

- 1           5. Collect, disclose, disseminate, or otherwise use anonymous data for governmental
- 2           purposes.
- 3           e. Without limitation, this privacy policy does not enlarge or limit any existing or future
- 4           privacy policies of sellers in Model 1.

**ARTICLE IV**

**SELLER REGISTRATION**

**400 SELLER PARTICIPATION**

- 9           a. In order to simplify the seller registration process, the member states will provide an
- 10           online registration system that will allow sellers to register in all the member states.
- 11           b. By registering, the seller agrees to collect and remit sales and use taxes for all taxable
- 12           sales into the member states, including member states joining after the seller's
- 13           registration. Withdrawal or revocation of a member state shall not relieve a seller of its
- 14           responsibility to remit taxes previously collected on behalf of the State.
- 15           c. In member states where the seller has a requirement to register prior to registering under
- 16           this Agreement, the seller may be required to provide additional information to complete
- 17           the registration process or the seller may choose to register directly with those states.
- 18           d. Registration with the central registration system and the collection of sales and use taxes in
- 19           the member states will not be used as a factor in determining whether the seller has nexus
- 20           with a State for any tax.

**402 AMNESTY FOR REGISTRATIONS**

- 22           a. Subject to the limitations stated below in this section and the following sections:
- 23           1. A State participating in the Streamlined Sales and Use Tax Agreement will provide
- 24           amnesty for uncollected or unpaid sales and/or use tax to a seller who registers to pay

1 and/or to collect and remit applicable sales and/or use tax on sales made to purchasers in  
2 the State in accordance with the terms of the Agreement, provided that the seller was not  
3 so registered in that State in the twelve-month period preceding the commencement of  
4 the State's participation in the Agreement.

5 2. The amnesty will preclude assessment for uncollected or unpaid sales and/or use tax  
6 together with penalty or interest for sales made during the period the seller was not  
7 registered in the State, provided registration occurs within twelve months of the effective  
8 date of the State's participation in the Agreement.

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

11 b. The amnesty is not available to a seller with respect to any matter or matters for which the  
12 seller received notice of the commencement of an audit and which audit is not yet finally  
13 resolved including any related administrative and judicial processes.

14 c. The amnesty is not available for sales and/or use taxes already paid or remitted to the State  
15 or to taxes collected by the seller.

16 d. The amnesty is fully effective absent the seller's fraud or intentional misrepresentation of a  
17 material fact as long as the seller continues registration and continues payment and/or  
18 collection and remittance of applicable sales and/or use taxes for a period of at least thirty-six  
19 months. The statute of limitations applicable to asserting a tax liability is tolled during this  
20 thirty-six month period.

21 e. The amnesty is applicable only to sales and/or use taxes due from a seller in its capacity as  
22 a seller and not to sales and/or use taxes due from a seller in its capacity as a buyer.

23 f. A State participating in the Agreement may allow amnesty on terms and conditions more  
24 favorable to a seller.

#### 25 **404 METHOD OF REMITTANCE**

26 When registering, the seller may select one of the following methods of remittances or other

1 method allowed by state law to remit the taxes collected:

- 2 a. MODEL 1 Seller selects a Certified Service Provider (CSP) as an agent to perform all the  
3 seller's sales or use tax functions, other than the seller's obligation to remit tax on its own  
4 purchases.
- 5 b. MODEL 2 Seller selects a Certified Automated System (CAS) to use which calculates  
6 the amount of tax due on a transaction.
- 7 c. MODEL 3 Seller utilizes its own proprietary automated sales tax system that has been  
8 certified as a CAS.

9 **406 REGISTRATION BY AN AGENT**

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

12

13 **ARTICLE V**

14 **PROVIDER AND SYSTEM CERTIFICATION**

15

16 **500 CERTIFICATION OF SERVICE PROVIDERS AND AUTOMATED SYSTEMS**

- 17 a. In order to facilitate the provisions of this Agreement, the member states acting jointly  
18 will certify automated systems and service providers to aid in the administration of sale  
19 and use tax collections.  
20
- 21 b. The member states acting jointly may certify a person as a Certified Service Provider if  
22 the person meets all of the following requirements:
  - 23 1. The person uses a Certified Automated System

- 1           2. The person integrates its Certified Automated System with the system of a seller
- 2           for whom the person collects tax so that the tax due on a sale is determined at the
- 3           time of the sale.
- 4           3. The person agrees to remit the taxes it collects at the time and in the manner
- 5           specified by the member states.
- 6           4. The person agrees to file returns on behalf of the sellers for whom it collects tax.
- 7           5. The person agrees to protect the privacy of tax information it obtains.
- 8           6. The person enters into a contract with the member states and agrees to comply
- 9           with the terms of the contract.

10       c. The member states acting jointly may certify a software program as a Certified  
11       Automated System if the member states determine that the program meets all of the  
12       following requirements:

- 13           1. It determines the applicable state and local sales and use tax rate for a transaction,  
14           based on the uniform sourcing provision established under the Agreement.
- 15           2. It determines whether or not an item is exempt from tax.
- 16           3. It determines the amount of tax to be remitted for each taxpayer for a reporting  
17           period.
- 18           4. It can generate reports and returns as required by the member states.
- 19           5. It can meet any other requirement set by the member states.

20       d. The member states acting jointly may establish one or more sales tax performance  
21       standards for multistate sellers that meet the eligibility criteria set by the member states  
22       and that developed a proprietary system to determine the amount of sales and use tax due  
23       on transactions.

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**ARTICLE VI**

**MONETARY ALLOWANCES FOR NEW TECHNOLOGICAL MODELS FOR SALES  
TAX COLLECTION**

**600 MONETARY ALLOWANCES FOR CSPs AND SELLERS**

This Article addresses the monetary allowances to be provided by a member state to a CSP in Model 1 or to a seller in Model 2 or Model 3 for implementing new technological models. These allowances shall be subject to review by the member states as the efficiency of technology improves and economies of scale arise from increasing transaction volumes processed through these systems. The non-monetary benefits that accrue to all sellers that participate in the Agreement are addressed in other sections. These non-monetary benefits include limitations on the assessment of back taxes, reduced audit scope, uniform returns, and other methods of tax compliance simplification.

**602 MONETARY ALLOWANCE UNDER MODEL 1**

- a. The member states agree to provide a monetary allowance to a CSP in Model 1 in accordance with the terms of the contract the member states sign with the CSP. The details of the monetary allowance are provided through the contract process. The allowance will be funded entirely from money collected in Model 1.
- b. The member states anticipate a monetary allowance to a CSP to be one or more of the following incentives:
  - 1. A base rate that applies to taxable transactions processed by the CSP.
  - 2. For a period not to exceed twenty-four (24) months following a voluntary seller's registration through the Agreement's central registration process, a percentage of tax revenue generated for a member state by the voluntary seller. "Voluntary seller" means a seller that does not have a requirement to register to collect the tax for a member state.

1     **604 MONETARY ALLOWANCE FOR MODEL 2 SELLERS**

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

4     a. All sellers shall receive a base rate for a period not to exceed twenty-four (24) months  
5     following the commencement of participation by a seller. The base rate will be set after the base  
6     rate has been established for Model 1. This allowance will be in addition to any discount  
7     afforded by each member state at the time.

8     b. The member states anticipate a monetary allowance to a Model 2 Seller based on the  
9     following:

- 10             1. For a period not to exceed twenty-four (24) months following a voluntary seller's  
11                 registration through the Agreement's central registration process, a percentage of  
12                 tax revenue generated for a member state by the voluntary seller. "Voluntary  
13                 seller" means a seller that does not have a requirement to register to collect the tax  
14                 for a member state.
- 15             2. Following the conclusion of the twenty-four (24) month period, a seller will only  
16                 be entitled to a vendor discount afforded under each member state's law at the  
17                 time the base rate expires.

18     **606 MONETARY ALLOWANCE FOR MODEL 3 SELLERS AND ALL OTHER**  
19     **SELLERS THAT ARE NOT UNDER MODELS 1 OR 2**

20     The member states anticipate that they will provide a monetary allowance to sellers under Model  
21     3 and to all other sellers that are not under Models 1 or 2 based on the following:

- 22             1. For a period not to exceed twenty-four (24) months following a voluntary seller's  
23                 registration through the Agreement's central registration process, a percentage of  
24                 tax revenue generated for a member state by the voluntary seller. "Voluntary  
25                 seller" means a seller that does not have a requirement to register to collect the tax  
26                 for a member state.



1 do not substantially deviate from the requirements set forth in this Agreement. Public notice and  
2 opportunity for comment will be given before a State is allowed to participate in the Agreement.

3 **708 AGREEMENT ADMINISTRATION**

4 The member states must organize to govern compliance of each State participating in the  
5 Agreement and take other actions as may be necessary to administer and implement the  
6 provisions contained herein. The member states acting jointly must appoint an advisory council  
7 to consult with in the administration of the Agreement and on issues of individual state  
8 compliance. Members of the advisory council shall include representatives from business and  
9 any other interested persons.

10 **710 WITHDRAWAL OF MEMBERSHIP**

11 This Agreement shall continue in full force and effect, after its original adoption, as to each State  
12 until withdrawn by the proper officials of a State. Such withdrawal shall not be effective until the  
13 first day of a calendar quarter after a minimum of sixty (60) days' notice. Such notification shall  
14 immediately be sent to the officials of the other member states of the Agreement. However,  
15 withdrawal by one State shall not effect the Agreement among other states. Notwithstanding the  
16 withdrawal, the obligations incurred by the withdrawing State shall survive the withdrawal  
17 during its membership.

18 **712 EXPULSION OF MEMBER STATES**

19 Any member state may request a resolution before the member states acting jointly to expel  
20 another member state which is not in compliance with the terms of this Agreement. A resolution  
21 expelling a member state from the Agreement shall require the affirmative vote of three-fourths  
22 of the total member states, excluding the State that is the subject of the resolution. The member  
23 state that is the subject of the resolution will not be allowed to vote. Failure of a member state to  
24 vote shall be deemed a vote against the resolution of expulsion.

25 **714 CONTINUED ROLE OF STREAMLINED SALES TAX PROJECT AND STATE**  
26 **ADVISORY COMMITTEE**



1    Until such time as this Agreement becomes effective pursuant to Section 704, it may be amended  
2    by the Streamlined Sales Tax Project pursuant to Operating Rules adopted by the Project. After  
3    this Agreement becomes effective pursuant to Section 704, all states that are participating  
4    members of the Streamlined Sales Tax Project pursuant to the Operating Rules of the Project  
5    shall become the State Advisory Committee to the member states. This Committee shall continue  
6    the work of the Streamlined Sales Tax Project and shall provide input to the member states on  
7    issues regarding the inclusion of additional states into membership. If additional states wish to  
8    join the Committee, they may do so pursuant to the Operating Rules adopted by the Project or by  
9    subsequent procedures adopted by the Committee. A state may choose to cease to participate at  
10   any time. Any state that is not a member of the Committee may participate fully in the work of  
11   the Committee except that they shall not have the right to vote.

12   The Project and, when effective, the Committee shall work on the following issues:

- 13           1. The continued development of uniform definitions;
- 14           2. The development of a simpler, more uniform tax return;
- 15           3. The development of product codes; and
- 16           4. Other issues as agreed upon by the Project and the Committee.

17   **716 EFFECTIVE DATE**

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

22

23

24

**ARTICLE VIII**

25

**AMENDMENTS AND INTERPRETATIONS**

1 **800 AMENDMENTS TO AGREEMENT**

2 This Agreement may be amended, subject to approval, by three-fourths of the member states  
3 acting through the officials thereof authorized to enter into this Agreement. Prior to the vote, the  
4 member states acting jointly shall give public notice of the proposed amendment and opportunity  
5 for public comment.

6 **802 INTERPRETATIONS OF AGREEMENT**

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

12

13

14

**ARTICLE IX**

15 **RELATIONSHIP OF AGREEMENT TO MEMBER STATES AND PERSONS**

16 **900 COOPERATING SOVEREIGNS**

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

21 **902 RELATIONSHIP TO STATE LAW**

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

1 member states remain subject to Article VI, State Entry and Withdrawal.

2 **904 LIMITED BINDING AND BENEFICIAL EFFECT**

3 a. This Agreement binds and inures only to the benefit of the member states. No person, other  
4 than a member state, is an intended beneficiary of this Agreement. Any benefit to a person other  
5 than a State is established by the laws of the member states and not by the terms of this  
6 Agreement.

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

12 c. No law of a member state, or the application thereof, may be declared invalid as to any person  
13 or circumstance on the ground that the provision or application is inconsistent with this  
14 Agreement.

15 **906 FINAL DETERMINATIONS**

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

18

19

**ARTICLE X**

20 **REVIEW OF COSTS AND BENEFITS ASSOCIATED WITH THE AGREEMENT**

21

22 **1000 REVIEW OF COSTS AND BENEFITS**

23 Representatives of the member states will review costs and benefits of administration and  
24 collection of sales and use taxes incurred by states and sellers under the existing sales and use tax

1 laws at the time of adoption of this Agreement and the proposed Streamlined Sales Tax System.

2

1 APPENDIX A

2 STREAMLINED SALES AND USE TAX AGREEMENT

3 LETTER OF INTENT

4  
5 **WHEREAS**, it is in the interest of the private sector and of state and local governments to  
6 simplify and modernize sales and use tax administration;

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

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

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

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

17  
18 \_\_\_\_\_  
19 NAME

20 \_\_\_\_\_  
21 TITLE

22 STATE OF \_\_\_\_\_



NATIONAL CONFERENCE of STATE LEGISLATURES

*The Forum for America's Ideas*

**NCSL TASK FORCE  
CONSIDERATION OF SSTP RECOMMENDATIONS**

Option 1

- Endorse for state consideration the Streamlined Sales Tax Project's Uniform Sales and Use Tax Administration Act and the Streamlined Sales and Use Tax Agreement as approved on 01/24/01

Pros

- The SSTP recommendations may provide the states with the best chance to reduce and eliminate the complexities and the financial burden for remote vendors to collect a state sales and use tax as were cited in the *Bellas Hess* and *Quill* decisions (zero-burden)
- Adoption of the Agreement and Act by enough states may give states the opportunity to either have Congress grant to states mandatory collection authority or bring a case back through the federal court system and overturn *Quill*.
- Continue the momentum gained by the SSTP
- Retains a united front of state groups in Washington working with the private sector to show Congress that the states warrant mandatory collection authority.

Cons

- The Agreement as drafted contains provisions not necessary for the first phase of implementing a Zero-Burden system that could lead to legislative defeats in the states (ie: definition of food, selling price). Legislative defeats could potentially implode the momentum of the streamline process and weaken states' argument to Congress that the states can fix the problem without federal preemption.
- The Agreement as drafted does not allow enough flexibility to allow states with more complex sales tax systems to join the agreement, thus impairing the ability of the cooperating states to achieve a critical mass of population necessary to lure non-nexus vendors to voluntarily collect. (Single base and state rate)

② Amend -  
strip inclusions

① Governance -  
- give us authority

## Option 1

- Endorse for state consideration the Streamlined Sales Tax Project's Uniform Sales and Use Tax Administration Act and the Streamlined Sales and Use Tax Agreement as approved on 01/24/01

Page 2.

- The Agreement fails to provide enough time for states to phase into a total streamlined sales and use tax collection system. The Agreement should begin with addressing what states need to do simplify their systems to reflect remote sales.
- The Project has not had enough time to fully develop politically sustainable options to difficult questions such as governance and vendor compensation.
- Legislative failure in the states could hurt the states' chances of ever streamlining their sales tax systems as well impacting NCSL's credibility in future endeavors.



NATIONAL CONFERENCE of STATE LEGISLATURES

*The Forum for America's Ideas*

## NCSL TASK FORCE CONSIDERATION OF SSTP RECOMMENDATIONS

### Option 2

*Endorse an amended model act allowing states that pass it to construct a new Interstate Agreement based on the criteria set forth in the Act. This option would recognize the SSTP's Streamlined Sales and Use Tax Agreement as an advisory document or as intellectual property from which multistate discussions can begin.*

#### Pros

- This option gets the proper decision-makers together (administrative and elected officials) at the table to strike the necessary compromise and flexibility between pure simplicity and the likelihood of a critical mass of states enacting streamlining legislation.
- Only those states that are serious and ready to make a commitment to streamline their sales and use tax collection systems will enact this legislation. It is these states of hopefully varying complexities, which should set the bar on compliance with an interstate agreement.
- Legislators will not have to defend the specific provisions of a still evolving Agreement, which could lead to legislative defeat in some states.
- Some of the unresolved issues in the SSTP's Streamlined Sales and Use Tax Agreement are really policy issues which we should not expect technical and administrative staff to resolve.
- The Streamlined Sales Tax Project has made clear that there will need to be additional discussions and formulation of uniform definitions, requiring a second round of legislative action. The process advocated in the new act would provide the extra time that is needed to ensure that the interstate agreement is ready for "primetime."



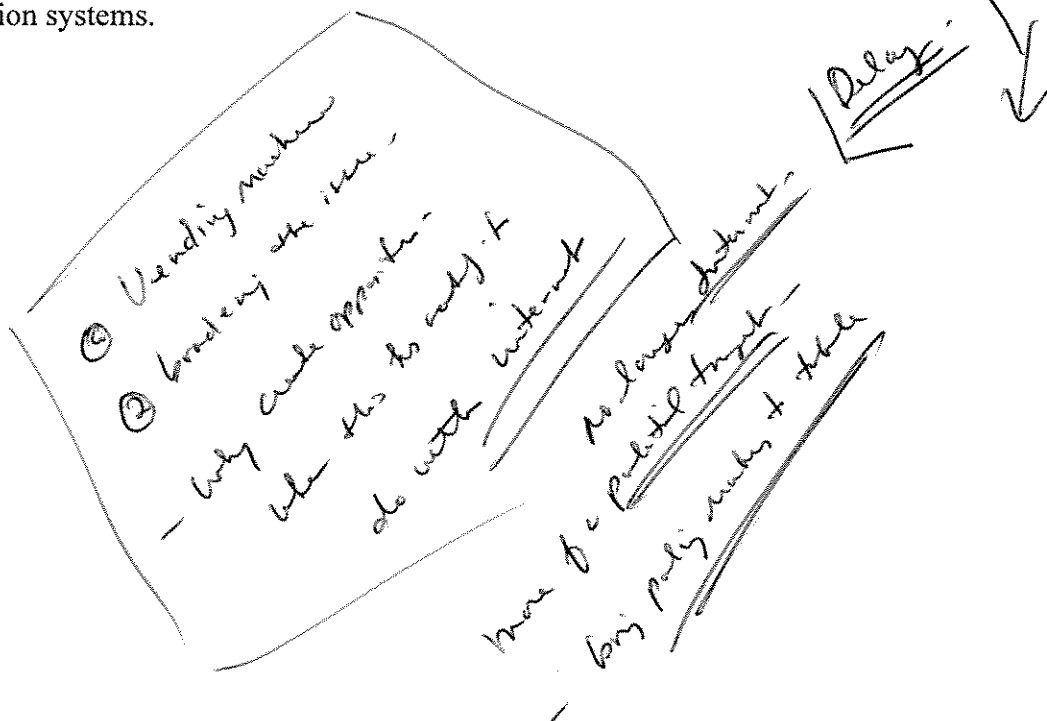
## Option 2

*Endorse an amended model act allowing states that pass it to construct a new Interstate Agreement based on the criteria set forth in the Act. This option would recognize the SSTP's Streamlined Sales and Use Tax Agreement as an advisory document or as intellectual property from which multistate discussions can begin.*

Page 2.

### Cons

- By only passing an act, states that could pursue even the purest simplification measures in the SSTP Agreement would be discouraged from acting without having a reasonable expectation of what will be in the eventual interstate agreement.
- There will not be an Agreement that is politically painless for all states and still respond to the criticisms raised in the *Bellas Hess* and *Quill* decisions.
- To try to accommodate a larger number of states by re-crafting the agreement, states are moving further away from a streamlined system that might form the basis to convince Congress to grant mandatory collection to the states.
- Many of the difficult issues that represent problems in the current SSTP Agreement will not get any easier with time such as the definition of food and sales price, agreement governance and vendor compensation.
- Not proceeding with the SSTP's Streamlined Sales and Use Tax Agreement could be perceived by opponents and Congress as proof that states do not have the political will to make the tough decisions in simplifying their sales and use tax collection systems.





- 1 d. "Person" means an individual, trust, estate, fiduciary,  
2 partnership, limited liability company, limited liability  
3 partnership, corporation, or any other legal entity.
- 4 e. "Sales Tax" means the tax levied under (CITE SPECIFIC  
5 STATUTE).
- 6 f. "Seller" means any person making sales, leases or rentals  
7 of personal property or services.
- 8 g. "State" means any state of the United States and the  
9 District of Columbia.
- 10 h. "Use Tax" means the tax levied under (CITE SPECIFIC  
11 STATUTE).
- 12 i. "Zero-burden Sales Tax Simplification Agreement"  
13 means a voluntary interstate agreement established as a  
14 result of multistate discussions authorized by this Act.  
15

16

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

18

19 The (LEGISLATIVE BODY) finds that a simplified sales and use tax  
20 system will reduce and overtime eliminate the burden and cost for all  
21 vendors to collect this state's sales and use tax. The (Legislative Body)  
22 further finds that this state should participate in multistate discussions to  
23 formulate the terms of an interstate agreement to simplify and modernize  
24 sales and use tax administration in order to substantially reduce the burden  
25 of tax compliance for all sellers and for all types of commerce.  
26

1     **SECTION 4            AUTHORITY TO PARTICIPATE IN**  
2                            **MULTISTATE NEGOTIATIONS**

3  
4     For the purposes of formulating an interstate agreement embodying the  
5     simplification requirements as contained in Section 5 of this Act, the state  
6     shall enter into multistate discussions. For purposes of such discussions, the  
7     state will be represented by three delegates, one shall be designated by the  
8     governor, and one by the presiding officer of the Senate and one by the  
9     presiding officer of the (name legislative body.) At least one of the  
10    legislative appointments shall be an elected member of one of the state's  
11    legislative bodies.

12                            1.    The state shall enter multistate discussions at such  
13                            time that at least three states have enacted similar  
14                            provisions.

15  
16    **SECTION 5            AGREEMENT REQUIREMENTS**

17  
18    The (STATE TAXING AUTHORITY) shall not enter into an "Interstate  
19    Agreement" unless such agreement requires each state to abide by the  
20    following requirements:

- 21  
22            a. Simplified State Rate. The Agreement must set  
23            restrictions to limit overtime the number of state rates.  
24            b. Uniform Standards. The Agreement must establish  
25            uniform standards for the following:  
26                            1. The sourcing of transactions to taxing  
27                            jurisdictions.

- 1                   2. The administration of exempt sales.
- 2                   3. The allowances a seller can take for bad debts.
- 3                   4. Sales and use tax returns and remittances.

4           c. Uniform Definitions. The Agreement must require states to  
5           develop and adopt uniform definitions of sales and use tax  
6           terms. The definitions must enable a state to preserve its  
7           ability to make policy choices not inconsistent with the  
8           uniform definitions.

9           d. Central Registration. The Agreement must provide a  
10           central, electronic registration system that allows a seller to  
11           register to collect and remit sales and use taxes for all  
12           signatory states.

13           e. No Nexus Attribution. The Agreement must provide that  
14           registration with the central registration system and the  
15           collection of sales and use taxes in the signatory states will  
16           not be used as a factor in determining whether the seller has  
17           nexus with a state for any tax.

18           f. Local Sales and Use Taxes. The Agreement must provide  
19           for reduction of the burdens of complying with local sales  
20           and use taxes through the following:

- 21                   1. Restricting variances between the state and  
22                   local tax bases.
- 23                   2. Requiring states to administer any sales and  
24                   use taxes levied by local jurisdictions within  
25                   the state so that sellers collecting and remitting  
26                   these taxes will not have to register or file  
27                   returns with, remit funds to, or be subject to

1 independent audits from local taxing  
2 jurisdictions.

3 3. Restricting the frequency of changes in the  
4 local sales and use tax rates and setting  
5 effective dates for the application of local  
6 jurisdictional boundary changes to local sales  
7 and use taxes.

8 4. Providing notice of changes in local sales and  
9 use tax rates and of changes in the boundaries  
10 of local taxing jurisdictions.

11 g. Monetary Allowances. The Agreement must outline any  
12 monetary allowances that are to be provided by the states  
13 to sellers or certified service providers for the purpose of  
14 eliminating the cost to vendors to collect the appropriate  
15 sales and use tax for each state.

16 h. State Compliance. The Agreement must require each  
17 state to certify compliance with the terms of the  
18 Agreement prior to joining and to maintain compliance,  
19 under the laws of the member state, with all provisions of  
20 the Agreement while a member.

21 i. Consumer Privacy. The Agreement must require each  
22 state to adopt a uniform policy for certified service  
23 providers that protects the privacy of consumers and  
24 maintains the confidentiality of tax information.

25 j. Advisory Councils. The Agreement must provide for the  
26 appointment of an advisory council of private sector  
27 representatives and a separate advisory council

1           comprised of the representatives of the participating  
2           states of the Streamlined Sales Tax Project to consult  
3           with in the administration of the Interstate Agreement.

- 4           k.    The Zero-burden Sales Tax Simplification Agreement  
5           can only take effect when ten or more states substantially  
6           comply with the provisions formulated and approved by  
7           the multistate discussions authorized by this Act.

8  
9  
10           **SECTION 6        AUTHORITY        TO        ENTER        INTO**  
11           **AGREEMENT**

- 12           a.. Pursuant to Section 5, subsection k, the (STATE TAXING  
13           AUTHORITY) shall notify in writing the presiding officers and  
14           the chairs of the appropriate fiscal committees of the state  
15           legislature that ten states have complied with the provisions of  
16           the Agreement. Upon the consent of the presiding officers of  
17           the legislature, the (STATE TAXING AUTHORITY) shall  
18           enter into an Interstate Agreement with other states to simplify  
19           and modernize sales and use tax administration in order to  
20           substantially reduce the burden of tax compliance for all sellers  
21           and for all types of commerce. In furtherance of the Agreement,  
22           the (STATE TAXING AUTHORITY) is may act jointly with  
23           other states that are members of the Agreement to establish  
24           standards for certification of a certified service provider and  
25           certified automated system and establish performance standards  
26           for multistate sellers.

1           b.    The (STATE TAXING AUTHORITY) may adopt rules and  
2                    regulations for the joint procurement, with other member states,  
3                    of goods and services in furtherance of the cooperative  
4                    agreement.

5

6   **SECTION 7           RELATIONSHIP TO STATE LAW**

7

8   No provision of the Agreement authorized by this Act in whole or part  
9   invalidates or amends any provision of the law of this state. Adoption of the  
10   Agreement by this state does not amend or modify any law of this State.  
11   Implementation of any condition of the Agreement in this state, whether  
12   adopted before, at, or after membership of this state in the Agreement, must  
13   be by the action of the legislature.

14

15

16   **SECTION 8           COOPERATING SOVEREIGNS**

17

18   The Agreement authorized by this Act is an accord among individual  
19   cooperating sovereigns in furtherance of their governmental functions. The  
20   Agreement provides a mechanism among the member states to establish and  
21   maintain a cooperative, simplified system for the application and  
22   administration of sales and use taxes under the duly adopted law of each  
23   member state.

24

25

26

27



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

2  
3     a. The Agreement authorized by this Act binds and inures only to the  
4     benefit of this State and the other member states. No person, other than a  
5     member state, is an intended beneficiary of the Agreement. Any benefit to a  
6     person other than a State is established by the law of this state and the other  
7     member states and not by the terms of the Agreement.

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

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

17  
18    **SECTION 10       SELLER AND THIRD PARTY LIABILITY**

19  
20    a. A Certified Service Provider is the agent of a seller, with whom the  
21    Certified Service Provider has contracted, for the collection and remittance  
22    of sales and use taxes. As the seller's agent, the Certified Service Provider  
23    is liable for sales and use tax due each member state on all sales transactions  
24    it processes for the seller except as set out in this section.

25    A seller that contracts with a Certified Service Provider is not liable to the  
26    state for sales or use tax due on transactions processed by the Certified  
27    Service Provider unless the seller misrepresented the type of items it sells or

1 committed fraud. In the absence of probable cause to believe that the seller  
2 has committed fraud or made a material misrepresentation, the seller is not  
3 subject to audit on the transactions processed by the Certified Service  
4 Provider. A seller is subject to audit for transactions not processed by the  
5 Certified Service Provider. The member states acting jointly may perform a  
6 system check of the seller and review the seller's procedures to determine if  
7 the Certified Service Provider's system is functioning properly and the  
8 extent to which the seller's transactions are being processed by the Certified  
9 Service Provider.

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

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

19

20

21 **SECTION 11**

22 *(Possible additional basic simplifications. The concept is to create a down*  
23 *payment system by including a few proactive steps that all states will have*  
24 *to take to implement a streamlined system proscribed by the eventual*  
25 *"Interstate Agreement." By adding these things to the Act, such as*  
26 *Section 10, states that are not serious about simplifying to participate in*  
27 *the system will be deterred from passing the model act, which will keep the*

1 *voting members of the multistate discussions to the states that are vested in*  
2 *the feasibility of product.)*

3 *EXAMPLE:*

4 *Section 11. Establishment of State Database for Determination of Sales and*  
5 *Use Tax Rates*

6 *a. The (State Taxing Authority) shall develop and maintain a*  
7 *database that describes boundary changes for all taxing*  
8 *jurisdictions. The database must include a description of the*  
9 *change and the effective date of the change for sales and use*  
10 *tax purposes.*

11 *b. The (State Taxing Authority) shall develop, provide and*  
12 *maintain a database of all sales and use tax rates for all of the*  
13 *jurisdictions levying taxes within the State. For purposes of*  
14 *identification of counties, cities, and parishes, the state shall*  
15 *use codes corresponding to the rates as provided according to*  
16 *the Federal Information Processing Standards (FIPS) as*  
17 *developed by the National Institute of Standards and*  
18 *Technology.*

19 *c. The (STATE TAXING AUTHORITY) shall either:*

20 *1. Develop, provide and maintain a database that assigns each*  
21 *five (5) digit and nine (9) digit zip code within the State to*  
22 *the proper tax rates and jurisdictions; or*

23 *2. Develop, provide and maintain a database that is developed*  
24 *pursuant to the federal Mobile Telecommunications*  
25 *Sourcing Act of 2000, PL 106-252.*



NATIONAL CONFERENCE *of* STATE LEGISLATURES

*The Forum for America's Ideas*

## NCSL TASK FORCE CONSIDERATION OF SSTP RECOMMENDATIONS

### Option 3

*Recommend that states enact at least the Uniform Sales and Use Tax Administration Act and allow those states which are ready to go forward with the Streamlined Sales and Use Tax Agreement to do so.*

*Variations of Option 3 would recommend that the states enact the Uniform Sales and Use Tax Administration Act with amended versions of the Streamlined Sales and Use Tax Agreement.*

#### Pros

- This option would allow all states to begin the process of simplification as immediately and those that could do more towards simplification are encouraged to do so.
- This option anticipates that those states with a rather simple sales and use tax collection system will be able to enact the agreement in either its present form or an amended version while still allowing those states with more complexities in their system to have a voice in changing the agreement.
- This option would allow the Task Force to discuss and formulate changes to the act and/or agreement to mitigate the potential political concerns.
- Maintains the momentum currently enjoyed by the SSTP in showing Congress and others that the states can agree on a course of action and take steps to reach the ultimate goal of simplicity.

### Option 3

*Recommend that states enact at least the Uniform Sales and Use Tax Administration Act and allow those states which are ready to go forward with the Streamlined Sales and Use Tax Agreement to do so.*

*Variations of Option 3 would recommend that the states enact the Uniform Sales and Use Tax Administration Act with amended versions of the Streamlined Sales and Use Tax Agreement.*

*Page 2.*

#### Cons

- By going forward with the SSTP Agreement, amended or not, the specific terms of that agreement will be used by interest groups to defeat the entire process, even if the agreement is amendable through a new governance structure.
- By keeping the present SSTP Agreement in play, it could pose difficulties for states with more complex sales and use tax systems from being able to enact just the model act.
- If five states enact the model act with all the provisions of the SSTP Agreement, the Agreement will become a "living legal document" which would allow those states to begin negotiations with Certified Service Providers and commit to contracts. This action could lead to a "second class status" for states that have only passed the model act and may inhibit their abilities to amend the Agreement to bring in more complex and larger states as complying members.
- By amending the act and/or the agreement, NCSL could be perceived as responsible for causing a rift between various partners in the efforts to streamline the sales and use tax collection systems.
- If the Task Force amended the act or the agreement, and the SSTP refused to accept those changes, there would be in essence two model bills and two agreements in play in the states, thus causing confusion and probably increasing the likelihood of states inaction in 2001.

## NCSL Task Force Background Paper

### Governance

Draft -- Not for Distribution

**Summary:** One important unresolved issue concerns future governance of the project. Currently, the 29 states participating in the Project have equal voting rights on project recommendations. These states gained participating status either by passing the NCSL model legislation for participation or through an executive order or letter from the governor directing participation.

Under the proposal, once five states adopt the agreement and conforming legislation, they assume governance of the project and make all decisions on changes to the agreement, admission or expulsion of states, and other governance issues. The concern raised by some legislators and business representatives is that states that have not yet passed the implementing legislation seem to have no authority once the initial group of states adopts the legislation.

Some observers fear that the initial states will have no incentive to make changes that will allow additional states to participate. This is part of the inherent tension in the project. States with relatively simple sales and use tax systems (no local option taxes) can take a hard line against provisions to accommodate the more complex states because additional complexity will increase the cost of the software system. These states will have a relatively easier time passing the model act because they do not have to reconsider long-established fiscal relationships with local governments. So it is not inconceivable that many of the initial adopting states will fall into the "simple system" category – states like Michigan, Wisconsin, Wyoming, Indiana, and others.

For this project to succeed on a national basis, however, it needs to be broader than just the simple system states. Most of the large market states have relatively complex local option systems and will have more political difficulty passing the model act. Flexibility on issues like a uniform state and local tax base might be necessary to get more of these states into the system. These states are concerned that the initial adopting states will have no incentive to allow such flexibility.

If the project is ever to get to a mandatory duty to collect on remote sellers, broad participation is especially important. There are only two ways to impose a duty to collect: challenge *Quill* in the courts or ask Congress to impose such a duty. Most discussions of federal legislation have set the threshold at 20 participating states before state could impose a mandatory duty to collect. If states challenge *Quill*, it will be more difficult to prevail if only a few states are in the system. Either way, states will need broad participation from simple and complex sales tax states to make this effort a success.

**Current Project Recommendation.** The current project recommendation is that once five states adopt the model act and implementing legislation, those states and any other states that subsequently adopt the model bill and conform to the agreement will control future changes to the agreement. Until five states adopt the legislation, the 29 voting project states will continue to govern changes to the model act and the agreement. After five or more states adopt the act and implementing legislation, the SSTP member states become a "State Advisory Committee" to the member states. It will continue to work on, and advise member states on, uniform definitions, improvements to the uniform tax return, the development of product codes, and other issues.

### **Options**

- 1) Endorse the current project recommendation.
- 2) Allow states that pass the model act and commit to passage of the implementing legislation by a date certain to be voting members of the Agreement. For example, states could adopt Sections 1-10 of the model act to show their commitment and gain voting rights while having an additional \_\_ years to pass statutory conforming changes.
- 3) Keep the current project structure until a date certain, retaining authority to change the agreement with the 29 project states.

### **Option 1 – Current project proposal**

*Arguments in support.* The project's approach – giving only states that fully implement the system a vote – is the only realistic way to govern the project going forward. It does not make sense to give voting power to states that have not undertaken the politically difficult job of passing the implementing legislation. The initial implementing states will have powerful incentives to accommodate new states if they want the system to succeed, so the fears of "complex" states are unfounded.

*Arguments against.* The current proposal would disenfranchise states that cannot immediately pass the system and will discourage them from trying to join due to uncertainty about whether they will be deemed in compliance by the early adopters. All 29 states have developed the system and there should be a more formal way to accommodate states that want to participate but have not fully complied.

### **Option 2 – Voting rights for partial passage with commitment to full adoption within \_\_ years.**

*Arguments in support.* This option would help move the project forward in several important ways. States with short sessions or that need more time to understand and digest the implications of statutory conformity could pass all but the conforming language in the 2001 sessions. This would show progress and keep the project moving forward. It would encourage complex states to move ahead and allow them to vote on

changes to the act or the agreement. And by providing a date certain – one or two years from passage of Sections 1-10 of the model act – it would prevent states from keeping voting rights indefinitely without coming into full compliance.

*Arguments against.* We should not give voting rights to states that are not in full compliance with the agreement. Only those states that undertake the full political struggle to change the relevant laws should have voting control over future project changes. The fears of the complex states are unfounded.

**Option 3 – Keep full SSTP voting powers until date certain.**

*Arguments in support.* The SSTP is a long-term endeavor that will take years to pass and implement. Rather than handing control over to a small number of early adopter states with relatively simple sales tax systems, it would be better to provide all the SSTP voting states with incentives to continue working to modify and improve the system. Without voting rights, these states may become disenfranchised and stop working to try to bring their states into the project.

*Arguments against.* The SSTP advisory group is sufficient to give non-implementing states a say in future development of the system. It would not be prudent to give states that have not complied with the system authority over states that have actually passed the implementing legislation.



## NCSL Task Force Background Paper

### Compensation

Draft -- Not for Distribution

**Summary.** The issue of vendor's compensation is critical to the success of the project. States must balance the need for strong retailer support in state legislatures to pass the model legislation with the desire to minimize the fiscal impact of vendor's compensation on state budgets.

The retail community wants a compensation system that achieves two objectives: 1) covering part or all of the cost of converting their systems to new software; and 2) providing ongoing compensation for ongoing administrative burdens of complying with a sales tax collection duty. Essentially, retailers want compensation for all retailers who have been dutifully collecting taxes over the years. They argue that to pay new "volunteers" is to reward the companies that have been exploiting the *Bellas Hess* loophole over the years.

The project recommends paying volunteers because they can pay them from "new" money. However, they are reluctant to provide compensation for merchants that now have nexus because of the potential fiscal implications. The attached chart shows that 25 states currently pay no compensation or cap it at such low levels as to make it meaningless to vendors, while twenty states provide meaningful compensation. If we agreed to a minimum compensation level for nexus sellers, these states would likely have a revenue loss in the early years of the project that could discourage them from entering in the early years.

We also need to be careful that any compensation system does not provide "windfall profits" to large retailers like Wal-Mart. Wal-Mart collects about \$6 billion in sales taxes annually, so even a 1% compensation level would provide the company with about \$60 million in compensation.

From the retailer perspective, some retailers are nervous that a recommendation for compensation will be lower than the rates they are getting in states like Illinois (1.75%) and will prompt legislatures in generous compensation states to reexamine their policies.

The bottom line for state retail associations appears to be that they need something to motivate their troops to get behind the SSTP, and that "something" is some type of vendor compensation allowance in states that don't have one. At the Task Force hearing, some legislators argued that we should only provide compensation to retailers that adopt one of the technology models in the SSTP and there was general agreement that this was fair.

**Current Project Recommendation.** The current project recommendation is somewhat convoluted (see Section 600 – 606 of the agreement on pages 24-25). It calls for a temporary incentive for new “volunteers.” For current “nexus” sellers that come into the project, the only compensation that would be provided are the vendor discounts currently provided in state law. The Certified Service Provider (CSP) would be compensated on a per transaction basis or on a percentage of revenue collected basis, to be determined by contract.

### **Options**

- 1) Endorse the project recommendation.
- 2) Endorse an alternative with minimum compensation. Staff has prepared an alternative that contains three principles: first, that states would pay a temporary bonus for new volunteers; second, that states would pay a temporary technology conversion bonus to all sellers that adopt one of the technology models; and third, that states would be required to pay a minimum of 0.5% compensation allowance on a going forward basis to all sellers that adopt one of the technology models.
- 3) Endorse option 2 above without minimum compensation.

### **Option 1 – Endorse project recommendation**

#### *Arguments in Support*

This option balances the needs of retailers and states in a way that minimizes state fiscal impact. States have no legal obligation to compensate retailers with nexus, and to do so in the SSTP would rehash battles that have already been fought in the legislatures. Besides, Main Street will benefit from a level playing field so the compensation issue is not critical to their support in the states. By targeting non-nexus sellers, states can get the maximum amount of new revenue into the system.

#### *Arguments Against*

This option provides no compensation for bricks and mortar retailers, who have cooperated with states in developing the SSTP and will be critical to helping pass it in the states. This violates our claim to provide a level playing field. Moreover, by granting enhanced compensation to non-nexus volunteers, states reward the same companies who have been exploiting the *Bellas Hess* loopholes all these years.

### **Option 2 – Staff alternative with minimum compensation requirement**

#### *Arguments in Support*

This alternative recognizes that to get political support from retail organizations, states need to send a signal by providing at least minimal compensation. We should not reward remote sellers with enhanced compensation without at least providing something to “bricks and mortar” stores. And by only providing ongoing compensation after the temporary technology conversion incentives expire, any fiscal impact from compensation

will be two or three years down the road – after states have new money coming in through the system. Many of the large states considering participation – including Indiana, Michigan, Missouri, Ohio, Texas, and Wisconsin – would not be affected because they already pay more than 0.5%.

*Arguments Against*

Providing minimum compensation will cause some states that do not pay vendors compensation now to have a large fiscal note that makes passage more difficult, including Iowa, North Carolina, Minnesota, South Dakota, and Wyoming. The courts do not require states to compensate nexus merchants for their collection costs, and states that have chosen not to do so should not be forced to rethink these decisions.

**Option 3 – Staff recommendation without mandatory compensation requirement**

*Arguments in Support*

This option clarifies and improves upon the project's recommendation by clarifying the two types of temporary compensation to be provided: one for new volunteers, one for technology conversion. However, this option deletes the mandatory compensation provision that causes concerns in states that currently do not pay compensation.

*Arguments Against*

By deleting the mandatory compensation, we risk losing the support of state retail federations – or at least weakening their resolve to pass the SSTP. We should not be providing a financial reward for non-nexus sellers while providing nothing to the nexus merchants that have been dutifully collecting for states for decades.

*Sales Tax Rates and Vendor Discounts*  
**January 1, 2000**

STATE	SALES TAX RATE	RANK	VENDOR DISCOUNT	MAX/MIN
ALABAMA	4.0%	37	5.0%-2.0% (1)	
-----N/A-----				
ALASKA	-----	-----	-----	
ARIZONA	5.0%	19	1.0%	\$10,000/year (max)
ARKANSAS	4.625%	34	2.0%	\$1,000/month (max)
CALIFORNIA	6.0%	8	None	
COLORADO	3.0%	46	3.33% (6)	
CONNECTICUT	6.0%	8	None	
-----N/A-----				
DELAWARE	-----	-----	-----	
FLORIDA	6.0%	8	2.5%	\$30/report (max)
GEORGIA	4.0%	37	3.0%-0.5% (1)	
HAWAII	4.0%	37	None	
IDAHO	5.0%	19	None (7)	
ILLINOIS (5)	6.25%	6	1.75%	\$5/year (min)
INDIANA (2)	5.0%	19	1.0%	
IOWA	5.0%	19	None	
KANSAS	4.90%	32	None	
KENTUCKY	6.0%	8	1.75%-1.0% (1)	
LOUISIANA	4.0%	37	1.1%(8)	
MAINE (9)	5.5%	18	None (7)	
MARYLAND	5.0%	19	1.2%-0.9% (1)	
MASSACHUSETTS	5.0%	19	None	
MICHIGAN	6.0%	8	0.5%	
MINNESOTA	6.5%	3	None	

MISSISSIPPI (2)	7.0%	1	2.0%	\$50/month (max)
MISSOURI	4.225%	36	2.0%	
----- N/A -----				
MONTANA				
NEBRASKA	5.0%	19	2.5%-0.5% (1)	
NEVADA	6.5%	3	1.25%	
----- N/A -----				
NEW HAMPSHIRE				
NEW JERSEY	6.0%	8	None	
NEW MEXICO	5.0%	19	None	
NEW YORK	4.0%	37	3.5%	\$85/month (max)
NORTH CAROLINA	4.0%	37	None	
NORTH DAKOTA	5.0%	19	1.5%	\$255/quarter (max)
OHIO	5.0%	19	0.75%	
OKLAHOMA	4.5%	35	2.25%	\$3,000/month (max)
----- N/A -----				
OREGON				
PENNSYLVANIA	6.0%	8	1.0%	
RHODE ISLAND	7.0%	1	None	
SOUTH CAROLINA	5.0%	19	3.0%-2.0% (1)	\$3,000/year (max)
SOUTH DAKOTA	4.0%	37	None	
TENNESSEE	6.0%	8	2.0%-1.15% (1)	\$25/report (max)
TEXAS	6.25%	6	0.5% (3)	
UTAH	4.75%	33	1.5%	
VERMONT	5.0%	19	None (7)	
VIRGINIA	3.5%	45	4.0%-2.0% (4)	
WASHINGTON	6.5%	3	None	
WEST VIRGINIA	6.0%	8	None	
WISCONSIN	5.0%	19	0.5%	
WYOMING	4.0%	37	None	

DIST. OF COLUMBIA	5.75%	17	1.0% (3)	\$5,000/month (max)
U. S. MEDIAN	5.0%		2.0%-1.5% (1)	28 states allow vendor discounts

Source: Compiled by FTA from various sources.

(1) In some states, the vendors' discount varies by the amount paid. In AL and SC, the larger discounts apply to the first \$100. In GA and NE, the larger discount applies to the first \$3,000. In TN and KY, the larger discounts apply to the first \$2,500 and \$1,000, while MD applies the larger discount to annual collections of \$6,000. The lower discounts apply to the remaining collections above these amounts.

(2) Utilities are not permitted to take discount.

(3) An additional discount of 1.25% in TX.

(4) Discount varies; 4% of the first \$62,500, 3% of the amount to \$208,000, and 2% of the remainder.

(5) 1.25% of the tax in IL.

(6) Vendor discount applies to the state taxes collected. Discount for local option sales tax varies from 0% to 3.33%.

(7) Vendors are allowed to keep any excess collections prescribed under the bracket system.

(8) The vendors discount is scheduled to increase to 1.5% on July 1, 2001 in Louisiana.

(9) Tax rate scheduled to decrease to 5.0% effective 7/1/00.

## Staff Alternative With Mandatory Compensation

### 600 MONETARY ALLOWANCES

This article addresses the monetary allowances that are to be provided to those sellers that volunteer to collect sales and use taxes in all member states in which they have no legal obligation to collect and to those sellers that use a technology model approved by the member states for performing their sales and use tax functions.

### 602 MONETARY ALLOWANCE FOR VOLUNTARY SELLERS

The member states agree to provide a volunteer allowance to all sellers that volunteer to collect sales and use taxes in all member states in which they have no legal obligation to do so. This volunteer allowance will be \_\_\_% of the sales and use taxes collected for each state. This allowance will be paid to the seller for a period of \_\_\_ years following the seller's registration through the Agreement's central registration process. A seller's voluntary collection in a state prior to registration shall not preclude the seller from receiving the volunteer allowance. States that have a general vendor allowance shall not be required to pay the general allowance in addition to the volunteer allowance. However, if a state has a general allowance that is in excess of the volunteer allowance, the state shall be required to pay the higher general allowance to the volunteer seller.

Nothing in this paragraph shall preclude a state from providing any additional allowance to volunteer sellers. If a seller establishes a legal obligation to collect sales and use taxes in any state in which they receive the volunteer allowance, they shall not be entitled to the volunteer allowance after the establishment of the obligation. The volunteer allowance shall be funded entirely from sales and use tax collections from voluntary sellers.

#### 604 MONETARY ALLOWANCE FOR ADOPTION OF TECHNOLOGY MODELS

For a period of \_\_\_ years following a seller's participation in the system, the member states agree to provide a technology conversion allowance to all sellers that use an approved technology model for performing their sales and use tax functions. For Model 1 sellers, the amount of the allowance shall be determined through the contract process. This allowance will be paid to the Certified Service Provider and may be shared with participating sellers in a manner specified in a Contract between the Certified Service Provider and the seller. For Model 2 and Model 3 sellers, the allowance will be set by the member states after the establishment of the technology conversion allowance for Model 1 sellers. The technology conversion allowance shall be in addition to any general allowance that is provided by a state. For a voluntary seller, this allowance shall be in addition to the volunteer allowance. The technology conversion allowance shall be funded entirely from sales and use tax collections from sellers that adopt an approved technology model.

#### 606 MINIMUM VENDOR'S COMPENSATION

Participating states agree to provide a minimum vendor's compensation allowance of not less than 0.5% to all sellers that use an approved technology model. Any voluntary collection allowances and technology conversion allowances are credited against this minimum vendor's compensation allowance. Such allowances shall be capped at \$10,000 per month per state in the Agreement and such cap shall be applied to each legal entity filing a return.

## NCSL Task Force Background Paper

### Uniform State-Local Tax Bases & Rates

Draft – Not for Distribution

**Summary:** One of the most difficult issues faced by the project is the level of simplification necessary in two important sources of complexity caused by current local option tax systems: First, should state and local governments within a state be allowed to have different tax bases? Second, should states or local government be allowed to tax certain items at rates different than the general sales tax rates?

The project recommendation would allow states a five-year “grandfather” provision to give states time to implement a single state and local tax base and to do away with any special sales tax rates based upon the type of product or service. After the grandfather period, such differences would not be allowed for states in the system.

There are a handful of states with home rule cities – Colorado, Illinois, Alabama, and Louisiana – where local governments have very broad authority to choose a different base from the state. There is broad agreement that such unfettered local authority imposes enormous complexity for multi-state businesses trying to comply with sales taxes, and that such an arrangement should not be allowed under the streamlined system.

Beyond that, there are a larger number of states where the state and local bases differ on a limited number of items. For example, the state of North Carolina exempts food while all localities in North Carolina tax food. New York allows locals to tax residential energy while the state exempts it. These base differences on a limited number of items add additional complexity to the system, but not on the same magnitude as the states with unfettered authority to tax or exempt any item. The project considered – but ultimately rejected – allowing these state and local base differences, provided that all local governments within a state have the same base. This would have allowed up to two bases per state – a state base and a uniform local base that could differ from the state base.

The project recommendation to conform the state and local bases raises difficult political choices in states that currently allow different state and local bases. In North Carolina, for example, the legislature would need to vote to exempt food from local taxation (causing large revenue losses for counties) or vote to re-impose the state tax on food (a large state tax increase). Conversely, in a state like Iowa where certain big ticket items like construction machinery are subject to state but not local taxes, the state would either need to exempt them from the state tax (a state revenue loss) or extend the tax to local governments (a local revenue windfall).

The second question relates to states that impose special rates –either higher or lower than the general sales and use tax rate – on certain items. For example, Missouri imposes a special lower rate on food; Illinois imposes a special lower rate on food and medicine;



and Tennessee imposes a special lower rate on certain energy sources. Allowing states to levy special rates, whether higher or lower than the general sales tax rate, adds additional complexity to the system. The project initially would have allowed for these special rates on certain defined items like food, clothing, and other products where the project had developed uniform definitions, but the project ultimately decided that allowing such special rates could open the door for states to impose an unlimited number of rates based upon specific products. Such a system would be very difficult to defend as "simplification." There was some discussion that the objective of lower rates – reducing the burden on certain items – could be accommodated through refunds or credits.

This is one of the most important sales tax policy questions that states will address in the Streamlined system. The tradeoff between simplification and uniformity on the one hand and flexibility for state policymakers on the other hand could determine the success of the project.

### **Options**

- 1) Endorse the current project recommendation. After the 5-year grandfather period, each state would have a single state-local base and product-specific rates would not be allowed.
- 2) Allow a single base for all local governments within a state that can be different from the state base, but do not allow for special product-specific rates that differ from the general sales tax rate.
- 3) Allow a single base for all local governments within a state that can be different from the state base and allow for special product-specific rates that differ from the general sales tax rate on specified items defined and approved by the project states.
- 4) Require a single, uniform base for each state and all local governments in that state. Localities would have a single, generally applicable sales and use tax rate on all items in the uniform base, while states could have their generally applicable sales and use tax rate plus one other different rate (this rate could be zero) on specified items defined and approved by the project states.

### **Option 1 – Endorse the current project recommendation**

*Arguments in Favor.* Proponents of uniformity – as expressed by the Project's recommendation – argue that states need to agree to the uniform state and local base and prohibitions on product specific rates for two reasons. First, Congress will need to be convinced that states are serious about simplification before they grant an expanded duty to collect. Some members of the business community will try to convince Congress that states are not serious, especially if the SSTP tries to preserve state flexibility on these rate and base issues. Second, even if the Congressional route is futile, states will try to

challenge the *Quill* decision before the Supreme Court. A more simplified system has a better chance of prevailing.

*Arguments Against.* Proponents of more state flexibility than allowed in the project recommendation argue that the project's requirements would make it very difficult for some important, big market states to participate in the system. They argue that a system that only gets implemented in a small number of states would be unlikely to meet with Congressional or Supreme Court approval. They further argue that large, national retailers will not want to volunteer for a system that does not include many big market states.

### **Option 2 – State-local base differences, no product specific rates**

*Arguments in Support.* Allowing uniform local bases that are different from the state base will provide added flexibility in some states without undermining the key tenets of simplification. It would provide for up to two different bases for each state, requiring software to track a maximum of 90 different bases – down from the hundreds of combinations permissible now. This would still bring dramatic simplification without putting some legislatures through the agonizing decisions between cutting local revenue sources or increasing taxes. This option would preserve the project's recommendation that produce specific rates be eliminated, another significant source of simplification.

*Arguments Against.* Allowing different state and local bases significantly undermines simplification and imposes additional software development and processing costs on the technology system. The added benefit of accommodating some additional states is not worth the added complexity introduced into the system.

### **Option 3 – State-local base differences; allow some limited product specific rates**

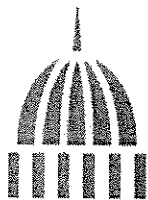
*Arguments in Support.* This option would provide maximum flexibility for states to join the Streamlined system while preserving the major simplification thrust. Two tax bases per state would not add significantly to the burden on technology developers. Also, the ability to levy lower rates on specified products could be accommodated as long as these items are covered by a uniform definition endorsed by the project. This flexibility would accommodate states that have lowered the state rate on food and other products without making them go through the politically difficult process of either taking away local revenues or increasing state taxes.

*Arguments Against.* To allow both two bases and product specific rates would undermine simplification and add significantly to the cost of software development for the new system. It would undermine states' credibility with the private sector and Congress and could hurt our chances of overturning *Quill*. The process of simplification cannot be done painlessly, and those states with complex systems will need to make some tough sacrifices to preserve the sales tax for the future.

**4) Require a single, uniform base for each state and all local governments in that state. Localities would have a single, generally applicable sales and use tax rate on all items in the uniform base, while states could have no more than two generally applicable sales and use tax rates (including a zero rate).**

*Arguments in Favor.* This option would simplify sales and use taxes in all states that currently have multiple bases while allowing flexibility for states to have a lower rate (than could include zero) on certain items within the base. It would also simplify administration in states that currently have product-specific rates that differ from the generally applicable rate by limiting these product-specific variations. It would reduce political opposition from local governments in states like North Carolina, Illinois, and Missouri where food is taxed at the full local rate but at a reduced (or zero) state rate. Reducing political obstacles in several key large states would facilitate broader participation in the system, thus adding incentives for sellers to participate in the voluntary collection system and exhibiting a broad based solution for Congress.

*Arguments Against.* Some affected segments of the industry will have concerns that once their products are in the base, it will be easier for states to adjust the rate (from zero) than it would to impose a tax if the product was not in the base. By allowing states to have a second, product specific rate, the system might encourage some states currently without multiple rates to adopt them. This would increase complexity in those states that currently have only a single, generally applicable rate. This, plus the added cost of developing technology capable of accommodating two state rates, would increase the cost of the system and cause companies and Congress to question states' commitment to "radical simplification."



# NCSL NEWS

NATIONAL CONFERENCE OF STATE LEGISLATURES

WILLIAM T. POUND, EXECUTIVE DIRECTOR

**Date:** January 29, 2001

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## State Legislators Endorse Sales Tax Simplification Efforts

### *Model legislation to be sent to the states for approval*

WASHINGTON, D.C. -- State lawmakers took an important step this weekend in simplifying the burdensome and complex system of sales and use tax collection laws, the National Conference of State Legislatures (NCSL) said today. On Saturday, January 27, 2001, the NCSL Executive Committee unanimously endorsed the Uniform Sales and Use Tax Administration Act and the Streamlined Sales Tax Agreement as amended and approved by the Executive Committee's Task Force on State and Local Taxation of Telecommunications and Electronic Commerce. The Act and Agreement as adopted by NCSL will guide the future of state sales tax simplification.

"The model legislation and the Agreement are a major milestone in the simplification of the nation's state sales and use taxes," said California Senator and NCSL President Jim Costa. "This act and agreement is the next step in the long process of making sales and use taxes easier and more equitable to collect and administer for *all* retailers."

States that adopt the Uniform Sales and Use Tax Administration Act and the Streamlined Sales and Use Tax Agreement as approved by NCSL's Executive Committee will provide retailers with a greatly simplified system of sales tax collection. Under the proposed system retailers will be able to take advantage of simplified procedures for returns, audits and exemptions, all administered by the state.

The model legislation and agreement are a product of NCSL's Task Force, the Streamlined Sales Tax Project (SSTP) and other national state and local organizations. The model legislation and agreement would simplify several aspects of state sales tax laws including base and rates, and provide uniform sourcing rules and central registration procedures.

- more -

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Last week the Streamlined Sales Tax Project, a group of state tax administrators from 29 states created last year through NCSL's Task Force's efforts, submitted the Uniform Sales and Use Tax Administration Act and the Streamlined Sales Tax Agreement to NCSL for their consideration.

The NCSL Executive Committee in adopting the findings of its Task Force approved the majority of provisions contained in the proposed SSTP Agreement with changes to sections on governance, base and rates, definitions, bad debt and vendor compensation. The NCSL Executive Committee praised the SSTP members for their efficient, diligent and thorough work on the Act and Agreement.

"The Streamlined Sales Tax Project did an incredible job in a relatively short amount of time," said Senator Costa. "Their expertise of the sales tax system coupled with NCSL's Task Force's recommendations should provide a solid foundation on which to continue building a simpler sales tax system."

###

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

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

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

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

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

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

**PAGE 2.**

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

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

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

**Amendment on Governance: APPROVED**

States can pass the Act only or the Act and Agreement

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

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

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

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

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

**Amendment on Base/Rate: APPROVED**

To modify Sec. 304, 308

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



**Amendments**  
**by the NCSL Task Force on States and Local Taxation of**  
**Telecommunications and Electronic Commerce**  
**to the Uniform Sales and Use Tax Administration Act and the Streamlined**  
**Sales and Use Tax Agreement as adopted by the Streamlined Sales Tax**  
**Project on January 24, 2001**  
**Page 2.**

**Amendment to delete Uniform Definitions:      APPROVED**

Remove Section 312 (all paragraphs) from the Agreement.

**Amendment to delete Section 308 (a) (5):      APPROVED**  
Removes language on a uniform rounding rule for sales tax rates.

**Amendment to delete Section 308 (a) (3-6):      APPROVED**  
Removes all references to elimination of caps and thresholds and language prohibiting multiple state rates.

**Amendment to delete Section 308 (b) (1-2):      APPROVED**  
Removes all references to elimination of caps and thresholds and language prohibiting multiple local rates.

**Amendment to delete Section 308 (g);      APPROVED**  
Removes language establishing restrictions on sales tax holidays.

**Amendment to delete Section 318:      APPROVED**  
Removes the entire section with regard to uniform procedures for deductions for bad debt.

**Amendment to delete Section 310:      WITHDRAWN**  
Would have removed language with regard to uniform sourcing.

**Amendment to delete Article 6:      WITHDRAWN**  
And add language to:  
Recommendation to NCSL Executive Committee that NCSL should participate in a study with the private sector and other governmental entities to determine the collection costs under the current system and a simplified system.

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

**Page 3.**

**Amendment to add the following to Article VI: APPROVED**

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

**Amend Article 7 Section 714 (Governance): APPROVED**

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

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

**APPROVED UNANIMOUSLY**

**Motion: Title to read: APPROVED UNANIMOUSLY**

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

**Motion: APPROVED UNANIMOUSLY**

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