the sales and use tax laws in that Member State and may vary by the characteristics of sellers in order to reflect differences in collection costs.
- Such compensation may be provided to a seller or a third-party service provider whom a seller has contracted with to perform all the sales and use tax responsibilities of a seller.

Main Street Fairness Act: Vendor Compensation

- The states will be set by each state but must meet the minimum compensation level required by the SSUTA
- The proposed minimum compensation a state with local jurisdictions is 1% of total sales and use tax revenue
- The proposed minimum compensation for a state without local jurisdictions is .9% of total sales and use tax revenue
- Having a different sales tax rate on groceries or drugs or a cap on clothing requires additional compensation to impacted sellers

Main Street Fairness Act: Vendor Compensation

- States must provide compensation to new remote sellers when collection authority is granted
- States must provide compensation to remaining sellers:
 - ◆ within 15 months; or
 - ◆ when sufficient new revenue is accumulated to cover the cost of compensating existing sellers (whichever is later).
- Compensation will be a percentage of the tax remitted by a seller
- The highest rate will be paid to smaller sellers as their cost is higher relative to the amount of tax they collect
- Medium size sellers will receive at least 50% of the rate for small sellers
- Large sellers will receive at least 25% of the rate required for small sellers

Main Street Fairness Act: Federal Court Review

- A person may bring an action against the Governing Board in the United States Court of Federal Claims for judicial review of an action of the Governing Board if the petition relates to whether:
 - ◆ a Member State has satisfied or continues to satisfy the requirements for Member State status under the Agreement
 - ◆ the Governing Board has performed a nondiscretionary duty of the Governing Board under the Agreement
 - ◆ the Agreement continues to satisfy the minimum simplification requirements of the Federal bill

Main Street Fairness Act: Small Seller Exception

- Past bills have excluded sellers of those with remote taxable sales of \$5 million and less
- This bill requires a small seller exception and gives the Governing Board the authority to set the amount
- The current proposal is to except sellers with gross remote taxable sales of \$100,000 or less

SST Technology: The “Certified Service Provider” (CSP)

- Two new companies were recently certified as CSPs.
- Remember that a CSP is a third party that provides “cradle to grave” tax service that includes liability determination, return filing and tax remittance
- Six CSPs have contract with Governing Board:
 - ◆ **Accurate Tax**
 - ◆ ADP
 - ◆ Avalara
 - ◆ Exactor
 - ◆ **Fed-Tax**
 - ◆ Speedtax

Central Registration System

- As of July 1, 2010 there were 1,249 companies registered on the central registration system
- As of July 1, 2010 those companies had collected \$590.6 million in sales tax for the Streamline states

Current Issues being discussed

- Healthy Food definition
- Audit overpayments
- Credit issues
- Substantial compliance
- Rules for candy definition
- Sourcing services with respect to tangible personal property
- Sales Price definition with respect to federal taxes and fees
- Limiting additional monthly remittances
- Sourcing of leases in origin states
- Limiting or expanding requirements for Direct Pay permits

Streamlined Sales Tax

Questions:

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