

The State



of Wyoming

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July 25, 2006

Subcommittee on International Trade
Senate Committee on Finance
Attn: Senator Charles E. Grassley, Chairman
Washington DC 20510-6200

RE: Testimony of Daniel W. Noble, Administrator, Excise Tax Division, Department of Revenue before the Subcommittee on International Trade, Senate Committee on Finance

Mr. Chairman and Members of the Subcommittee on International Trade,

I am honored to present this testimony to the Subcommittee on International Trade on behalf of The Great State of Wyoming and the Wyoming Department of Revenue. As a small rural state, Wyoming will be greatly impacted by the work of this committee and the work of Congress related to the issue of taxation of remote sales.

Over the last six and one half years a group of forty-two states and the District of Columbia have formed an alliance known as the Streamlined Sales Tax Project (SSTP). This alliance of states and the District of Columbia has worked together with representatives of the business community to develop a more uniform and simplified sales and use tax system. The goal of this project has been to create a tax environment for business which removes many of the burdens that have been placed on businesses

by state and local sales and use tax laws. The SSTP also hopes to level the playing field between traditional “brick and mortar” retailers and remote retailers. This has proven to be a monumental task but there has been significant progress made.

Probably the single most difficult challenge faced by this group has been the balance that had to be struck between state and local governments need to maintain taxing authority at the various levels of government and the need to remove the burden for collecting those taxes from businesses. To achieve this balance the state and local governments have agreed to assume this burden both in creation of a simpler tax code and by providing a mechanism for businesses to collect sales tax on their sales. In order to remove this burden from businesses the states crafted an agreement which radically simplifies tax laws in the member states, develops more efficient administrative procedures and exploits emerging technologies to manage the many taxing jurisdictions in this country.

The agreement currently in effect addresses the following areas of concern raised by businesses during our deliberations:

- **State funding of the technology used to collect the tax.**
- **Centralized registration for sellers**
- **Rate simplification**
- **State level tax administration of all state and local sales and use taxes**
- **Uniform sourcing rules**

- **Simplified exemption administration for use and entity-based exemptions**
- **Uniform audit procedures**

Utilizing technology to accurately collect the tax

The states have partnered with two technology vendors to provide a tax calculation engine for businesses which choose to utilize their services. These vendors are compensated from the tax revenue generated from their clients. The states went through an exhaustive certification process to test these vendors accuracy at returning the appropriate tax rate as well as the identification of exempt products from test information supplied by the states.

The states received the very first electronic transmission of a tax return from one of the technology providers on July 20th of this year. Contrary to any testimony you may have received previously the technology and software does exist to accurately calculate taxes due and provide that information to vendors. This process is very similar to the technology used to authorize credit card transactions. Credit card transactions have become a standard for authorization of payments in electronic commerce.

There are also vendors coming forward to have their software certified by the states so that they can market the software directly to clients that wish to perform the tax calculation process in-house. One vendor's software has already been certified and will be available shortly.

The states have developed a centralized registration system which has been operational since October of 2005. There have been over seven hundred voluntary registrants utilizing the system since its inception. The state of Wyoming has collected from these vendors approximately \$237,000 in sales and use taxes since October of last year. Previously several vendors voluntarily licensed with the SSTP and began remitting tax to all the governing states. Wyoming has received well over one million dollars in revenue from these vendors.

Simplified rates

It is true that the Streamlined Project was unable to achieve a consensus on adoption of the single rate per state concept and the removal of local jurisdictions ability to impose separate taxes. There was extensive debate regarding the single rate concept early in the development of the agreement.

It is important to understand the reason states needed to retain the integrity of the various rates charged by state and local governments. Local governments separately budget their revenue streams from state revenues. In many instances local governments utilize their tax revenues to collateralize bond issues and other borrowing instruments. This facilitates construction of infrastructure needs within these jurisdictions. To remove the ability of local governments to assess these taxes could limit these types of funding mechanisms.

More importantly limiting states to a single tax rate removes the autonomy of local governments and their citizens to tax themselves. The states recognize the complexity created by maintaining these rates. We are willing to assume the financial and administrative burden to manage this complexity. From the actions of the governing states I believe it is safe to say that we have demonstrated this willingness to assume this role.

There have been some rate simplifications achieved by the project. All states must have a common tax base between local tax and the state tax. In other words something which is taxable for the state tax must also be taxable locally. The one exception to this is food. Also rates which once could potentially change virtually any day of the year are now only allowed to be changed at the beginning of a calendar quarter and only after 60 days notice (or 120 days notice for catalog vendors).

Previously Congress has been told that the single rate per state would resolve merchant compliance problems in this country. If that is truly the case then why are remote vendors not collecting in the states with a single tax rate? The state of Wyoming has had a single tax rate in place for all vendors that have no physical presence in Wyoming since 1991. This date roughly coincides with the U.S. Supreme Court's decision in *Quill v. North Dakota*. The states of Rhode Island and Michigan have a single tax rate in their states. If the states are willing to remove this burden on these merchants by utilizing technology to do so then is not the same objective achieved?

State level administration of the tax

One of the major simplifications required under the Streamlined Sales and Use Tax Agreement has been the requirement for state level administration of the tax. If all states eventually adopt this provision of the agreement companies that sell into all states will drastically reduce their filing and remittance requirements as well as a major reduction in their exposure to audits. This is a simplification measure which will aid all vendors.

Uniform Sourcing Rules

The adoption of uniform sourcing rules for the states has been achieved under the agreement. They are very detailed and clearly identify where tax is due. Destination sourcing was chosen as it most closely credits the tax to where the taxpayer is located. One of the fears of the Project was that if origin sourcing were adopted safe harbors would be created in states that impose no sales tax. This stance on destination sourcing has not come without difficulty within the states. Some states are not currently adopting conforming legislation because they will experience a revenue shift by converting to destination sourcing. While there have been several challenges by states to destination sourcing the Governing Board has continued to support destination sourcing.

The sourcing rules in place also address industries which have had difficulty in the past adapting to the various rules of individual states. The telecommunications industry and leasing industries have been very active in moving these rules forward.

Simplified Exemption Administration

The business community presented to the Project early in our deliberations concerns about the various exemption requirements of the states. Each state used a different form, had different renewal requirements and viewed the relief from liability provided by an exemption certificate differently. Some states required pre-numbered certificates and would not allow blank certificates. From the Streamlined Sales Tax Project has evolved a common exemption form, a removal of renewal requirements and a relaxation of the good faith requirement to minimize vendor liability.

Uniform Audit Procedures

Audit procedures are currently under development for all vendors that choose to utilize one of the technology models. One of the more attractive features related to use of the Streamlined Technology is that the seller will not be subjected to audit on their sales. This effectively limits the scope of their audits to their purchases. State level administration will also limit audits of many vendors.

An issue which must be addressed by the states that impose a sales and use tax is the evolution of commerce from the tangible world to the electronic world. Items which several years ago were only available in a form that was easily identifiable as tangible personal property are now sold in electronic form. Books, movies, newspapers, magazines and music are now sold electronically in a downloadable format. New

service industries are developing with the evolution of commerce. Businesses are creating new ways to market products and services.

The member states of the Streamlined Sales and Use Tax Agreement are working diligently with industry to address the administration and imposition of sales tax on these new products and services. As these new products and services migrate from the tangible world to the electronic world the tax that would be charged will erode as part of this evolution. The states must modernize their tax laws to prevent this erosion of revenues.

Conclusion

The amount of revenue at risk for the states is something that has been debated extensively. Depending on the study you read the numbers can be fairly small to enormous. The fact is, there are significant revenues which remain uncollected each and every day in this country because of the increase in remote sales transactions brought about by our entry into the electronic age and the fact that these remote sellers are not collecting the tax. Virtually every audit assessment I sign has purchases which have gone untaxed. Arguing over the magnitude of the problem is not productive. Every one of us knows intuitively that this is a significant problem.

The only efficient method for the collection of sales and use tax revenues is to require taxation at the point of sale. Until states can require vendors to collect these taxes this erosion of revenues will continue.

Wyoming believes that the states have demonstrated to Congress a willingness to minimize the burdens placed on businesses when collecting our sales taxes. What is missing is direction. We need to know if we have removed enough of the burdens from vendors for Congress to require collection of tax from all vendors. If we have not achieved that threshold then tell us what else is required. We need specific guidance on what it will take to capture the revenue that is currently not being collected. The Governor of the State of Wyoming, Dave Freudenthal, supports the concept of the project but believes that the only way for states to decisively act on simplification is to receive direction on what is expected of them through federal legislation. Establish a threshold for the states that will allow us to work productively towards a modern and simplified tax system which will not burden vendors and will efficiently capture this revenue.

Again I would like to thank you for the opportunity to provide testimony on an issue which has developed momentum over the years but desperately needs your help.