

# Streamlined Sales Tax Project

## Public Hearing

September 29, 2000

### Witness List

#### Panel #1

**Joe Brooks**, Councilman, Richmond, Virginia, representing the National League of Cities  
**Michael Brodie**, Realtor, Plano, Texas, representing the National Association of Realtors  
**Diann L. Smith**, General Counsel, Committee on State Taxation

#### Panel #2

**Bob Jenner**, Manager of Non-Income Taxes, Toys 'R Us, representing the National Retail Federation  
**David Bullington**, Vice President of Taxes, WalMart Stores, Inc., representing the International Mass Retail Association  
**John L. Bucksbaum**, Chief Executive Officer, General Growth Properties, Inc., representing the International Council of Shopping Centers  
**Thomas McMahon**, National Automatic Merchandising Association

#### Panel #3

**Merle Buff**, Vice President and Tax Counsel, American Express  
**Jon Abolins**, Director of Government Affairs, Taxware International  
**Dan Kostenbauder**, Hewlett Packard  
**Joseph Ercolano**, Director of Government Affairs, Pitney Bowes

#### Panel #4

**David J. Clark**, Boerio and Company, CPAs  
**Lloyd J. Looram**, CPA, The Looram Consulting Group  
**Aaron Lilly**, Director of Technology Policy, Americans for Tax Reform



## **Oral Testimony to the Streamlined Sales Tax Project**

**September 29, 2000**

**Jon W. Abolins  
Chief Tax Counsel/  
V.P., Tax & Government Affairs**

## EXECUTIVE SUMMARY

The Proposals Under Consideration proffered by the Work Groups of the Streamlined Sales Tax Project are an excellent start to radically simplifying sales and use tax laws and rules. Although most issues have clearly been addressed, there are three issues that apparently have not. None of the Work Groups proposed rules that would define what constitutes a sales tax transaction, and what constitutes a use tax transaction. Further, the application of tax laws and rules to invoice amounts rather than line item amounts has not been dealt with. Finally, only the Work Group on Tax Rates, Registration, Returns and Remittances addressed notification timeframes for all tax law and rule changes.

The testimony of Jon W. Abolins, Chief Tax Counsel and Vice President of Tax and Government Affairs with TAXWARE International, Inc., is intended to bring these issues to the attention of the Project, and to suggest changes to tax laws and rules that would further its goal of sales and use tax simplification. The following specific suggestions are offered:

- The Project should propose legislation that clearly defines what constitutes a sales tax transaction, and what constitutes a use tax transaction. Sales tax laws and rules should be applied if merchants have nexus with the taxing jurisdiction(s) of their purchaser, and use tax laws and rules should be applied if merchants do not have nexus with the taxing jurisdiction(s) of their purchaser
- The Project should propose legislation that eliminates all tax laws and rules that require the aggregation of all items on an invoice; all such laws and rules should be applied separately to each line item
- The Project should propose legislation that imposes a sixty-day notification period for all tax law and rule changes, not just changes to tax rates and taxing jurisdiction boundaries

Without clarifying these issues, the Project is leaving three confusing and costly burdens on merchants and tax software providers.

## TESTIMONY

My name is Jon Abolins, and I am Chief Tax Counsel and Vice President of Tax & Government Affairs with TAXWARE International. I am responsible for, among other things, all tax decisions in all of TAXWARE's global transaction tax software. TAXWARE's Tax Department is charged with obtaining transaction tax information from Tax Authorities worldwide, and with analyzing this information for placement into our software applications. It is with great excitement that I reviewed the work done by the Streamlined Sales Tax Project; its commitment to proactively assist tax professionals by providing tax information and analysis is remarkable.

The work already performed by the Project is both expansive and thorough, but I would like to call attention to the few areas that may not have been fully addressed to date. These issues are: 1) laws and rules defining what constitutes a sales tax transaction, and what constitutes a use tax transaction, 2) the application of tax laws and rules to invoice amounts, and 3) notification for all tax law and rule changes.

First, the Project has not stated its position on what constitutes a sales tax transaction, and what constitutes a use tax transaction. This issue is critical, in that overall taxes charged on a transaction will be lower if the transaction is subject to use taxes. The issue impacts the Work Group on Tax Rates, Registration, Returns and Remittances as well as the Work Group on Bad Debts, Rounding and Sourcing, but neither addressed the issue directly. The Work Group on Tax Rates, Registration, Returns and Remittances acknowledged in their report that this is an issue that "could create some complexities in audit situations," but did not issue a recommendation that addressed these complexities. Although the determination of this issue may seem intuitive, in practice it is not. In some states, for example, a remote transaction can be subject to sales taxes if the goods are shipped in the merchant's vehicle. In other states, goods shipped from out-of-state are subject to use taxes, even if the order is placed and accepted at an in-state location. Existing statutory and regulatory language rarely addresses this issue in sufficient detail; the Project has the opportunity to clarify this extremely confusing area, and should take advantage of it. Sales tax laws and rules should be applied if merchants have nexus with the taxing jurisdiction(s) of their purchaser, and use tax laws and rules should be applied if merchants do not have nexus with the taxing jurisdiction(s) of their purchaser.

Second, the Project should consider modifying tax laws and rules that require tax calculations be performed using the invoice amount. Many states, for example, limit the amount of local taxes that can be charged "per sale," defining a "sale" as every line item on an invoice, added together. In previous Project meetings, the Work Group on Tax Rates, Registration, Returns and Remittances and the Work Group on Bad Debts, Rounding and Sourcing addressed this issue as it affects the rounding of tax liabilities. Even so, the issue is not addressed in the Proposals Under Consideration. To accurately automate tax laws and rules that require exempt products or services be separately stated on invoices, all transaction tax technology must be designed to determine tax liabilities line-item-by-line-item. Requiring further tax liability calculations on invoice amounts forces merchants to spend more time and money on their billing applications and eCommerce billing solutions. Further, computer systems performing both invoice and line item calculations operate at slower speeds. To further complicate the issue, some

states apply invoice calculations rules to selected products or services only. For all these reasons, the Project should consider the elimination of invoice tax calculation rules.

Finally, notification rules should be created for all tax law and rule changes. While the Work Group on Tax Rates, Registration, Returns and Remittances specifically addressed notification of tax rate and taxing jurisdiction boundary changes, the rest of the Work Groups were silent on the issue. It is more difficult by far to discover, analyze and implement a new or changed exemption or exclusion than it is to change the tax rate charged. Fair notification provisions for all tax law and rule changes, including those imposed due to an administrative or judicial decision, should be a component of model sales and use tax legislation. The recommendations proffered by the Work Group on Tax Rates, Registration, Returns and Remittances for notification of tax rate and boundary changes should be applied to all future tax law and rule changes.

I would like to thank the Streamlined Sales Tax Project for the opportunity to offer testimony on these exciting and radical proposed changes to the existing sales and use tax system. The work you have done to date clearly shows that most Tax Authorities are willing to work with industry to simplify the tax laws and rules that we all must live with. As always, TAXWARE International is prepared to support your simplification efforts in any way possible. Thank you.

**SUPPLEMENTAL SHEET**

**Jon W. Abolins**

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**STATEMENT  
OF  
JOHN L. BUCKSBAUM,  
CHIEF EXECUTIVE OFFICER  
OF  
GENERAL GROWTH PROPERTIES, INC.**

**ON BEHALF OF  
THE INTERNATIONAL COUNCIL OF  
SHOPPING CENTERS**

**ON THE  
TAXATION OF  
ELECTRONIC COMMERCE**

**TO THE  
STREAMLINED SALES TAX PROJECT**

**SEPTEMBER 29, 2000**

**SUBMITTED BY:  
INTERNATIONAL COUNCIL OF SHOPPING CENTERS  
1033 N. FAIRFAX STREET, SUITE 404  
ALEXANDRIA, VA 22314  
(703) 549-7404**

**STATEMENT OF JOHN L. BUCKSBAUM  
ON BEHALF OF THE  
INTERNATIONAL COUNCIL OF SHOPPING CENTERS**

Good morning. My name is John Bucksbaum, and I am Chief Executive Officer of General Growth Properties, Inc., the second largest self-administered regional mall real estate investment trust (REIT) in the United States. General Growth currently owns, develops, and operates regional malls in 37 states. I am here on behalf of the International Council of Shopping Centers, of which I am a member of the Board of Trustees.

ICSC is the global trade association of the shopping center industry. Its 40,000 members in the United States, Canada and more than 70 other countries around the world include shopping center owners, developers, managers, investors, lenders, retailers and other professionals. The shopping center industry contributes significantly to the U.S. economy. In 1999, shopping centers in the U.S. generated over \$1.2 trillion in retail sales and over \$47 billion in state sales tax revenue, and employed over 11 million people.

I appreciate this opportunity you have given me to present my views, and those of ICSC, on sales and use taxes. I would first like to applaud the organizers and members of the Streamlined Sales Tax Project, including the National Governors Association, National Conference on State Legislatures, Federation of Tax Administrators, Multistate Tax Commission, and the various participating states. We believe that simplification and unification of our nation's overly complex and burdensome state sales and use tax system is an important step in getting legislation enacted that will level the playing field for all retailers. We support your efforts in developing a simplification proposal – one that hopefully Congress will accept as part of any overall package that would allow states to collect sales and use taxes on remote electronic sales.

My testimony today does not specifically address the various components or details of creating a simplified sales and use tax system. Instead, it addresses the need for Congress to enact legislation that would permit those states that simplify their sales and use tax systems to require out-of-state retailers to collect such taxes on their behalf.

Simply stated, we believe that all goods, regardless if they are purchased over the Internet, via catalog or in traditional retail stores, should be subject to the same state and local tax collection requirements. One form of commerce should not receive preferential tax treatment over another. Unfortunately, existing tax law is structured to favor electronic commerce over sales made in local retail stores.

Contrary to popular belief, it is not the existing moratorium on Internet taxes that precludes states from requiring out-of-state retailers to collect sales and use taxes on their behalf. Instead, it is a 1992 Supreme Court case, *Quill v. North Dakota*, that held that remote merchants are not required to collect sales and use taxes for states in which they do not have a substantial physical presence or "nexus". The moratorium – which expires in October 2001 – applies only to access charges and new, multiple and discriminatory taxes on electronic commerce.



We do not support the enactment or implementation of Internet access charges, or new, multiple or discriminatory taxes on electronic commerce. Instead, we believe that existing sales and use taxes should be collected uniformly on all types of retail sales. The taxes which states should be able to require remote sellers to collect are not new taxes. Instead, they are existing use taxes which buyers are currently obligated to remit to their state and local governments. However, as a practical matter, most individuals are either unaware of their tax obligations, or simply do not bother to comply.

We support electronic commerce and believe it should be fostered. In fact, many traditional brick-and-mortar retailers are incorporating Internet commerce into their businesses in order to obtain new customers and better serve existing ones. However, as a matter of fairness and sound tax policy, Internet-based retailers should not receive a competitive advantage over traditional brick-and-mortar merchants simply because electronic commerce is a new and growing form of transacting business.

The inequitable situation that traditional retailers find themselves in is very clear to most Americans. In fact, a few months ago, ICSC commissioned Wirthlin Worldwide to survey Americans on this issue and found that two-thirds of them believe it is unfair to require brick-and-mortar retailers to collect state and local sales tax without requiring Internet-based retailers to do the same. In an Illinois statewide poll conducted by Market Shares Corporation released this week, over three-quarters of all respondents agreed that it is unfair to local businesses that sales tax is not collected on Internet purchases.

The reality is, as more and more Americans go online to purchase goods, the competitive tax advantage that Internet-based retailers enjoy will negatively affect many local retailers, shopping centers (including my own) and their communities in the near future. Not only will traditional retailers sell fewer goods, but their employees will suffer from reduced working hours, wages or layoffs. In fact, 62% of those polled by Market Shares Corporation believe that some local business will be seriously harmed and jobs will be lost as more people shop on the Internet.

In addition, state and local governments could experience a decrease in sales tax revenues that provide essential public services such as education, police and fire protection, and road repairs. Governments that rely heavily on sales tax revenues to fund key programs could potentially face severe budget shortfalls. When Wirthlin Worldwide surveyed Americans about this scenario, they found that a majority (55%) believe that reduced sales tax revenues would cause state and local governments to either raise other taxes, such as property taxes, or cut state and local programs. 69% of the Illinois residents polled by Market Shares Corporation felt the same way.

If local property taxes were to be increased, it would only add to the competitive disadvantage that traditional retailers have compared to Internet-based merchants. Not only do traditional retailers have to collect sales taxes on purchases, but they would then be forced to make up for lower overall sales tax revenue in the form of higher property taxes. As we all know, higher operating costs, including property taxes, often result in higher prices to consumers.

Furthermore, if governments decide to increase sales tax rates to make up for lost revenues, lower-income individuals would be particularly vulnerable to paying a higher share of their income on sales taxes since they are less likely to own computers and purchase products on-line. The Wirthlin Worldwide survey found that Americans overwhelmingly agree (62%) that this situation would be unfair.

Our critics assert that electronic commerce is a new and growing industry and, therefore, should not be saddled with "old world" sales tax collection requirements. They say we should not kill the goose that lays the golden egg. Our response is that, while electronic commerce is a growing and important part of our economy, subjecting it to the same sales tax collection requirements that traditional merchants have been subject to for decades would not harm its growth or vitality. Electronic commerce will continue to flourish, regardless of whether or not sales and use taxes are imposed on it. In fact, only 35% of those Illinois residents surveyed by Market Shares Corporation believed that collecting sales tax on Internet purchases would slow the growth of the Internet or the U.S. economy.

These critics also claim that forcing Internet retailers to collect sales and use taxes for the thousands of state and local taxing jurisdictions across the country would be too burdensome on electronic commerce and cannot be done. We agree that all businesses, especially small businesses, should not be overburdened by sales tax collection requirements and that state and local governments should work to simplify their sales tax systems. However, relatively inexpensive software exists today that can assist electronic retailers in determining how much sales and use tax needs to be collected on their out-of-state sales.

Another argument made by our critics is that states and localities are flush with cash and do not need to tax electronic commerce. While it is true that most state and local governments are currently enjoying budget surpluses, there is no guarantee that this economic prosperity will last forever. In fact, some states, such as Kentucky and Tennessee, are currently experiencing budget difficulties.

It is important to reiterate that the shopping center industry does not oppose the actual substance of the current moratorium – its ban on Internet access charges and new, multiple and discriminatory taxes on electronic commerce. However, we strongly believe that the longer the moratorium is extended, the more difficult it will be for Congress to level the playing field for all retailers with regard to sales and use tax collection.

That is why we support legislation that, in addition to providing for a short-term extension of the moratorium, would give those states that simplify their sales and use tax systems the authority to require remote sellers to collect and remit use taxes. Your group's development of a simplified and unified state sales and use system is a very important part of getting such legislation enacted into law.

Once again, I would like to thank the Streamlined Sales Tax Project for all of its work and for allowing me to express our views on this very important matter. I would be glad to answer any questions you may have.

# NATIONAL ASSOCIATION OF REALTORS®

## Testimony of C. Michael Brodie before the

### Streamlined Sales Tax Project

Sheraton Gateway Suites O'Hare

Rosemont, Illinois

September 29, 2000 – 9:00 am

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# NATIONAL ASSOCIATION OF REALTORS®

## Testimony of C. Michael Brodie before the

### Streamlined Sales Tax Project

Sheraton Gateway Suites O'Hare  
Rosemont, Illinois  
September 29, 2000 – 9:00 am

#### 1. Introduction.

Hello, my name is Mike Brodie. I am a REALTOR® from Plano, Texas. I would like to thank the Co-Chairs of the Streamlined Sales Tax Project, Mr. Charles Collins and Ms. Diane Hardt – as well as members of the Steering Committee, for inviting me here. I appear here today on behalf of the NATIONAL ASSOCIATION OF REALTORS® (NAR) where I presently serve on the Board of Directors, the Executive Committee, and as Chair of the Internet Tax Working Group. NAR represents 760,000 real estate professionals engaged in all aspects of the real estate business. About 80% of our members are residential sales agents and brokers, and about 20% of our members are principally engaged in commercial brokerage, leasing and management. During my association with NAR, I also have served as Regional Vice-President, National President of the Residential Sales Council and as Past Chairman of the Realtors National Marketing Institute. Currently, I am serving a 6-year appointment to the Texas Real Estate Commission.

#### 2. NAR Internet Tax Working Group.

In February of this year, the President of NAR, Dennis Cronk, asked me to serve as Chair of the Internet Tax Working Group. This group was convened to study issues associated with the debate on "Internet Taxation." My initial reaction was that no one – especially REALTORS® – wants to tax the Internet. However, as our working group studied this matter, we soon realized that the main issue was not whether to tax Internet access, but whether state and local sales taxes

could or should be collected on purchases made over the Internet. First, I will address our position concerning taxation of Internet access.

### **3. NAR Opposes Taxation of Internet Access.**

Let us be clear from the start: The NATIONAL ASSOCIATION OF REALTORS® does not and will not support any tax that would impede free access and use of the Internet. While this principle is becoming widely accepted, it is still important to understand its implications. For REALTORS® and our clients, Internet usage is very important.

- Sixty-two percent (62%) of all REALTORS® use the Internet for business today. Also, seventy-two percent (72%) of real estate firms and fifty-seven (57%) of REALTORS® generate at least some of their business on-line.<sup>1</sup>
- Our customers also are using the Internet. Of our clients who use the Internet in the homebuying process, eighty-nine percent (89%) go online to find a real estate firm; eighty-seven percent (87%) look for a specific REALTOR®; and eighty-two percent (82%) preview homes.
- The Internet is making the home-buying transaction more efficient. Homebuyers using the Internet spend about half the time finding a new home as do other buyers. On the average, homebuyers who use the Internet tour four properties before making a buying decision; this is compared to traditional homebuyers, who tour an average of eight properties.<sup>2</sup>

*Therefore, NAR opposes the imposition of sales/use taxes on Internet access charges. Citizens are not taxed upon entering their local library or mall. Taxing access to the Internet would be discriminatory.*

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<sup>1</sup> "Real Estate and Technology." Report by the NATIONAL ASSOCIATION OF REALTORS®, November 1999.

<sup>2</sup> "A Profile of an Internet Buyer." A survey by the California Association of REALTORS, August 1999.

#### **4. NAR Supports a Level Playing Field.**

NAR supports a level playing field for both local in-store retailers and remote merchants (including Internet merchants). We believe that economically equivalent transactions should bring similar tax consequences. Exempting Internet purchases from state and local sales taxes would be unfair to both:

*a. Local merchants; and*

*b. Homeowners and other holders of real estate.*

*a. Tax-free Internet purchases would be unfair to local merchants.* It doesn't take a rocket scientist to figure out that consumers would prefer not to pay sales taxes. But this is not the issue. If we allow Internet sellers to offer tax-free goods but require our local merchants to collect sales taxes, we encourage a basic economic shift in consumer behavior. That is, consumers will increasingly make purchases in cyberspace – not from their local merchants. We do not believe it is either fair or economically reasonable to exempt Internet sellers from collecting the same sales tax that our local merchants must charge and collect. In addition to increasing the cost of goods sold, this also disadvantages our local merchants who must incur administrative costs associated with the collection and remittance of these taxes.

Our local merchants provide value and services to our communities. As a REALTOR®, I sell homes AND communities. I would have a very difficult time selling a house that does not have a roof; I also would have a very difficult time selling a house that is not supported by the services and products offered by local merchants. You might see this as a gross exaggeration. However, this is the path that lies before us, if we continue to favor Internet sellers over those storeowners that serve and are a part of our communities.

b. Tax-free Internet purchases would be unfair to homeowners and other holders of real

estate. Why would tax-free Internet purchases be unfair to homeowners? NAR is

concerned that erosion of state and local sales tax collections will force state and local

governments to seek to expand their sales and use tax bases. If, as predicted, tax-free

Internet purchases erode sales tax collections (and losses of sales tax collections of up to

\$11 Billion have been predicted by the year 2003), state and local governments certainly

will have to:

(i) *Reduce funding for government services,*

(ii) *Increase alternative revenue sources, or*

(iii) *Expand the sales tax base.*

(i) Reduce funding for government services? A reduction in government funding

translates into a reduction of government services. A decrease in government

services translates into a decrease in the value of a community; and finally, a

decrease in the value of a community translates into a decrease in the value of

real estate. Decreases in state and local government services, such as education

and highways, could have a direct and negative impact upon desirability and

value of certain neighborhoods.<sup>3</sup> This causes us great concern.

<sup>3</sup> According to the U.S. Census Department, the four largest direct expenditures made by State and local governments during 1996 were:

Education	\$399 Billion
Welfare	\$193 Billion
Highways	\$79 Billion
Hospitals	\$71 Billion

(ii) Increase alternative revenue sources? While we are very concerned with the results of decreases in government services, we are even more concerned with the inevitable pressure to increase other taxes.<sup>4</sup> That is, as sales tax revenues decrease, state and local governments will certainly look to replace these revenues from other sources. Governments then would be pressured to increase its other revenues, such as real estate taxes. NAR strongly opposes any increases in real estate taxes: High real estate taxes place an undue burden on the acquisition and ownership of real estate.

(iii) Expand the sales tax base? This, in fact, could be the most volatile of all the issues. As sales tax revenues decrease, will state and local governments look to tax other purchases? Purchases of medicine, food, medical care, and services – such as REALTOR® fees – all represent targets for an expanding sales tax base. NAR is particularly opposed to any expansion of the tax base that would tax the cost of services, such as REALTOR® fees, and other costs associated with the purchase and sale of real estate. Higher real estate taxes would increase not only the cost of real estate, but also the cash payment required to close – which for some buyers is more critical than the actual purchase price.

## **5. NAR Supports the Streamlined Project.**

<sup>4</sup> According to the U.S. Census Department, State and local governments collected taxes of \$689 Billion during 1996. These top three components of this revenue were:

Sales taxes	\$249 Billion	36%
Real estate/property taxes	\$209 Billion	30%
Income taxes	\$179 Billion	26%
Other taxes	\$52 Billion	8%
<b><i>Total</i></b>	<b><i>\$689 Billion</i></b>	<b><i>100%</i></b>



A chain of related events leads NAR to support to state sales and use tax simplification: If sales tax collections decrease, state and local governments will (i) seek additional forms of revenue, (ii) decrease government services, or (iii) expand the existing sales tax base. Any of these results would adversely impact REALTORS® and real estate. We believe that states should be permitted to collect sales and use taxes on purchases made by its citizens, without regard to the medium of purchase. However, it would not be fair or reasonable to require a small Internet merchant to collect and remit sales taxes for all state and local governments unless the sales tax systems are substantially streamlined and simplified. Therefore, we support the simplification of the state and local sales tax systems – which is the goal of your project.

#### **6. Conclusion.**

We compliment you on the time and effort you have expended on this important task. We recognize this work is very difficult, time-consuming, and not without substantial political complications. However, as you continue toward completion of your Streamlined Proposal, we are confident that we can cooperate to simplify the sales tax systems. Thank you for inviting us to work with you on this critical project.

At this time, I will be pleased to address any questions you might have.

**EXHIBIT "A"**

**NATIONAL ASSOCIATION OF REALTORS®**

**Internet Tax Policy**

**Adopted by the NAR Board of Directors**

**May 22, 2000**

While the NATIONAL ASSOCIATION OF REALTORS® is firmly opposed to unnecessary or discriminatory taxation in any form, NAR is very concerned with the potential for increases in state/local real estate and property taxes that might result from exempting Internet purchases from state and local sales and use taxes. Accordingly, NAR adopts the following statements as its Internet Tax policy:

- 1. No state/local sales/use taxes on Internet access fees.** NAR opposes the imposition of sales/use taxes on Internet access charges.

**RATIONALE:** NAR believes that access to the Internet should be unfettered by state and local sales and use taxes. Citizens are not taxed upon entering their local library or mall. Taxing access to the Internet would tend to be a discriminatory tax – discouraging use of the Internet in favor of local bricks and mortar businesses and facilities.

**2. Consistent state/local sales/use tax consequences for economically equivalent transactions.**

NAR supports a level playing field for local in-store retailers and remote merchants (including Internet merchants). NAR believes that economically equivalent transactions should bring similar tax consequences.

*RATIONALE: NAR believes that loss of revenue due to failure to collect sales tax on goods sold over the Internet is likely to place pressure on state and local governments to find replacement revenue in the form of increased:*

- real estate and property taxes
- income taxes
- transfer taxes
- impact fees

NAR believes this shift in the tax burden would cause housing to be less affordable for many potential homebuyers. NAR also is concerned that the erosion of state and local sales tax collections will encourage state and local governments to seek to expand their sales and use tax bases. In this regard, NAR is firmly opposed to any expansion that would impose taxes on the cost of services, such as REALTOR® fees and other costs associated with the purchase and ownership of real estate.

**3. Simplification of State/Local Sales/Use Taxes.** NAR supports efforts to simplify the collection and payment of sales/use taxes.

*RATIONALE: NAR believes that economically equivalent transactions should bring similar tax consequences. Therefore, NAR believes that state and local governments should be able to enforce existing sales and use tax laws for both intra-state and inter-state purchases. However, in order to establish an effective and simple means of collection of these taxes, NAR believes that state and local governments first must simplify their existing state and local sales and use tax systems.*

**4. "Internet Tax" Legislation.** Federal legislation should not preempt states' efforts to address their own sales and use tax issues.

**RATIONALE:** NAR believes the key issues associated with the Internet Tax debate affect state and local government revenues. Accordingly, we believe state and local legislative action is appropriate, and we encourage state legislative action that would:

- Ban sales tax on Internet access fees;
- Provide consistent sales tax consequences for economically equivalent transactions; and
- Simplify state/local sales/use taxes

Therefore, we do not support Federal legislation that – without consent and participation of state governments – would preempt states’ efforts to address their own sales and use tax issues consistent with these NAR statements of policy.

**EXHIBIT "B"**

**NATIONAL ASSOCIATION OF REALTORS®**

**Ownership of Assets by Income and Age**

	Percent Owning (1998)			Median Value for Owners (1998)		
	Stock	Retire Acct	Home	Stock	Retire Acct	Home
<b>All Families</b>	48.8%	48.8%	66.2%	\$ 25,000	\$ 24,000	\$ 100,000
<b>Income</b>						
Less than \$10,000	7.7%	6.4%	34.5%	\$ 4,000	\$ 7,500	\$ 51,000
10,000-24,999	24.7%	25.4%	51.7%	\$ 9,000	\$ 8,000	\$ 71,900
25,000-49,999	52.7%	54.2%	68.2%	\$ 11,500	\$ 13,000	\$ 85,000
50,000-99,999	74.3%	73.5%	85.0%	\$ 35,700	\$ 31,000	\$ 130,000
100,000 or more	91.0%	88.6%	93.3%	\$ 150,000	\$ 93,000	\$ 240,000
<b>Age of head</b>						
Less than 35	40.7%	39.8%	38.9%	\$ 7,000	\$ 7,000	\$ 84,000
35-44	56.5%	59.5%	67.1%	\$ 20,000	\$ 21,000	\$ 101,000
45-54	58.6%	59.2%	74.4%	\$ 38,000	\$ 34,000	\$ 120,000
55-64	55.9%	58.3%	80.3%	\$ 47,000	\$ 46,800	\$ 110,000
65-74	42.6%	46.1%	81.5%	\$ 56,000	\$ 38,000	\$ 95,000
75 or more	29.4%	16.7%	77.0%	\$ 60,000	\$ 30,000	\$ 85,000

Source: Federal Reserve Board, Survey of Consumer Finance.

**EXHIBIT "C"**

**NATIONAL ASSOCIATION OF REALTORS®**

**Tax Notes on Homeownership**

1. Home is the largest asset for most families.
  - ◆ In 1998, 66% of households own a home, while only 49% own any stock, either directly or indirectly.
  - ◆ Median value of home for owners is \$100,000; while median value of stock holdings is only \$25,000 (1998).
2. Housing wealth is more evenly distributed across the income distribution than any other asset, except for vehicles. The Federal Reserve Board reports that the wealthiest 1% of households own 43% of all direct stock holdings, but only own 9% of all value of personal residences.
  - ◆ Although minority households have lower homeownership rate, for those that do own, their home is an even larger share of their wealth than for majority households.
  - ◆ Homeownership rate of minority households is 46.8% compared to 71.8% for white households in 1998.
3. Although homeownership declines with income, for those that do own, their home is an even larger share of their wealth the lower is household income.
  - ◆ For households earning less than \$10,000 annually, less than 8% own any stock, direct or indirect, while 34.5% own their own homes.
  - ◆ For households earning less than \$10,000 annually who do own stock the median value of stock holdings is only \$4,000, while those homeowners earning less than \$10,000 have a median home value of \$51,000.
4. For much of the current elderly their largest source of retirement wealth is their home.
  - ◆ In 1998, 77% of households aged 75 plus own a home, while less than 30% own any stock, either directly or indirectly.
  - ◆ Median value of home for owners aged 75 plus is \$85,000; while median value of stock holdings is only \$60,000 for those who own stock (1998).
5. High Stock Market masks many losing stocks while most housing markets share in national gains.
  - ◆ Of the 138 MSA monitored by NAR, only 12 displayed a decline in median prices from 1998 to 1999. The worst performing housing market lost only 7%.
  - ◆ Of the 374 IPO's issued between June 1999 and April 2000, 99 are trading below their issue price as of April 4, 2000 (that is they lost money), with an average *decline* of 36%.
  - ◆ Of the 1,000 stocks tracked by the Wall Street Journal's Shareholder Scoreboard, 442 display a *negative* return for all of 1999.

**Streamlined Sales Tax Project Public Hearing**

**Testimony of Merle Buff**  
**Vice President – Tax Counsel, American Express Company**  
**September 29, 2000**

My name is Merle Buff and I am Vice President - Tax Counsel for American Express Company. I would like to start by thanking you for the opportunity to comment on your proposal to streamline the sales tax system. I would also like to commend the Project for a proposal that does much to achieve a fairer and simpler sales and use tax system. Your work achieves this result while taking into account the important policy considerations that need to be addressed in light of the vast changes being proposed.

However, there is one aspect of the proposal where I believe that fairness and overriding policy considerations have not been taken into account, namely that relating to bad debts. I make this comment based on what I consider to be the essence of a sales tax - that it is a tax on the consumer or ultimate purchaser.

An earlier draft of this proposal explicitly stated that the refund of sales tax on bad debts was only available to a vendor - that an assignee or purchaser was not eligible. While that explicit reference has been deleted from this draft, the current language would still deny a refund to a subsequent purchaser or assignee. The proposal (at page 65) states that a bad debt should be tied to the definition under Internal Revenue Code Section 166, but that excluded from that definition are debts sold or assigned to third parties.

The definition just quoted would effect a significant change in state substantive law by arbitrarily denying businesses the right to determine rights and liabilities under contract and assignment law. It is contrary to existing laws in many states. For example, Georgia, Texas and California have statutes specifically allowing refunds related to assigned paper and other states allow it even in the absence of a specific provision. The change proposed by the Streamlined Sales Tax Project would effectively repeal those laws, resulting in an expanded tax base and an inequitable result for business. A change of such magnitude is outside the purview of the Streamlined Sales Tax Project and should be considered at the individual state level.

In the Puget Sound case, the Washington Supreme Court spoke on the considerations favoring the assignability of tax refunds when it stated the following - "An important policy reason for permitting the assignment of a tax refund claim is to ensure that commercial paper continues to travel freely in the marketplace. If this Court permits assignment of certain contractual or statutory rights, while prohibiting others, parties to an assignment will be unable to determine what rights and liabilities transfer in an assignment. This dilemma will only breed inconsistencies and uncertainty into the law of assignment."

I do not believe it was the intent of this Project to effect any substantive changes. If that is true, the Project should leave current law unchanged.

However, this Project has the opportunity to go beyond just leaving current law unchanged. This Project could propose the only "right" answer in terms of equity and fairness, namely that third party assignees and purchasers be able to get the benefit of the bad debt refund provision.

This is a simple matter of right and wrong. The essence of a sales tax is a tax on the ultimate consumer - so, if the consumer doesn't pay, the states should not be able to keep the money. The states are enjoying a revenue stream from sales taxes remitted by merchants when the consumer does not ultimately pay the tax. That is wrong. With respect to this revenue stream, the states are being unjustly enriched at the expense of business. That is wrong. While the states have come to rely on this source of revenue, it is still wrong.

Most states, including the Streamlined Sales Tax Project proposal (at page 66), allow the vendor to recover sales tax paid on debts that become worthless. This type of provision recognizes that the consumer has not paid the tax and the state should give back the taxes paid over. Assuming that the purpose of allowing such refunds is to remedy the unjust result that occurs when a vendor pays sales tax up front and the consumer fails to pay its debt, there would appear to be no overriding policy for arbitrarily limiting refunds to only those who originally sold the property. In fact, and as noted by the court in Puget Sound, any other rule is inequitable and entitles the state to a financial windfall merely because an assignment took place.

The participants in this Project have spent an incredible amount of time coming up with a proposal to restructure our sales/use tax systems so that the right result can be achieved. For many years, the states have not been collecting sales taxes on remote sales - taxes that they were certainly entitled to as a matter of law (through the use tax). That is wrong. Even if the states have not come to rely on this sales/use tax as part of their revenue stream, it is still wrong.

Hopefully, through the work of this Project, that wrong will be corrected by a new system that encourages fuller participation. I would suggest that, in working to make the sales/use tax system more equitable, that consideration be given to refunding sales tax whenever it can be proven that the ultimate purchaser didn't pay. If the essence of a sales tax is a tax on the consumer, that would be the right answer.

Footnote: At this public hearing, the above testimony is being given only on behalf of American Express Company.



# Supplemental Information for Merle Buff

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**STATEMENT OF**

**JOE BROOKS**

**COUNCILMAN, CITY OF RICHMOND, VIRGINIA**

**on behalf of**

**THE NATIONAL LEAGUE OF CITIES**

**before the**

**THE STREAMLINED SALES TAX PROJECT**

**FRIDAY, SEPTEMBER 29, 2000**

**CHICAGO, ILLINOIS**

**STATEMENT OF JOE BROOKS**  
**COUNCILMAN, CITY OF RICHMOND, VIRGINIA**  
**on behalf of**  
**THE NATIONAL LEAGUE OF CITIES**  
**before the**  
**THE STREAMLINED SALES TAX PROJECT**  
**FRIDAY, SEPTEMBER 29, 2000**  
**CHICAGO, ILLINOIS**

Good morning. Thank you for the opportunity to share local perspectives on the process of simplifying state and local sales and use taxes. I am Councilman Joe Brooks of Richmond, Virginia; and I will be speaking on behalf of the National League of Cities, which represents 18,000 municipalities across the nation. NLC generally supports the work of the Streamlined Sales Tax Project, but has some concern about protecting local authority in those states where cities administer their own sales tax systems.

All of you are familiar with the continuing debate in Washington over what, if any, taxation should be authorized on sales transacted over the Internet. Among the legislative proposals before Congress, the House has passed a five year extension of the current moratorium imposed by the Internet Tax Freedom Act, multiple bills have been introduced in the Senate, and others are being negotiated that would allow the federal government to preempt the authority of states to determine their own tax systems and structures. All of these bills and proposals would make it difficult or impossible for cities in a number of states to maintain their home rule options to set and collect local taxes.

These proposals raise concerns with most cities for a variety of reasons:

- Some would preempt the right of local governments with local option authority to determine their own tax rates and bases, and to administer and collect their locally imposed taxes;
- Others would require each state to establish a uniform tax rate (one rate per state), base, and definitions, and simplified audit and bad debt procedures, etc;
- States could decide not to remit the lost local tax revenues to local governments after elimination of the home rule option;
- They would impose "one-size-fits-all" solutions on the collection of use taxes on remote sales, prohibiting states and localities from employing various approaches to tax simplification including the use of technology to facilitate collection; and
- They would prohibit and/or short circuit state and local joint efforts to develop fair and equitable use tax collection strategies without federal preemption.

Streamlined Sales Tax Project Public Hearing  
National League of Cities' Testimony

By way of background, the seven public interest groups of the "Big 7/US Alliance," representing state and local governments, developed a joint statement of "Principles for Making Electronic Commerce Fair and Modernizing the Sales Tax System for the 21<sup>st</sup> Century" for submission to the Advisory Commission on Electronic Commerce in September 1999.

The four key principles endorsed by state and local government groups are as follows:

- Competitive neutrality which would require that all sales transactions be treated equally so that remote vendors are no longer treated as a "protected class" receiving preferential tax treatment at the expense of local brick and mortar merchants. True tax fairness would establish a level playing field among businesses, promote equity among all American consumers, and help preserve investment in our communities.
- Congress, under its Commerce Clause authority, should authorize states and local governments to require remote sellers with no physical presence in a state, to collect use taxes on goods sold into the state and remit them to the state of the purchaser.
- Our system of federalism should not be weakened by federal preemption of the authority of state and local governments or their ability to determine their own tax policies.
- The e-Commerce Commission should encourage states and localities to continue their cooperative efforts to reduce the complexity and compliance burdens currently imposed by existing sales and use tax systems on remote sellers, and suggest that states and localities may wish to investigate and test approaches that promote greater simplicity and uniformity, provide incentives for voluntary sellers, and otherwise reduce the burdens of tax collection.

The final recommendations of the Advisory Commission on Electronic Commerce were disappointing and not a reflection of a majority of the commissioners. If the Advisory Commission's actual recommendations were to become law through current bills under consideration, they would pose one of the most devastating forms of preemption in our nation's history, totally eroding state and local government sales tax revenues.

Since the Commission issued its final report last March, the Streamlined Sales Tax Project has begun developing recommendations to improve sales and use tax systems for both Main Street and remote sellers and for all types of commerce. We know the project expects to create a new system, providing a level playing field for all vendors, which can be used by both interstate and intrastate vendors.

Streamlined Sales Tax Project Public Hearing  
National League of Cities' Testimony  
Page Three

While the goal of this project is laudable, we caution you that many cities will oppose your efforts if the new streamlined system does not permit local option sales taxes that are essential to fund community and economic development, public safety, and other municipal needs.

NLC is pleased that 27 states are actively participating in the project due to state legislative actions or executive orders signed by the governors. This degree of involvement is an impressive indicator of the importance of the project's potential. You have demonstrated to the nay sayers that more than half the states can work together to accomplish simplification of their tax systems, and that another 12 states are attending the project's meetings as observers. NLC and other local government groups have sent representatives to the project's meetings to listen, comment occasionally, and to follow the project's progress. We will continue to do this.

We commend the project for opening up its process to the business community. We believe the only way to accomplish a workable and equitable new sales tax system, in two years or less, is by engaging all stakeholders. NLC understands that if tax simplification is not completed quickly and successfully, we stand to lose many of our local brick and mortar stores as they convert to dot.coms in order to compete in the market place. We do not want to lose the economic viability of our retail sectors and the many contributions made by our local businesses to the quality of life in our communities. NLC also understands that the business community will play a key role in garnering legislative support for the Project. We need business to work with us in the state legislatures and in Congress. Without the full engagement of the business sector, this Project will not succeed in becoming state law.

At the project's recent briefing in Chicago on September 6, representatives of the governors as well as local governments were provided with a very informative update on the progress of the project, and today we look forward to hearing the business community's thoughts and reactions to the progress of simplification so far. We understand that in a perfect world, business would prefer to see one blended rate per state. So we are very appreciative of business' acknowledgement that failure to accept multiple rates, due to the local home rule option enjoyed by many cities, could doom the project.

Clearly there will be hurdles ahead, but if we can craft a solution to create a level playing field for business and remove most of the unnecessary burdens of today's sales tax systems, we may be able to prevent federal preemption of state and local taxing authority and preserve an essential source of state and local revenue.

Streamlined Sales Tax Project Public Hearing  
National League of Cities' Testimony  
Page Four

We all recognize the importance of completing this streamlining project. From the standpoint of the nation's cities, we need and want local businesses to choose to remain in our communities and not shift their business transactions to dot.coms on the Internet. NLC urges the project to continue to work toward simplification while preserving local option sales taxes. There are cities in at least eight states that would lose considerable revenue if not allowed to collect local option taxes. The support and cooperation of all cities will be essential to success of the project.

NLC understands that the Project is struggling with definitions and is leaning toward requiring each state to have a uniform tax base. However, we would encourage the Project to try to ensure that definitions are as broad as possible. On the issue of a uniform tax base, I assume this would be a uniform base for each state. If this is correct, could a state combine its base with the existing local bases, and then let the tax collection software deal with what is in the state base and the local base? It should be duly noted that many cities have both different and broader tax bases than their respective states, and many local and regional facilities and programs are funded with local option tax revenues. There are billions of dollars in bonds that have been underwritten with the anticipated revenues from local option taxes.

We believe that limiting the number of times a year states and local governments can make changes to their respective tax codes is essential for tax simplification. These changes would include jurisdictional boundaries, exemptions, and local rates, and possibly others. Although many cities would prefer to administer their own tax collection systems, we recognize that for purposes of true simplification, the states may be in the best position to administer the new streamlined tax system. I must caution you that many cities fear that their respective states may not remit to them their proper share of the sales taxes collected. The states must work closely with their cities to dispel this concern. Let me repeat ... This project will be seriously called into question if the fiscal needs of local governments are not addressed fairly. States have the inherent ability to make themselves financially whole through their taxing authority. Local governments, in most instances, do not. We at the local level need a firm commitment from the states participating in this Project that the fiscal needs of local governments will not be left behind. NLC recognizes that tax reform is needed in the areas of consumer sales and telecommunications. However, these reforms, at the state level, should not undermine the needs of our communities and the local governments entrusted with providing services.

Also, as NLC's policy calls for employing various approaches to tax simplification, we support the Project's proposed models for integrating advanced technology into the sales tax collection process to eliminate as much as possible the seller's sales tax burden. The technological component is key to the Project's implementation.

**Streamlined Sales Tax Project Public Hearing  
National League of Cities' Testimony  
Page Five**

Let me close by once again commending the work of the Project, and urging all stakeholders to work together to accomplish this new tax system. Thank you for this opportunity to share NLC's concerns about sales tax simplification, and I welcome any questions that you may have.



**Pitney Bowes**

**Streamlined Sales Tax Project  
Statement on Behalf of Pitney Bowes Inc.**

By Joseph M. Ercolano  
Director, Government Affairs  
Friday, September 29, 2000

I appreciate the opportunity to make these brief remarks related to the work of the Work Group on Business and Technology models. Pitney Bowes is pleased to be participating in the Streamlined Sales Tax project pilot program. We support the project's goal, which is to design and implement a simplified sales tax collection system that can be used by traditional retail vendors and vendors involved in e-commerce.

Pitney Bowes will actually participate in two contracts, teaming with two different firms who will provide tax compliance software. In both contracts, Pitney Bowes will provide funds management, reconcile merchant and tax calculator records, aggregate payments to states, and prepare necessary documentation.

Pitney Bowes has a long history as a funds management provider. Pitney Bowes Postage By Phone® system, introduced in 1979, collects over \$12 billion in postage funds yearly for the United States Postage Service, all without a penny in lost funds. Postage By Phone® is in use in 15 countries around the world. Pitney Bowes is also a leading developer of encryption and security technologies.

We are excited to leverage the proven reliability of our funds management technology as part of a system that will simplify the tax collection process for both state governments and merchants of any size. Our technology solution will offer a win-win for both merchants and the states, as they share a common goal of reducing the administrative burden of collection, remittance, and reconciliation. In conjunction with our partners, we will help reduce costs and save valuable time for our customers.

Thank you for the opportunity to offer our comment on this important project.





# TOYS "R" US®

September 27, 2000

Madam and Mr. Chairpersons,  
Representatives of the Participating and Observing states,  
Special Guests and Attendees:

My name is Robert Jenner and I am the Manager of Non-Income Taxes for Toys "R" Us, Inc. Toys "R" Us is a company that sells toys, children's clothing, baby products and other products to the public through approximately 1,000 retail stores located in 49 states and an internet subsidiary. Toys "R" Us stores operate under the names of Toys "R" Us, Kids "R" Us, Babies "R" Us and Imaginarium Toys Centers. Collectively these stores collect and remit over \$600 million of sales tax revenue to the states on an annual basis.

I am pleased to report to you that today's proposals made by members of the Streamline Sales Tax Project are well received by Toys "R" Us and that these proposals are positive and important steps toward a fair, workable and simplified sales tax system. We commend the Streamline Sales Tax Project members for recognizing the importance of having BOTH state and business participate in the process of crafting standardized concepts and definitions. We also appreciate the fact that the state representatives have been open and receptive to our suggestions, comments and concerns. The professional and open dialog between all participants involved in these past working group meetings encourages our continued commitment and support of this project.

Specifically, we would like to point out some extremely positive recommendations in today's proposals:

- **The administration of tax exemptions claimed by customers.** The minimized information and "good faith" standards in today's proposal are a significant step forward for many retailers. Toys "R" Us currently retains so much paper related to these types of sales that we measure it in cubic yards. The proposals put forth today will allow us to maintain this information electronically and in a much more usable form for state review. In addition, since the majority of these requests come during the holiday sales season, these changes will significantly benefit the speed of our store operations at the cash register to the pleasure of our guests and store associates.
- **Uniform bad debt reimbursement for sales taxes remitted.** This proposal is a very positive step forward in business fairness. Today's proposal standardizes a true inequity between businesses and states quickly, fairly and in a simplified manner. While most states address this issue in some manner, the documentation, method of claim and time to reimbursement can vary greatly from state to state.

- **Tax rate-rounding principles.** This proposal is a blessing to those of us who spend many hours coding unique tax rate breaking points and register rate tables. It is a clear step forward in easing an administrative burden and business costs.

The above proposals clearly indicate the open thinking and willingness of the members of the Streamline Sales Tax Project to address difficult issues in a fair, workable and simplified manner. Toys "R" Us supports the continued evolution of these proposals and looks forward to participating in the difficult work ahead.

Toys "R" Us also would like to reinforce our commitment to assist in the following issues that have yet to be addressed or resolved by the Streamline Sales Tax Project:

- **The continued progress toward "a level playing field"** is of critical important to this company. As stated in the September 7, 2000 press release by the Steamline Sales Tax Project "*The goal of the Project is to design and implement a simplified sales tax collection system that can be used by traditional brick and mortar vendors and vendors involved in e-commerce.*" It is our belief that the Steamline Sales Tax Project is the "next step" in progressing states toward to a fair, workable and simplified sales tax system that is necessary for congressional approval to require remote sellers to also collect sales taxes.
- **The continued development of standardized definitions.** State statutory terms vary for tangible personal property, services and digitized items. Many of the definitions used by states within their current statues to identify taxable or exempt sales are far from uniform and create one of the largest and most difficult areas for this project to address. The inability to address the myriad of state statutory terms in Phase 1 model legislation will hinder some of the state legislatures in their ability to interpret HOW the Phase 1 legislation will be implemented into their existing state sales tax system. The State representatives should be looking for any of these kinds of difficulties in their home state and start developing plans to address them.

It should also be reiterated that the Project is attempting to gain standardization of state terms and definitions, but the Project is NOT attempting to seek standardization of each state's tax base (what is taxable or exempt). States have and will continue to determine what goods and services they choose to tax or not tax. In the future, it is desired that they would make these decisions from a list of standardized terms and definitions. The state legislators and other officials often misunderstand this fine distinction about the intentions of this project. To avoid this misunderstanding, this distinction should be communicated loud and clear to all interested parties.

There will also be many cases identified where unique business sectors need to be contacted to reach a truly fair, workable and standardized group of definitions. For example: oil and gas industry, repair, maintenance and installation services, medical items and over the counter drugs, real property construction and renovation. Progress toward standardized statutory definitions for these areas will be greatly slowed without input from these business sectors. We would encourage the Project to lay out an agenda of definitions that plan to be addressed in the Phase 2 model legislation and contact business sectors as soon as possible to submit background material and recommendations to the workgroup for review and consideration. This will dramatically increase the likelihood of mutually agreeable language and speed up the process of definition development.

- **Coordination with States' legislative bodies.** Toys "R" Us also recognize that today's proposals are a long way from becoming law. Once the Phase 1 model legislation is finalized, again we foresee the need for the state and business communities to join forces to shepherd these reforms through each state's legislative process. This task should not be understated or go unaddressed by this project. We would encourage all participants, state and business, to start "setting the stage" for the effort of translating standardized concepts and model legislation into the political language and explanations necessary to receive the support of each state's legislature. The number of states that adopt these simplified reforms will be the true measure of this project's success.
- **Uniform vendor compensation for models two and three.** Toys "R" Us and other retailers clearly see this issue as a challenge to this project. It is also one of the most important issues necessary to gain wide spread retailer support of model legislation as we move into the state by state approval challenges.

A stated goal of this project is to encourage the voluntary tax collection by many non-required sellers, thereby significantly increasing state tax collections. Given that goal, states should view the reinstatement of fair vendor compensation as a reasonable request, offset by the plethora of increased tax revenue from these new collection agents. Several years ago many states provided for vendor compensation, however budget constraints encouraged states to significantly reduce or discontinue them. We encourage the Project to address this issue with the same high standards of fairness and uniformity that has resulted in today's other proposals.

In closing, Toys "R" Us praises the Streamlined Sales Tax Project members for the proposals put forth today. We greatly appreciate the Project member's interest in our views on the various subjects effecting our responsibilities to the states and look forward to continued open dialog. With the Phase 1 model legislation reflecting today's proposals, the state and business communities will start preparing plans to shepherd this package through each state's unique legislative process in 2001. The Project members have made significant progress in many areas of this enormous undertaking. There is a great deal more work to be done and a great many more people to get involved. We look forward to working with the Streamline Sales Tax Project members in the future.

Thank you.

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**DRAFT - SUBJECT TO MINOR REVISION**

**WAL-MART AND IMRA SUPPORT THE GOALS OF THE  
STREAMLINED SALES TAX PROJECT**

Statement of David Bullington  
Vice President of Taxes, Wal-Mart Stores, Inc.  
Before the Streamlined Sales Tax Project - September 29, 2000

With great interest and significant financial stake in both Internet sales and our existing store operations, Wal-Mart and the other member companies of the International Mass Retail Association (IMRA) applaud the efforts underway by way of the Streamlined Sales Tax Project.

IMRA is an alliance of retailers and their product and service suppliers that is committed to bringing price-competitive value to the world's consumers. IMRA represents over 200 retail companies, which operate more than 133,000 stores worldwide and have sales of over \$450 billion annually. IMRA represents over 600 supplier companies with sales totaling over \$600 billion per year. Together, IMRA's membership represents over \$1 trillion in sales and employs millions of workers.

IMRA and Wal-Mart are among the founding members of the e-Fairness Coalition—a coalition that advocates fairness for businesses and consumers, and which supports a level playing field that ensures that consumers are treated fairly no matter where they choose to shop.

Wal-Mart and IMRA support a level playing field for businesses and consumers. We support a level playing field that ensures consumers are treated fairly no matter where they choose to shop. We are opposed to new and discriminatory taxes on the Internet itself. We are simply talking about the fairest, most efficient way to collect existing taxes. We believe that simplification and standardization across state lines are essential to achieving a level playing field.

We hope the time has finally arrived for all the stakeholders affected to work together to create and pass the necessary state-by-state legislation necessary for creating a system that can create the basis for an eventual across-the-board collection requirement. Sound economic policy in a free enterprise economy requires equal tax treatment of the different channels of retail distribution. The existing state sales tax rules, as constrained by Supreme Court decisions issued well before eCommerce, have created two fields of retail competition. On one playing field, brick-and-mortar retail stores, both small and large, are required to collect sales tax on behalf of states and localities. On the other, the largely unenforceable rules applicable to remote sales do nothing more than encourage consumers to voluntarily pay the use tax equivalent of a sales tax. As we all know, the use tax is easily ignored. The "pricing" advantage created is real in the consumer's mind—why else would one remote seller's ad during last year's holiday season display the caption "Free Sales Tax"?

As to that eventual across-the-board collection requirement, I testified in April before the Senate Commerce Committee that Congress may fairly require Internet and other remote sellers to collect and remit sales or use taxes, and that simplification is the key, coupled with technology. There will always be those that will dismiss your efforts as falling short, as not going far enough. Our review

of your proposal indicates that tremendous strides have been made toward a more workable system, even toward many of those simplification goals set forth by the Advisory Commission on Electronic Commerce.

Who would have thought this time a year ago that 27 states would be well on their way to:

- Electronic registration for out-of-state retailers,
- A uniform return,
- Electronic filing of returns,
- A standard format for remittances,
- Restrictions on the frequency of rate changes, and
- Seller hold harmless protection for reliance upon an exemption certificate.

And these are only a few of the changes being proposed by the Project. In an effort to help the Project arrive at meaningful proposals, Wal-Mart committed its resources and significant insight into all of the state systems. I want to publicly thank my Director of Sales and Use Taxes, Warren Townsend, who has tirelessly participated in your working group efforts. Admittedly, we did not get included in the proposals everything we and other participating retailers recommended, but by being a constructive part of the process to create workable solutions, we better understand and appreciate the realities of setting out to make change.

None of you should be discouraged by the remarks that will certainly come forth from those that are totally committed to blocking an across-the-board collection obligation. Nor should anyone be discouraged by the effort that must be undertaken to create the necessary changes in this area. Your efforts here are monumental, as is the overall legislative task ahead. Realistically, this fall's efforts are only a first step. But they are part of a necessary first step. Followed through to completion, passage of the necessary legislation and implementation, the Project will show the commitment and resolve of the states to undertake significant change.

We strongly believe that Congress will in short order reward those states that have taken the hard steps in their legislatures to create a simplified system. We must caution, however, that the Streamlined proposals, thus far, do not meet all of the required criteria set forth in legislation that has been introduced in both the Senate and House by strong supporters of an across-the-board collection requirement. At some point, these differences must be reconciled, as the ultimate goal of across-the-board collection will not come to pass without Congressional approval.

We encourage the states that have not yet committed to the Project to make that commitment. Noticeably absent as Project members are the half dozen states that are staking their claim around everything Internet—all with the stated aim of attracting as much dot-com headquarter businesses as possible. When appropriately examined in the light of sound tax and economic policy, nothing within the Streamlined Sales Tax Project hinders the growth of the Internet and the supporting high-tech or telecommunications industries.

Now for the plea that I have made publicly on a number of occasions: The five states that allow local administration, collection and audit of the local jurisdiction's tax should not view the Project and its associated technology as a fix-all. In compliance and audit matters, we spend almost as much time on behalf of these five states and their locales as we do for all the other states combined. Please, for those of you representing these states (several are not represented here), help us carry the message to your legislatures to take the even tougher steps needed to achieve uniformity within your state. Why should food be defined and taxed differently at the city, county or parish level than at the state level?

Do not be misled that the technology solutions envisioned as part of the Project are ends within themselves. Those committed to maintaining the status quo have made substantial simplification as the price of getting a mandatory collection obligation through Congress. We must all stay the course on achieving meaningful uniformity and simplification in the bills the various state houses will soon be asked to pass. Yes, technology solutions should be encouraged as part of encouraging significant and rapid movement toward simpler systems with greater consistency across state lines. But I urge you, by all means, do not give up even if Congress should insist on yet a few more painful steps toward simplification.

**DRAFT—SUBJECT TO MINOR REVISION**

September 27, 2000

**COMMITTEE ON STATE TAXATION**

Oral Testimony to the Streamlined Sales Tax Project

Chairperson Collins, Chairperson Hardt, and other members of the Project, thank you for allowing me to present COST's comments today. I am Diann Smith, General Counsel for the Committee on State Taxation. COST is a non-profit trade association organized in 1969 whose membership consists of 540 multistate companies. COST's objective is to preserve and promote equitable and nondiscriminatory state and local taxation. COST has been a leader in addressing the issues surrounding sales and use tax complexity and is enthusiastic about many of the changes proposed by this Project. Today, I will briefly list the items in the "Proposals for Consideration" that we can support and those about which we continue to have concerns.

First, let me compliment this Project on its clear efforts to craft a system that will truly be simplified. While we may ultimately not be able to support specific conclusions of the Project, the state participants have listened to our comments and have modified many of the proposals as a result of these comments. We recognize the sincere effort that the state participants have made and applaud it.

This Project has produced many proposals with which we have no current objection.

First, we support the local rate and boundary limitations and the hold harmless provision. We note that vendors still need to be protected from overcollection liability risks.

Second, we support the uniformity in identifying tax jurisdictions, effective dates, and rate calculation.

Third, we support the state provided jurisdiction databases utilizing zip plus 4 and the default rules. It is important that the jurisdictional specificity rules apply to all vendors and that no one industry has a greater burden.

Fourth, we support the electronic registration and encourage the Project to expand the centralized registration to all vendors.

Fifth, we support the uniformity in returns and rules regarding due date, prepayment calculation rules, and payment methods.

Sixth, we support the exemption administration proposal. We believe that this is a shining example of the state participants' ability to question the current system and find an easier, less cumbersome, more rational solution.

Seventh, we note that the sourcing rule has undergone a significant transformation and we look forward to working with the project to finalize a rule that all interested parties can support. Further, we find the Multiple Points of Use Rule a very innovative suggestion. The MPU, however, should follow the same rules as the exemption certificate.

Recognizing the tremendous effort that was involved in undertaking this project, I now note the proposals for which we continue to have concerns.

First, the bad debt provision disallows the deduction to assignees, thereby increasing the tax liability of businesses in those states that currently allow the deduction or credit. This provision should be revised to preserve the status quo at the very least. Ideally, this Project would revise the bad debt provision to allow the economic incidence of the tax to fall on the appropriate party.

Second, advertising remains a special sourcing item. This provision raises the specter that states not currently taxing advertising will do so. We believe that the advertising proposal is an example of what this Project must be ever vigilant to avoid – an expansion of the tax base. To the extent that the output of this Project looks like an expansion, the Project risks defeat in the legislatures.

In conclusion, COST finds that many of the Proposals addressed by this hearing are truly innovative and will reduce the administrative, financial, and legal burden for many vendors. Some work remains, but we are confident that the Project participants will find an appropriate solution to the concerns raised above. Thank you for the efforts expended in preparing these proposals.



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## STREAMLINED SALES TAX PROJECT

September 29, 2000, Public Hearing Testimony  
Prepared by David J. Clark

Good morning/afternoon. I appreciate the opportunity to make these comments to you.

My name is David Clark.

I am an attorney and certified public accountant in private practice in California. I have been directly involved with tax issues for 26 years. I am the Chair of the Wage Base Conformity Task Force of the Employment Taxes Committee, Section of Taxation, American Bar Association. I am making these comments today as an individual. My comments have not been approved by the Council of the Section of Taxation or the American Bar Association, and thus do not represent the policy of either the Association or the Section.

In the mid-1980s, the predecessor to the current Employment Taxes Committee of the ABA Section of Taxation undertook a project to conform, or harmonize, the definition of "wages" for federal payroll tax purposes, including federal income tax, the federal unemployment insurance tax and social security (FIT, FUTA and FICA). I was the co-chair of that project.

The original project has gone through a number of iterations. It has been substantially expanded to include all state taxing jurisdictions. It continues to exist in a draft legislative format as part of the Simplified Tax and Wage Reporting System (STAWRS). The ABA has continued to monitor its progress over the years. I have been personally involved, off and on, both directly and indirectly in its development over the entire period.

The development of what has come to be known as the Harmonized Wage Code was often contentious, involving – as it did – stakeholders from federal, state and private backgrounds who often had different goals. It obviously has been a lengthy process, as well.

While that project addressed payroll tax issues, its development process is remarkably similar to yours. Both projects have simplification, modernization and harmonization as goals. Both envision the eventual use of a single form that an employer in our situation and a retailer in yours can use to report the relevant tax obligation. Both have harmonization of definitions as a specific goal.

As you know, I have attended and participated in the public sessions of four of your working group meetings this year. Therefore, I make these observations from first hand experience.

First, I congratulate you on the speed with which you have reached the point where you are today. It is clearly the result of the dedication and effort that you have put into the project.

Second, because many of the issues that you addressed and continue to address are difficult to reconcile, the fact that you have reached consensus clearly indicates that parties have

compromised in the interest of reaching the common goals of simplification and modernization. From my observation, the process has been inclusive rather than exclusive. You have actively solicited public comment throughout the process. Discussion and debate has consistently occurred in a professional and collegial manner.

In sum, I applaud you on the rapidity with which you achieved this position and commend you on the openness of the process by which you achieved it.

Before I begin, I would like to thank the members of this project for giving me the opportunity to be here today. My name is Aaron Lilly. I am the Director of Technology Policy at Americans for Tax Reform. We are non-profit, non-partisan taxpayer advocates and serve as a national clearinghouse for the grassroots taxpayers' movement by working with approximately 800 state- and county-level organizations. Americans for Tax Reform is widely regarded as the most influential taxpayer group in the country.

From our Taxpayer Protection Pledge to our work on the Advisory Commission on Electronic Commerce, we have advocated simple, fair and lower taxes since our inception in 1986. As your analysis indicates, the complexity of state and local sales and use taxes is a very real problem. With more than 3,000 different taxing jurisdictions imposing taxing obligations and closer to 5,000 with the authority to impose sales or use taxes, interstate retailers face a daunting task in complying with these nightmarish obligations. I am pleased to see so many of you here today to address this problem.

Moving toward one rate per state with uniform definitions and remittance schedules would make it easier for taxpayers to identify which states share their commitment to lower taxes and less government, but state and local autonomy is a high price to pay for that kind of simplification. Your analysis of the issues surrounding simplification of sales and use taxes raises many concerns about the constitutionality of simplification efforts and the conflict between simplification and autonomy, but fails to offer any viable solutions.

Your streamline efforts seem to operate on the underlying assumption that by creating a simplified sales tax collection scheme would bring more companies into the system. However, the system you describe in your white paper offers only limited benefits to those companies that already collect and remit sales and use taxes, and would be nothing more than a massive, new headache for those companies that are not obligated to collect these taxes. What incentive is there for a company to take part in your streamline sales tax project after it moves out of the trial phase? With so much uncertainty, and the high fixed costs associated with implementing this new system, I am curious what incentive there is for states to join this compact.

As I am sure you know, we do not support efforts by the government to export their collection burden. If you are indeed concerned about the unfair collection obligation faced by bricks-and-mortar retailers, the best solution to the problem is to remove that obligation. Contrary to your suggestion that the Supreme Court created an uneven playing field with the *Quill* decision, they actually opened the door for you to level the playing field by removing the collection obligation from all retailers by collecting your own taxes. While the streamline state sales tax project seems like a step in the right direction, I feel there is far too *much* emphasis on how to convince interstate retailers to assume the burden of collecting use taxes, and far too *little* emphasis on the very real difficulties associated with a streamlined state sales tax system.

Your Certified Service Provider and Certified Automated System sound remarkably similar to the Trusted Third Party scheme proposed to the Advisory Commission on Electronic Commerce. That commission roundly rejected the idea of states outsourcing their sales tax collection. The privacy implications of such a system are enormous. Under a Trusted Third Party or Certified

Service Provider system, retailers would collect an unprecedented amount of extremely personal and sensitive information and turn it over to the Trusted Third Party. Although privacy concerns are beyond the scope of this hearing, I would urge the members of this project to refer to the record of the Advisory Commission on Electronic Commerce and be sure that their system addresses the concerns raised by that commission.

These Trusted Third Party systems are nothing more than glorified and cleverly disguised corporate welfare. Select firms would receive exclusive contracts to collect sales taxes on behalf of the state and skim a little off the top for themselves. While the streamline state sales tax project may offer some marginal benefits to interstate retailers that already face a collection obligation, it seeks to dramatically expand the burden on retailers who presently do not have to deal with the nightmare of sales and use tax collection and is absolutely a bad deal for taxpayers.

As it stands right now, your streamline state sales tax project would raise our taxes *today* to pay for a massive new bureaucracy in order to collect more taxes *tomorrow*. At a time of record surpluses on the federal, state and local levels this would be a devastating blow to taxpayers.

**TESTIMONY  
PRESENTED AT THE  
STREAMLINED SALES TAX PROJECT  
PUBLIC HEARING  
SEPTEMBER 29, 2000**

**PRESENTED BY:**

**Lloyd J. Looram, CPA  
Managing Director  
The Looram Consulting Group, Inc.  
Palm Beach Gardens, Florida**

Good Morning. My name is Lloyd J. Looram. I am a Certified Public Accountant and the Managing Director of The Looram Consulting Group, a boutique consulting firm based in Palm Beach Gardens, Florida with an exclusive practice in the area of state and local taxation. The Firm provides partner-level services to the global business community. Prior to forming the Looram Consulting Group, I was a firmwide tax partner with Arthur Andersen based in the company's New York City office with responsibility for its northeast region state and local tax practice. I have worked exclusively in the field of state and location taxation for more than thirty years. My purpose for testifying before you this morning is to address an issue of practical concern to the at-large corporate business community. Those companies presently existing and operating within your states today. Those companies that are presently registered as taxpayers.

It is not my intent today to address any questions or issues rising to the level of Constitutional muster or of a deep theoretical nature.

I will leave that task to colleagues and friends far more competent than I, many of whom are in attendance today. My testimony today is not at the request of any specific company or client, yet, it concerns an issue of great concern to all companies presently registered as taxpayers for sales and use tax purposes in your states. The issue is exemptions and in particular exemption certificates, and the myriad of draconian rules, regulations and requirements for the collection, retention, maintenance and administration thereof currently in existence throughout all of the jurisdictions imposing a sales and/or use tax. As stated previously, this is an area of grave concern and potentially devastating consequences.

Likewise, it is an area most likely not fully understood nor appreciated by those companies not currently registered that you presently wish to tax. Existing sales and use tax exemptions are a veritable patchwork quilt. They vary with each individual state and local taxing jurisdiction. An exemption is a statutory provision which specifically provides exempt status to a product, transaction, service or legal entity that would otherwise be subject to tax. It is primarily determined by the category of the transaction, the taxability or exempt status of the parties involved, or the nature of the entities selling or buying the products. Typically, as it is the states'

position that all sales are taxable, to take advantage of an exemption, an exemption certificate must be prepared by the entity making the purchase and filed with either the seller or the state.

In general, exemptions fall into several types. Individual jurisdictions vary, and specific situations involved in determining the proper application of the exemption demand careful review. The following is a list of some examples of the more common exemptions.

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|---|--|
| 1.) Sales for Resale                                    | 10.) Utilities such as Gas and Electric            |
| 2.) Occasional, Isolated or Casual Sales                | 11.) Machinery and Equipment used in Manufacturing |
| 3.) Transfer of Common Interest                         | 12.) Off Shore Usage                               |
| 4.) Items Taxed by Other Law                            | 13.) Interstate Shipments                          |
| 5.) Governmental Entities                               | 14.) Enterprise Zones                              |
| 6.) Religious, Educational and Charitable Organizations | 15.) Environmental and Conservation Service        |
| 7.) Health Care Items                                   | 16.) Inter-Corporate Services                      |
| 8.) Food and Food Products                              | 17.) Temporary Storage                             |
| 9.) Agriculture Items                                   |  |

It is laudable that the states involved with the Streamlined Sales Tax Project (SSTP or the Project), both participating and observing, have designated a work group to specifically address the issue of exemption administration. Sadly, the suggested recommendations contained in the White Paper released September 15, 2000 addressing the subject do not go far enough.

As members of this Project, you have before yourselves a "once-in-a-lifetime" opportunity to do something momentous. Now is not the time to retreat to roots embedded in years of audit controversy. Now is the time to unshackle yourselves and all impacted taxpayers from the burdens of a system developed long before any one of us could have imagined or envisioned the global economy in existence today. Now, is the time for bold action. To accomplish the goal to simplify or streamline the system. Simply, do it.

Simplify the system. With regard to exemption certificates, let me suggest that you consider the elimination of all paper or hard-copy certificates. Eliminate the requirement that a selling company obtain the certificate, retain it and maintain and administer the certificate. (See, New York State Resale Certificate, Exhibit A.) Eliminate the requirement that the selling company must police the minute detail contained on the form. Eliminate the requirement that the forms must be renewed annually.

Simultaneously, eliminate the requirement that the selling company is liable for tax, penalty and interest when a certificate is either not found or found to be defective.

This is possibly the issue that antagonizes registered taxpayers the most. In addition, it is the issue that frustrates state administrators when auditing a taxpayer's compliance certificate maintenance compliance. Establish a procedure that simply allows a purchaser to provide the seller with a number that identifies it as a registered taxpayer or an exempt organization.

Alternatively for companies such as manufacturers simply let them document through external indicia that an established percentage of its sales are for resale and thus non-taxable.

Existing requirements are excessive and burdensome and the states' current posture that penalizes the selling company for the payment of tax, penalty and interest when the hard-copy document collected and maintained by the company does not meet the stringent requirements of the statute borders on harrassment. For example, the state of Connecticut uses forty (40) different exemption certificates while Kansas utilizes at least twenty-six (26) different certificates and Kentucky has twenty-five (25).

At the same time, the state of Hawaii has three separate forms dedicated to resales while California does not have a formal resale certificate per se, but provides a suggested format that is contained in a four page regulation (See, California Reg. Sec. 1668, Resale Certificate, Exhibit B). This is unacceptable.

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In conclusion, let me respectfully request that you consider the following recommendations: eliminate all hard copy certificates; and, hold sellers harmless in all instances. If you do this, many of the remaining suggested recommendations contained in the work group's White Paper are moot.

Enclosed as a part of this submission are selected samples of some of the various certificates in existence today. You will note immediately the complete lack of consistency or uniformity.