

Streamlining State and Local Sales Taxes

44 States, DC and Puerto Rico
Legislative Branch
Executive Branch
Local Governments
Tax Practitioners
Business community

Why doesn't seller always collect sales tax?

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

Background:

- 45 states plus District of Columbia & Puerto Rico impose sales and use taxes
- Over 7,000 local jurisdictions impose sales and use taxes
- Retailers required to collect and remit sales tax to states where retailer has physical presence
- Use tax is owed by consumer when retailer does not collect the sales tax

Remote sales: What is at stake?

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

Remote sales: What is at stake?

- "State and Local Sales Tax Revenue Losses from E-Commerce," Report by Dr. Bill Fox at Univ. of Tennessee: State and local governments will lose an estimated **\$8.6 billion** in 2010 as states are unable collect sales taxes from online sales.
- 2010 revenue projected loss for South Dakota state & local taxes is estimated at **\$22.5 million**.
- Municipal tax loss is over \$7 million for 2010.
- Total losses for South Dakota between 2007 and 2012 is estimated at \$136.1 million.

Goals of the Streamlined Effort:

- Create a simpler system for administering the various state and local sales taxes
- Where something could not be made more simple, make it uniform
- Balance the interests of a state's sovereignty with the interests of simplicity and uniformity
- Leverage the use of technology to ease tax collection

Results: Streamlined Sales and Use Tax Agreement (SSUTA)

- SSUTA approved November 2002 by the states, and amended since
- Provisions are based on simplification, uniformity and technology principles
 - ◆ Simplification (e.g., state-level administration of tax)
 - ◆ Uniformity (e.g., uniform definition of "lease," lease sourcing rule)
 - ◆ Technology (e.g., certification of tax calculation software)
 - ◆ Balancing interests of state sovereignty

Results: Streamlined Sales and Use Tax Agreement (SSUTA)

- SSUTA became effective October 1, 2005
 - ◆ Today there are 20 full member states
 - Full member status:
 - ✓ Full member state has made all changes to statutes and rules to comply with the provisions of the SSUTA
 - Arkansas, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, West Virginia, Vermont, Washington & Wyoming
 - ◆ 3 associate member states
 - Associate member status:
 - ✓ Changes to state's statutes, rules, regulations or other authorities necessary for compliance take effect in the near future
 - Ohio, Tennessee & Utah

SSUTA: Key Features

- State level administration of local sales and use taxes
- Rate simplification
 - ◆ Allows one general state rate per state
 - ◆ Allows single local rate per jurisdiction

SSUTA: Key Features

- Common state and local tax bases within a state
- Common tax base for local jurisdictions
- Uniform sourcing rule for goods and services
 - ◆ Destination based
 - An exception for in-state origin based
- Uniform sourcing rule for:
 - ◆ Telecommunications
 - ◆ Lease or rental of property
 - ◆ Direct mail

SSUTA: Key Features

Uniform Definitions

- Food and food ingredients
- Prepared food
- Candy
- Soft drinks
- Dietary supplement
- Clothing
- Lease or rental
- Tangible personal property
- Bundled Transaction
- Drugs
- Durable Medical Equipment
- Computer Software
- Prewritten Computer Software
- Delivered Electronically
- Load and Leave
- Sales Price

SSUTA: Key Features

- Uniform treatment of bank holidays
- Uniform rules for sales tax holidays
 - ◆ limited to defined products and within administrative guidelines
- Uniform drop shipment rule
- Uniform rule for bad debt credits

SSUTA: Key Features

- Central registration system
- Simplified electronic tax return
- Uniform exemption certificate and simplified exemption processing
- Uniform rounding rule

STREAMLINED REGISTRATIONS & REVENUES

Totals from October 2005 through December 2009
For South Dakota

- Total Registrations: 1201
- State Tax: \$4,204,707
- Municipal Tax: \$1,708,990
- Trust Fund: \$2,472,487
 - ◆ Trust Fund includes state tax plus interest, minus \$1,500,000 moved to the general fund in 2009 per statute.

SSUTA: CURRENT ISSUES

Sourcing the Tax

States like Texas and Ohio tax sales based on where the sale originated.

But the original Agreement required that sales be taxed based on where the customer receives the product.

For instance, if you order a part from Sioux Falls and have it shipped to Rapid City, city tax is due to Rapid City.

At the December 2007 Governing Board meeting an amendment was passed to allow a state to choose origin sourcing for in-state sales.

This should allow more states to work towards being full member states.

SSUTA: CURRENT ISSUES

Issues

Replacement taxes: replacing the sales tax on products with another type of tax to avoid SST requirements – should it be allowed?

SSUTA: FEDERAL LEGISLATION

Federal legislation is currently being sponsored in the House & Senate to require remote sellers to collect tax in Full Member Streamlined states:

A small business exception will be allowed, but that threshold has not yet been determined.

- All three of South Dakota's Congressional delegation co-sponsored the federal legislation in 2008.

SSUTA: FEDERAL LEGISLATION

Federal Legislation is also supported by:
National Conference of State Legislatures
National Governor's Association
Council on State Taxation

This past year Congress has held more committee meetings on this issue than in the past

There is a greater chance the legislation will see some movement in the next year, but many believe a greater simplification effort is need by states before Congress will act.