REPORT #833

TAX SECTION

New York State Bar Association

Report on proposed Consumer and Main Street
Protection Act of 1995, formerly the
Tax Fairness for Main Street Business Bill

Table of Contents

TAX SECTION
New York State Bar Association

April 5, 1995

The Honorable Dale L. Bumpers
United States Senate
229 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Sales Tax on Out-of-State Vendors

Dear Senator Bumper:

Enclosed is a report of the Tax Section commenting on the proposed Consumer and Main Street Protection Act of 1995 (S. 545) (herein the "Bill"). The Bill is designed to authorize states to require the collection of state sales and use taxes by certain out- of-state vendors, thus changing the result of the Supreme Court's decision in Quill Corp. v. North Dakota.

As set forth in the report, we generally support the expansion of sales tax collection responsibilities of out-of-state vendors. We believe, however, that in its current form the Bill contains many technical deficiencies that must be corrected before the Bill is enacted. We also believe that more consideration should be given to establishing mechanisms for promulgating uniform interpretations of the Bill, and that, in the context of enacting this kind of legislation, greater effort should be made to address the procedural complexities involved in complying with different states' sales tax laws.

I hope you find our report useful. Please call me should you or your staff wish to discuss it.

Very truly yours,

Carolyn Joy Lee
Chair

TAX SECTION
New York State Bar Association

April 5, 1995

The Honorable Bob Graham
United States Senate
241 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Sales Tax on Out-of-State Vendors

Dear Senator Graham:

Enclosed is a report of the Tax Section commenting on the proposed Consumer and Main Street Protection Act of 1995 (S. 545) (herein the "Bill"). The Bill is designed to authorize states to require the collection of state sales and use taxes by certain out- of-state vendors, thus changing the result of the Supreme Court's decision in Quill Corp. v. North Dakota.

As set forth in the report, we generally support the expansion of sales tax collection responsibilities of out-of-state vendors. We believe, however, that in its current form the Bill contains many technical deficiencies that must be corrected before the Bill is enacted. We also believe that more consideration should be given to establishing mechanisms for promulgating uniform interpretations of the Bill, and that, in the context of enacting this kind of legislation, greater effort should be made to address the procedural complexities involved in complying with different states' sales tax laws.

I hope you find our report useful. Please call me should you or your staff wish to discuss it.

Very truly yours,

Carolyn Joy Lee
Chair

TAX SECTION
New York State Bar Association

April 5, 1995

The Honorable Bob Packwood
United States Senate
215 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Sales Tax on Out-of-State Vendors

Dear Mr. Chairman:

Enclosed is a report of the Tax Section commenting on the proposed Consumer and Main Street Protection Act of 1995 (S. 545) (herein the "Bill"). The Bill is designed to authorize states to require the collection of state sales and use taxes by certain out- of-state vendors, thus changing the result of the Supreme Court's decision in Quill Corp. v. North Dakota.

As set forth in the report, we generally support the expansion of sales tax collection responsibilities of out-of-state vendors. We believe, however, that in its current form the Bill contains many technical deficiencies that must be corrected before the Bill is enacted. We also believe that more consideration should be given to establishing mechanisms for promulgating uniform interpretations of the Bill, and that, in the context of enacting this kind of legislation, greater effort should be made to address the procedural complexities involved in complying with different states' sales tax laws.

I hope you find our report useful. Please call me should you or your staff wish to discuss it.

Very truly yours,

Carolyn Joy Lee
Chair

TAX SECTION
New York State Bar Association

April 5, 1995

The Honorable Orrin G. Hatch
United States Senate
205 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Sales Tax on Out-of-State Vendors

Dear Mr. Chairman:

Enclosed is a report of the Tax Section commenting on the proposed Consumer and Main Street Protection Act of 1995 (S. 545) (herein the "Bill"). The Bill is designed to authorize states to require the collection of state sales and use taxes by certain out- of-state vendors, thus changing the result of the Supreme Court's decision in Quill Corp. v. North Dakota.

As set forth in the report, we generally support the expansion of sales tax collection responsibilities of out-of-state vendors. We believe, however, that in its current form the Bill contains many technical deficiencies that must be corrected before the Bill is enacted. We also believe that more consideration should be given to establishing mechanisms for promulgating uniform interpretations of the Bill, and that, in the context of enacting this kind of legislation, greater effort should be made to address the procedural complexities involved in complying with different states' sales tax laws.

I hope you find our report useful. Please call me should you or your staff wish to discuss it.

Very truly yours,

Carolyn Joy Lee
Chair

TAX SECTION
New York State Bar Association

April 5, 1995

The Honorable Daniel P. Moynihan
United States Senate
464 Russel Senate Office Building
Washington, D.C. 20510

Re: Sales Tax on Out-of-State Vendors

Dear Senator Moynihan:

Enclosed is a report of the Tax Section commenting on the proposed Consumer and Main Street Protection Act of 1995 (S. 545) (herein the "Bill"). The Bill is designed to authorize states to require the collection of state sales and use taxes by certain out- of-state vendors, thus changing the result of the Supreme Court's decision in Quill Corp. v. North Dakota.

As set forth in the report, we generally support the expansion of sales tax collection responsibilities of out-of-state vendors. We believe, however, that in its current form the Bill contains many technical deficiencies that must be corrected before the Bill is enacted. We also believe that more consideration should be given to establishing mechanisms for promulgating uniform interpretations of the Bill, and that, in the context of enacting this kind of legislation, greater effort should be made to address the procedural complexities involved in complying with different states' sales tax laws.

I hope you find our report useful. Please call me should you or your staff wish to discuss it.

Very truly yours,

Carolyn Joy Lee
Chair

TAX SECTION
New York State Bar Association

April 5, 1995

The Honorable Henry J. Hyde
Chairman, Committee on the Judiciary
House of Representatives
2110 Rayburn House Office Building
Washington, D.C. 20515-1306

Re: Sales Tax on Out-of-State Vendors

Dear Mr. Chairman:

Enclosed is a report of the Tax Section commenting on the proposed Consumer and Main Street Protection Act of 1995 (S. 545) (herein the "Bill"). The Bill is designed to authorize states to require the collection of state sales and use taxes by certain out- of-state vendors, thus changing the result of the Supreme Court's decision in Quill Corp. v. North Dakota.

As set forth in the report, we generally support the expansion of sales tax collection responsibilities of out-of-state vendors. We believe, however, that in its current form the Bill contains many technical deficiencies that must be corrected before the Bill is enacted. We also believe that more consideration should be given to establishing mechanisms for promulgating uniform interpretations of the Bill, and that, in the context of enacting this kind of legislation, greater effort should be made to address the procedural complexities involved in complying with different states' sales tax laws.

I hope you find our report useful. Please call me should you or your staff wish to discuss it.

Very truly yours,

Carolyn Joy Lee
Chair

TAX SECTION
New York State Bar Association

April 5, 1995

The Honorable Bill Archer
Chairman, Committee on Ways and Means
House of Representatives
1236 Longworth House Office Building
Washington, D.C. 20515-6348

Re: Sales Tax on Out-of-State Vendors

Dear Mr. Chairman:

Enclosed is a report of the Tax Section commenting on the proposed Consumer and Main Street Protection Act of 1995 (S. 545) (herein the "Bill"). The Bill is designed to authorize states to require the collection of state sales and use taxes by certain out- of-state vendors, thus changing the result of the Supreme Court's decision in Quill Corp. v. North Dakota.

As set forth in the report, we generally support the expansion of sales tax collection responsibilities of out-of-state vendors. We believe, however, that in its current form the Bill contains many technical deficiencies that must be corrected before the Bill is enacted. We also believe that more consideration should be given to establishing mechanisms for promulgating uniform interpretations of the Bill, and that, in the context of enacting this kind of legislation, greater effort should be made to address the procedural complexities involved in complying with different states' sales tax laws.

I hope you find our report useful. Please call me should you or your staff wish to discuss it.

Very truly yours,

Carolyn Joy Lee
Chair

TAX SECTION
New York State Bar Association

April 5, 1995

The Honorable Nancy L. Johnson
Chairwoman, Subcommittee on Oversight
House of Representatives
343 Cannon House Office Building
Washington, D.C. 20515

Re: Sales Tax on Out-of-State Vendors

Dear Madame Chairwoman:

Enclosed is a report of the Tax Section commenting on the proposed Consumer and Main Street Protection Act of 1995 (S. 545) (herein the "Bill"). The Bill is designed to authorize states to require the collection of state sales and use taxes by certain out- of-state vendors, thus changing the result of the Supreme Court's decision in Quill Corp. v. North Dakota.

As set forth in the report, we generally support the expansion of sales tax collection responsibilities of out-of-state vendors. We believe, however, that in its current form the Bill contains many technical deficiencies that must be corrected before the Bill is enacted. We also believe that more consideration should be given to establishing mechanisms for promulgating uniform interpretations of the Bill, and that, in the context of enacting this kind of legislation, greater effort should be made to address the procedural complexities involved in complying with different states' sales tax laws.

I hope you find our report useful. Please call me should you or your staff wish to discuss it.

Very truly yours,

Carolyn Joy Lee
Chair

TAX SECTION
New York State Bar Association

April 5, 1995

The Honorable Leslie B. Samuels
Assistant Secretary (Tax Policy)
Department of the Treasury
Room 3120 MT
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Re: Sales Tax on Out-of-State Vendors

Dear Secretary Samuels:

Enclosed is a report of the Tax Section commenting on the proposed Consumer and Main Street Protection Act of 1995 (S. 545) (herein the "Bill"). The Bill is designed to authorize states to require the collection of state sales and use taxes by certain out- of-state vendors, thus changing the result of the Supreme Court's decision in Quill Corp. v. North Dakota.

As set forth in the report, we generally support the expansion of sales tax collection responsibilities of out-of-state vendors. We believe, however, that in its current form the Bill contains many technical deficiencies that must be corrected before the Bill is enacted. We also believe that more consideration should be given to establishing mechanisms for promulgating uniform interpretations of the Bill, and that, in the context of enacting this kind of legislation, greater effort should be made to address the procedural complexities involved in complying with different states' sales tax laws.

I hope you find our report useful. Please call me should you or your staff wish to discuss it.

Very truly yours,

Carolyn Joy Lee
Chair

TAX SECTION
New York State Bar Association

April 5, 1995

The Honorable Margaret Richardson
Commissioner
Internal Revenue Service
Room 3000
1111 Constitution Avenue, NW
Washington, D.C. 20224

Re: Sales Tax on Out-of-State Vendors

Dear commissioner Richardson:

Enclosed is a report of the Tax Section commenting on the proposed Consumer and Main Street Protection Act of 1995 (S. 545) (herein the "Bill"). The Bill is designed to authorize states to require the collection of state sales and use taxes by certain out- of-state vendors, thus changing the result of the Supreme Court's decision in Quill Corp. v. North Dakota.

As set forth in the report, we generally support the expansion of sales tax collection responsibilities of out-of-state vendors. We believe, however, that in its current form the Bill contains many technical deficiencies that must be corrected before the Bill is enacted. We also believe that more consideration should be given to establishing mechanisms for promulgating uniform interpretations of the Bill, and that, in the context of enacting this kind of legislation, greater effort should be made to address the procedural complexities involved in complying with different states' sales tax laws.

I hope you find our report useful. Please call me should you or your staff wish to discuss it.

Very truly yours,

Carolyn Joy Lee
Chair

TAX SECTION
New York State Bar Association

April 5, 1995

Kenneth J. Kies
Chief of Staff
Joint Committee on Taxation
1015 Longworth House Office Building
Washington, D.C. 20515

Re: Sales Tax on Out-of-State Vendors

Dear Mr. Kies:

Enclosed is a report of the Tax Section commenting on the proposed Consumer and Main Street Protection Act of 1995 (S. 545) (herein the "Bill"). The Bill is designed to authorize states to require the collection of state sales and use taxes by certain out- of-state vendors, thus changing the result of the Supreme Court's decision in Quill Corp. v. North Dakota.

As set forth in the report, we generally support the expansion of sales tax collection responsibilities of out-of-state vendors. We believe, however, that in its current form the Bill contains many technical deficiencies that must be corrected before the Bill is enacted. We also believe that more consideration should be given to establishing mechanisms for promulgating uniform interpretations of the Bill, and that, in the context of enacting this kind of legislation, greater effort should be made to address the procedural complexities involved in complying with different states' sales tax laws.

I hope you find our report useful. Please call me should you or your staff wish to discuss it.

Very truly yours,

Carolyn Joy Lee
Chair

TAX SECTION
New York State Bar Association

April 5, 1995

Hon. Michael H. Urbach
Commissioner
Department of Taxation and Finance
State of New York
Building 9, State Campus
Albany, NY 12227-1215

Re: Sales Tax on Out-of-State Vendors

Dear Commissioner Urbach:

Enclosed is a report of the Tax Section commenting on the proposed Consumer and Main Street Protection Act of 1995 (S. 545) (herein the "Bill"). The Bill is designed to authorize states to require the collection of state sales and use taxes by certain out- of-state vendors, thus changing the result of the Supreme Court's decision in Quill Corp. v. North Dakota.

As set forth in the report, we generally support the expansion of sales tax collection responsibilities of out-of-state vendors. We believe, however, that in its current form the Bill contains many technical deficiencies that must be corrected before the Bill is enacted. We also believe that more consideration should be given to establishing mechanisms for promulgating uniform interpretations of the Bill, and that, in the context of enacting this kind of legislation, greater effort should be made to address the procedural complexities involved in complying with different states' sales tax laws.

I hope you find our report useful. Please call me should you or your staff wish to discuss it.

Very truly yours,

Carolyn Joy Lee
Chair

TAX SECTION
New York State Bar Association

April 5, 1995

Hon. Joseph Lhota
Commissioner
New York City Department of Finance
1 Centre Street, 5th Floor
New York, NY 10007

Re: Sales Tax on Out-of-State Vendors

Dear Commissioner Lhota:

Enclosed is a report of the Tax Section commenting on the proposed Consumer and Main Street Protection Act of 1995 (S. 545) (herein the "Bill"). The Bill is designed to authorize states to require the collection of state sales and use taxes by certain out- of-state vendors, thus changing the result of the Supreme Court's decision in Quill Corp. v. North Dakota.

As set forth in the report, we generally support the expansion of sales tax collection responsibilities of out-of-state vendors. We believe, however, that in its current form the Bill contains many technical deficiencies that must be corrected before the Bill is enacted. We also believe that more consideration should be given to establishing mechanisms for promulgating uniform interpretations of the Bill, and that, in the context of enacting this kind of legislation, greater effort should be made to address the procedural complexities involved in complying with different states' sales tax laws.

I hope you find our report useful. Please call me should you or your staff wish to discuss it.

Very truly yours,

Carolyn Joy Lee
Chair

NEW YORK STATE BAR ASSOCIATION

TAX SECTION

COMMITTEE ON MULTISTATE TAX ISSUES*

Report on proposed Consumer and Main Street Protection Act of 1995, formerly the Tax Fairness for Main Street Business Bill

I. INTRODUCTION

On March 13, 1995, Senators Bumpers and Graham introduced legislation to expand the authority of states to require out-of-state vendors to collect state sales and use tax. S.545, 104th Cong., 1st Sess. (1995). Attached as an Appendix to this report is a copy of S.545, which is referred to herein as "the bill".

The purpose of the bill, like similar measures Congress has considered over the past several years (e.g., S.1825, 103rd Cong., 1st Sess.), is to change the result of Quill Corp. v. North Dakota, 112 S. Ct. 1904 (1992), and of National Bellas Hess, Inc. v. Department of Revenue of I11. 386 U.S. 753 (1967) (to the extent not overruled in Quill). In those decisions, the Supreme Court concluded that, in the absence of Congressional authorization, a state could not require a vendor to collect its

* This report was prepared by the Committee on Multistate Tax Issues, Robert E. Brown and Paul R. Comeau co-chairs. The principal authors of the report are Carolyn Joy Lee (Parts I and II) and Edward H. Hein (Part III). Helpful comments were received from Walter Hellerstein, Maria T. Jones, Richard O. Loengard, Arthur R. Rosen and Michael L. Schler.

sales or use tax (hereinafter "sales tax") unless the vendor had a physical presence in the state.

In Quill, the United States Supreme Court first held that the contemporary standards for determining the existence of personal jurisdiction under the Due Process Clause of the Fourteenth Amendment to the Constitution -- whether a person has purposefully directed its economic activities toward residents of the state -- is applicable in the context of sales and use tax collection responsibility. Such responsibility could therefore be imposed on an out-of-state mail order vendor without violating the Due Process Clause provided that the vendor has sufficient contacts with the state to be subject to civil suit, under modern Due Process Clause analysis, in that state.

The Court declined, however, to overrule its decision in National Bellas Hess that the Commerce Clause (Article I, Section 8) imposes a standard of "substantial" nexus, a standard that requires, in the context of sales tax collection responsibility, that the vendor have a physical presence in the taxing state. Because its decision was based on a "negative" or "dormant" Commerce Clause analysis, the Court specifically acknowledged that Congress has the power to alter this Commerce Clause threshold and, accordingly, to provide a different standard[1] for the imposition of sales tax collection responsibility. In the absence of Congressional action on the subject, however, the Commerce Clause standard for jurisdiction to impose sales and use taxes on out-of-state vendors remained the National Bellas Hess

[1] While we concur that Congress can legislate a higher or lower standard for Commerce Clause nexus, we do not believe Congress can legislate a standard lower than that prescribed under the Due Process clause. See Quill. 112 S. Ct. at 1909 ("Congress does not . . . have the power to authorize violations of the Due Process Clause.")

test of whether such vendors had a physical presence in the taxing state.

The bill represents a response to the judicial invitation for legislative change to the Commerce Clause threshold of nexus. The crux of the bill is its authorization of each state to require collection and remittance of its sales taxes by persons "subject to the personal jurisdiction of the state," *i.e.*, persons who satisfy the Due Process standard of nexus but may not satisfy the Commerce Clause "physical presence" test.

This report sets forth certain general and technical comments on the bill. We wish to emphasize that:

1. Although it is ultimately a policy question, we think it is reasonable to expand the sales tax collection responsibility of out-of-state vendors by decoupling that responsibility from the physical presence test;

2. We have no fundamental disagreement with the approach taken by the bill, but note that other approaches also are possible[2]; and

3. The bill in its current form contains many serious technical deficiencies that should be corrected before the bill becomes law.

---

[2] For example, imposing sales tax on an origin basis, rather than destination basis, or establishing a "throwback" concept. See, e.g., Multistate Tax Commission, Uniform Interstate Sales and Use Tax Act (Second draft, September, 1992); New York State Bar Association Tax Section Report No. 525, dated May 13, 1986, commenting on S.1510. We take no position on the merits of such other proposals, and confine our commentary herein to the bill.

II. GENERAL CONSIDERATIONS

A. We support the bill's objective of extending sales tax collection responsibilities to out-of-state vendors by decoupling that responsibility from a test of physical presence. Current law depends upon a distinction -- physical presence -- that often has little significance in today's economy. The result of the existing jurisprudence generally has been a distortion in the perceived taxability of purchases made from in-state versus out-of-state vendors, and resulting noncompliance by purchasers who do not, (or in some instances may not know of their responsibility to) comply with state use tax laws. Viewing the current state of affairs from our perspective as tax practitioners, we see no good reason for the continued blanket exemption of out-of-state vendors from compliance with that state's sales and use tax laws, based simply on a test of physical presence.

B. Taxpayers do have legitimate concerns about the complexity of multi-state sales tax compliance. In our judgment, these concerns are inadequately addressed by the bill. Compliance issues involve (i) the interpretation and application of the bill itself, (ii) the interpretation and application of the substantive sales tax laws of each state, (iii) compliance with each state's filing and tax remittance requirements, and (iv) submission to each state's audit and tax litigation procedures.

An overarching concern in enacting federal legislation on the subject of state taxes is the lack of any federal mechanism for clarification of the federal statute. In the absence of any coordinated or nationwide enforcement of the bill, interpretation and application of its provisions will be left to individualized state and local interpretations and litigation.

The problems generated by multijurisdictional interpretations and applications of a federal statute affecting state taxation have been demonstrated by the development of the law under P.L. 86-272.[3] Since its enactment in 1959, P.L. 86-272 has generated a host of state and local regulations and administrative pronouncements, as well as a great deal of controversy concerning the appropriate application of federal law by state auditors and state courts. The Supreme Court's decision in Wrigley[4] sheds light on some of the more difficult aspects of P.L. 86-272, but that decision came more than three decades after enactment of the statute, and falls far short of constituting comprehensive federal guidance on the interpretation and application of the law. One would expect similar problems to follow the enactment of the bill.[5]

In light of the complexities involved in imposing sales tax collection responsibilities on vendors with only limited state contact, we believe there are three things that are

---

[3] In contrast, under Section 306 of the 4-R Act, 49 U.S.C. §11503 (which prohibits states from imposing discriminatory taxes on railroads), the availability of a federal judicial forum assuages this problem.

[4] Wisconsin Dep't of Revenue v. William Wrigley Jr., Co., 112 S. Ct. 2447 (1992).

[5] Moreover, the problems engendered by an unclear federal law often will be more severe in the case of the bill, where theissue is state sales tax collections rather than state income tax liability. State income taxes generally constitute a relatively small fraction of a taxpayers' net profit. Consequently, while the amounts of a taxpayer's income tax exposure under P.L. 86-272 can loom large, they remain in most cases only a small share of the taxpayer's economic profit. Sales taxes by contrast are generally measured by the gross sales price, not the profit, and the state sales tax on an item often can equal or exceed the vendor's profit margin on that item. Thus, an unanticipated sales tax liability for taxes not collected at the time of sale could entirely eliminate or exceed the vendor's profits on the sale. This exposure occurs, it should be noted, not in a context where the vendor is paying its own tax, but in a context where the vendor instead serves as a collection agent for the state to facilitate the buyers' satisfaction of their own tax liabilities.

essential to any legislation along the lines of the bill. First, the bill itself must be very carefully drafted, with as little ambiguity and imprecision as possible, and with substantial legislative history to detail Congressional thinking. As discussed in Section III, below, the current text of the bill raises a number of basic questions.

Second, consideration should be given to establishing a mechanism for promulgating uniform, nationwide guidance under the bill. For example, the Internal Revenue Service, which has considerable expertise in tax regulation might be authorized to issue interpretations of the statute. Alternatively, consideration might be given to whether Congress can delegate authority to interpret and apply the statute to an existing governmental group such as the Multistate Tax Commission, to some other agency or body of state tax administrators. However constituted, having some body with authority to promulgate uniform federal interpretations of what is, at its essence, a federal tax rule would be very important to the efficient administration of the bill.

Similarly, on questions involving the interpretation of the bill, we believe it is important that taxpayers have access to the federal courts. We would not encourage rules that promoted the regular invocation of the federal courts in state sales tax controversies. On the other hand the interpretation of a federal statute is properly a subject of federal court jurisdiction. Consideration should therefore be given to devising some system, such as state court certification of interpretative issues to the federal courts, for providing access to the federal courts for interpretation of this legislation.

Third, the states should be required to provide real and reliable assistance to out-of-state vendors in satisfying their tax collection responsibilities. Toll-free telephone advice is helpful, but unfortunately telephonic tax advice would not, to our knowledge, be considered a binding determination that could be relied upon by the taxpayer; in all events, there are difficult proof problems as to the nature of the advice provided. Inasmuch as vendors serve as collection agents for the states, they should be entitled to prompt and reliable advice as to the scope of their responsibilities -- both in terms of what is taxable and in knowing when and how to file and remit tax.

We therefore believe that in enacting legislation along the lines of the bill Congress also should impose specific procedures under which the states must provide to any vendor who asks a detailed itemization of that vendor's sales tax collection responsibilities with respect to the specific items sold by that vendor. We suggest that any vendor who properly requests advance guidance should be entitled to rely on it in collecting or refraining from collecting sales tax from its buyers, such that the remedy for any erroneous conclusions given would be for the state to seek use tax from the buyer, but not to impose sales tax collection responsibility on the vendor. We suggest that Congress work with both vendors and the states to devise a practical system for providing reliable and, most importantly, binding advance guidance. Such a system will likely mean that taxing states will have to devote additional resources to out-of-state vendors; however, since states also should enjoy significantly enhanced collections, we believe this up-front investment in specific and reliable guidance is justified, both as a concession to the additional burdens the bill will impose, and in terms of generating improved initial compliance, which should lessen the

need for audit and enforcement activities directed at out-of-state vendors.

In an analogous vein, Congress should be sensitive to the fact that the extension of sales tax collection responsibility means that large numbers of vendors will have to comply not only with differing substantive laws but also with different procedural requirements regarding such things as proof of exemptions, tax forms, due dates, evidentiary and record keeping procedures, audit and enforcement procedures and, in some cases, state tax litigation procedures. It would be very useful to vendors endeavoring to satisfy their multi-jurisdictional tax collection responsibilities for these various procedures to be made uniform, to the greatest extent possible, from state to state. Again, we recognize that in most cases procedural differences reflect reasonable historical or policy developments in the particular states, and we also recognize that standardizing audit or litigation procedures among the states involves much more difficult questions than, for example, standardizing forms and filing dates. We believe, however, that a thorough analysis of the extent to which procedural burdens can be alleviated is necessary, and that reasonable concessions can and should be made to the expansion of multi-jurisdictional tax collection responsibilities by standardizing various state tax procedures.

In summary, we believe that any legislation along the lines of the bill should address in a reasonable and cost-effective manner the many ambiguities and complexities that will be involved in applying the various state sales tax laws to the targeted sales.

III. TECHNICAL COMMENTARY

The text of the bill is ambiguous and technically inadequate in many essential respects. The questions raised by the bill in its current form would undoubtedly lead to considerable uncertainty, controversy and litigation. We therefore urge most strongly that technical revisions be made to the text of the bill, as discussed below.

The principal operative section of the bill is section 3(a)[**] which states:

"A State is authorized to require a person who is subject to the personal jurisdiction of the State to collect and remit a State sales tax, a local sales tax, or both, with respect to tangible personal property, if -

(1) the destination of the tangible personal property is in the State,

(2) during the 1-year period ending on September 30 of the calendar year preceding the calendar year in which the taxable event occurs, the person has gross receipts from sales of such tangible personal property-

(A) in the United States exceeding $3,000,000, or

(B) in the State exceeding $100,000, and

(3)... [see discussion of local tax below]."

[**] Hereinafter all references to "section" are to sections of the bill.

1. Objective.

The affirmative nature of the initial authorizing language in section 3(a) appears unnecessarily broad if the intention is merely to eliminate the implication drawn in National Bellas Hess, supra, from prior Congressional silence. If the bill is intended to affect federal limits on state sales taxes other than the nexus required under existing dormant Commerce Clause jurisprudence (e.g., to waive the federal government's immunity from state sales taxes), those objectives should be clearly disclosed and considered. To limit the bill's effect to what we believe is its intended scope, we recommend section 3(a) be modified to commence: “The Commerce Clause of Article I §8 of the Constitution of the United States shall not be construed to prohibit a state from requiring a person...”. The suggested modification would also be more compatible than the present language in the bill with recognition of states' sovereignty.

2. Persons required to collect sales tax.

A. Nothing in section 3(a) or elsewhere in the bill specifies that the person required to collect tax must be, or must in any way be related to the seller in the transaction with respect to which the tax is imposed; the bill simply tests whether the person has the requisite level, specified in section 3(a)(2), of gross receipts from sales of such tangible personal property. This may cause confusion, in part because the condition in section 3(a)(2) may be satisfied, pursuant to subdivision (A) thereof, solely by the aggregate volume of gross receipts in the United States (i.e., no sales to customers in the particular state are required), and in part because of the provisions

included in section 9(3) and 3(a)(2), discussed below. If the bill is not intended to authorize the imposition of sales tax collection responsibility on anyone other than the seller of the taxed item, then the first reference in section 3(a) to “tangible personal property” should be modified to read “such person's sales (other than for resale) of tangible personal property”.

B. Section 3(a) limits its impact to “a person who is subject to the personal jurisdiction of the state.” This language should, we believe, preserve without change the limitations of the due process jurisprudence discussed in part III of the opinion in Quill. To avoid any implication that the bill is an attempt to effect changes to the Due Process threshold of nexus to tax, the Congressional findings should include a statement that the minimum standards of contact prescribed under the Due Process clause continue to be a prerequisite to the imposition of state taxes.

C. Section 9, subdivision (3) defines the term “person” to mean:

> “an individual, a trust, estate, partnership, society, association, company (including a limited liability company) or corporation, whether or not acting in a fiduciary or representative capacity, and any combination of the foregoing”. (Emphasis added.)

If retained, the reference to “any combination” in the definition of “person” requires some limitation. For example, does this language mean that an individual with no sales to the state can be “combined” with a trust of which the individual is a beneficiary and which does satisfy the requirements of section 3(a), such that the individual is made liable for collection of the tax the trust is required to collect under the bill? Absent clarification, there will be uncertainty as to joint and several

liabilities which could be asserted, based on combination, against a potential borrower, lessee, acquisition target, candidate for partnership, etc. These uncertainties are not justified. Persons who are at risk of being held responsible for the collection of sales taxes should be given clear and specific notice of that responsibility. Accordingly, the concept of "combination," must either be eliminated or clarified, as must the effects of combination.

D. Section 3(c) states:

> "Aggregation rules - All persons that would be treated as a single employer under section 52(A) or (B) of the Internal Revenue Code of 1986 shall be treated as one person for purposes of subsection (a)."

It seems likely that the aggregation rules of section 3(c) were intended to apply only for purposes of determining whether the requisite levels of gross receipts specified in section 3(a)(2)(A) and (B) were met; that should be clarified. In any event, we do not believe it is appropriate under this bill to use concepts of aggregation or relatedness to attempt to establish nexus for purposes of sales tax collection responsibility, which is a jurisdictional concept, based solely on the relationship of one entity to another.

3. Threshold.

A prerequisite in section 3(a)(2) for requiring a person to collect the tax is that:

> "during the 1-year period ending on September 30 of the calendar year proceeding the calendar year in which the taxable event occurs, the person has gross receipts from sales of such tangible personal property -

(A) in the United States exceeding $3,000,000, or

(B) in the State exceeding $100,000."

A. We assume that the first word in (A) and (B) i.e., "in") refers not to the place of acceptance of an order or passage of title but to the concept of destination in section 3(d) discussed below. If this assumption is correct the language should be modified accordingly.

B. A critical question on which it is easy to foresee substantial litigation is reflected by the use of the word "such" in section 3(a)(2). That word is redundant if "any tangible personal property" is intended. Yet the bill gives no clue as to what else the word might refer, or how narrowly to construe the category of property the sale of which counts in measuring the thresholds in section 3(a)(2)(A) and (B). Do sales for resale count? Are casual sales of non-inventory items (e.g., depreciable furniture and equipment used in the seller's trade or business) to be counted? Is any concept of fungibility, line of business, brand, comparable method of distribution, etc. to be applied in measuring the person's sales? Or does "such" merely mean "any," in which case the word should be deleted.

C. Some de minimis rule is clearly desirable to preclude the imposition of legal requirements that are impractical to comply with and impractical to enforce. Nevertheless, the de minimis rule in the bill suffers from the inevitable infirmities of any bright-lines test, as well as certain other defects.

Clause (A)'s establishment of a de minimis amount of United States sales, albeit in the alternative, is rational in the case of a domestic branch of a multinational entity. However, the rationale of the distinction between two United States companies each with $5,000,000 of sales with one selling exclusively in the domestic market and the other exporting the majority of its goods is questionable.

Clause (B)'s $100,000 de minimis amount does not take into account the number or regularity of sales. Consider, for example, a jewelry store or art gallery with a wide price range of merchandise. Should a single sale of one expensive item suffice to require a full year's sales tax compliance?

We also are concerned that the bill has no minimum level of sales in the state below which no tax is required to be collected. Under the bill, if the $3,000,000 U.S. threshold is met then even one sale (or ten $10.00 sales) into a state can give rise to the obligation fully to comply with that state's sales tax law. This seems unnecessarily strict.

4. Transactions on which tax is to be collected.

A. Although the “Findings” in section 2 indicate that “out-of-State firms” are the target of the bill, nothing in the bill limits its impact to interstate sales. This could create some confusion. For example, are the thresholds prescribed in the bill to apply to small in-state vendors?

B. Pursuant to Section 3(a), the duty to collect is imposed “with respect to tangible personal property if -

(1) the destination of the tangible personal property is in the State”.

The limitation in section 3(a) to “tangible personal property” appears prudent inasmuch as state sales taxes on services are an expanding field in which highly controversial issues of the appropriate scope of jurisdiction are encountered. However, the bill does not define “tangible personal property” for these purposes. Subdivision (4)(A) of section 9 of the bill could be read to provide that the definition of “tangible personal property” is determined under state law, in which case a vendor of the same type of item could be taxed differently in different states depending on the states' definition of “tangible personal property.” This does not seem a prudent course. We instead recommend that the bill adopt its own definition of “tangible personal property,” and we repeat our concern that this definition be uniformly applied on a nationwide basis.

We note that a federal definition of “tangible personal property” may be inconsistent with particular states' definitions of that terms. Differences between the federal and state interpretations will, in turn, lead to differences in sales tax treatment between in-state and out- of-state vendors of the same item, a situation the bill is intended to eliminate. On balance, however, it seems preferable for Congress to define more precisely the area in which it is exercising its Commerce Clause authority to permit taxation of out-of-state vendors, rather than leave the interpretation of such a basic and important element of the bill wholly to the individual states.

We also note that the definition of tangible personal property is a subject which has engendered substantial controversy and litigation, for example, in the context of

technological know how, computer software, customer lists and film negatives. See, e.g., Navistar International Transportation Corp. v. State Board of Equalization. 35 Cal. Rptr. 2d 651 (Sup. Ct. 1994). Both for purposes of determining the threshold level of gross receipts under section 3(a)(2) and for measuring the tax to be collected, it is very important to note that rules will be required for so-called “mixed transactions” (in which sales of tangible property are integrated with services or intangibles).

C. Section 3(d) provides:

> “For purposes of subsection (a), the destination of tangible personal property is the State or local jurisdiction which is the final location to which the seller ships or delivers the property, or to which the seller causes the property to be shipped or delivered regardless of the means of shipment or delivery or the location of the buyer.”

Consider the increasingly common situation in which the retailer, perhaps a mail-order business, never takes physical possession of the goods but accepts orders and directs their fulfillment from its supplier's inventory (i.e., drop shipments). Clearly the retailer has caused shipment or delivery but the supplier is also making a sale, albeit for resale to the retailer, and is shipping or delivering the property. Is it intended that both be liable to collect the tax on the sale to the recipient of the merchandise? Does the supplier need to obtain a resale certificate from the retailer for every jurisdiction to which the supplier ships? What other actions might constitute a sale “in” the state for these purposes? Consider, for example, shopping expeditions where transportation to another state's stores is provided.

Difficulties may arise in the rental area, particularly of mobile property such as cars and trailers. Is the “final

location” of a rental the place where the property is initially rented? Or will designation of a return location be the “final location”? Is it appropriate to distinguish between, for example, daily rentals of mobile consumer goods and long-term leases of commercial property (such as aircraft)?

The phrase “or local jurisdiction” in section 3(d) raises questions, as subsection (a) uses the word destination only as “in a State”. Presumably vendors who elect to collect and remit nonuniform local sales taxes need to know the local destination of a sale, but the statutory construction in section 3(a) and section 4(b) is not well coordinated.

D. As stated in point 2 above, nothing in the bill restricts its application to the seller in a transaction subject to tax. Indeed, with the exception of the reference to “seller” in the definition of “destination” and the definition of “sales tax”, nothing in the bill specifically states that its application is limited to transactions involving transfers of title or possession for a consideration. Given the intended scope of the legislation this basic point should be clearly stated.

5. Requirements authorized.

Section 5(a) limits the frequency of returns:

> In general - A State may not require any person subject to this [Act] -
>
> (1) to file a return reporting the amount of any tax collected or required to be collected under this [Act], or to remit the receipts of such tax more frequently than once with

respect to sales in a calendar quarter, or (2)... “

A. Prepayment of estimated collections and/or security deposit or bonding requirements are not expressly prohibited but probably should be unless a fairly high threshold volume of sales to the particular state is required.

B. As previously noted, the bill does not limit itself to interstate sales and has broad attribution rules. Section 5(a)(1), unless modified to apply only to persons required to collect and remit tax solely by reason of this legislation, could be construed as prohibiting monthly or more frequent deposit requirements presently in effect in some states.

C. Section 7 provides:

“(a) Persons required to collect State or local sales tax. - Any person required by section [3] to collect a State or local sales tax shall be subject to the laws of such State relating to such sales tax to the extent that such laws are consistent with the limitations contained in this act.

(b) Limitations. Except as provided in subsection (a), nothing in this [act] shall be construed to permit a State -

(1) to license or regulate any person,

(2) to require any person to qualify to transact intrastate business, or

(3) to subject any person to State taxes not related to the sales of tangible personnel [sic] property.

(c) Preemption. Except as otherwise provided in this Act, this Act shall not be construed to preempt or limit any power exercised or to be exercised by a State or local jurisdiction under the law of such State or local jurisdiction or under any other Federal law." (Emphasis added).

1. The circularity in the underscored phrases should be eliminated.

2. Laws relating to sales and use taxes typically provide for recordkeeping including exemption certificates, production of books and records and presumptions of taxability. These are often more burdensome and onerous than the actual collection and remittance of tax. Does subjecting to state law only persons "required by section 3 to collect a state or local sales tax" protect other persons from such burdens? See L.L. Bean, Inc. v. Commonwealth, 516 A.2d 820 (Pa. Comwth. Ct. 1986). That might constitute a narrowing of the in personam jurisdiction currently sanctioned by the Due Process clause, and would not, we believe, be appropriate. Furthermore, how are state tax administrators to determine whether a person, or group of persons subject to the aggregation rules, had gross receipts from sales in the State exceeding $100,000?

D. Section 6 provides:

"Any State which exercises any authority under this [act] shall allow to all persons subject to this [act] all exemptions or other

> exceptions to State and local sales taxes which are allowed to persons located within the State or local jurisdiction."

If intended to preserve summarily prohibition of the entire gamut of practices heretofore held to constitute discrimination against interstate commerce prohibited by the Commerce Clause, section 6 is inadequate. Given that in enacting the bill Congress would be lifting Commerce Clause restraints on the tax treatment of out-of-state vendors, it seems prudent to articulate with greater specificity the extent to which Commerce Clause constraints other than those cited in Quill continue to apply to state taxation of out- of-state vendors. This section also raises problems of over-inclusiveness. For example, does this section 6 prohibit limited exemptions based on geographically delineated incentive zones within a state (other than border areas permitted in section 4(a)(2))?

6. Local tax.

The last condition in section 3(a) to its applicability is that:

> "(3) the State, on behalf of its local jurisdictions, collects and administers all local sales taxes imposed pursuant to this [act]."

Furthermore, section 3(b) provides:

> "States must collect local sales taxes. - ... a State in which both State and local sales taxes are imposed may not require State sales taxes to be collected and remitted under subsection (a) unless the State also requires the local sales taxes to be collected and remitted under subsection (a)."

These provisions either require that a state seeking the advantage of the bill as to any sellers must collect and administer all local sales taxes imposed on all sellers anywhere

within its borders, or (as seems intended) require a bifurcated system of collection and administration, leaving to local authorities responsibility for taxes to the extent the expanded jurisdiction provided by the bill is not utilized in collection. The former approach could lead to significant intrastate political controversy; the latter possibility could lead to inconsistencies in state and local interpretations and practice and, by perpetuation of nexus issues apart from the effect of the bill, create highly undesirable uncertainties for both taxpayers and tax administrators.

The foregoing technical commentary reflects interpretative issues we have encountered in these early stages of analyzing the bill. It is certain that other difficult issues will arise as states and vendors consider the technical aspects of applying and complying with the bill. This underscores the importance of careful draftsmanship, and the need for a nationwide interpretative forum.

FULL TEXT OF BILLS

104TH CONGRESS; 1ST SESSION
IN THE SENATE OF THE UNITED STATES
AS INTRODUCED IN THE SENATE

S. 545

1995 S. 545; 104 S. 545

SYNOPSIS:

A BILL

To authorize collection of certain State and local taxes with respect to the sale, delivery, and use of tangible personal property.

DATE OF INTRODUCTION: MARCH 13, 1995
DATE OF VERSION: MARCH 14, 1995 -- VERSION: 1

SPONSOR(S):

Mr. BUMPERS (for himself and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on Finance

TEXT:

* Be it enacted by the Senate and House of Representatives of the United*
* States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Consumer and Main Street Protection Act of 1995”.

SEC. 2. FINDINGS.

The Congress finds that-

(1) merchandise purchased from out-of-State firms is subject to State and local sales taxes in the same manner as merchandise purchased from in-State firms,

(2) State and local governments generally are unable to compel out-of-State firms to collect and remit such taxes, and consequently, many out-of-State firms choose not to collect State and local taxes on merchandise delivered across State lines,

(3) moreover, many out-of-State firms fail to inform their customers that such taxes exist, with sane firms even falsely claim that merchandise purchased out-of-State is tax-free, and consequently, many consumers unknowingly incur tax liabilities, including interest and penalty charges,

(4) Congress has a duty to protect consumers from explicit or implicit misrepresentations of State and local sales tax obligations,

(5) small businesses, which are compelled to collect State and local sales taxes, are subject to unfair competition when out-of-State firms cannot be

compelled to collect and remit such taxes on their sales to residents of the State,

(6) State and local governments provide a number of resources to out-of-State firms including government services relating to disposal of tons of catalogs, mail delivery, communications, and bank and court systems,

(7) the inability of State and local governments to require out-of-State firms to collect and remit sales taxes deprives State and local governments of needed revenue and forces such State and local governments to raise taxes on taxpayers, including consumers and small businesses, in such State,

(8) the Supreme Court ruled in Quill Corporation v. North Dakota, 112 S. Ct. 1904 (1992) that the due process clause of the Constitution does not prohibit a State government from imposing personal jurisdiction and tax obligations on out-of-State firms that purposefully solicit sales from residents therein, and that the Congress has the power to authorize State governments to require out-of-State firms to collect State and local sales taxes, and

(9) as a matter of federalism, the Federal Government has a duty to assist State and local governments in collecting sales taxes on sales from out-of-State firms.

SEC. 3. AUTHORITY FOR COLLECTION OF SALES TAX.

(a) IN GENERAL.-A STATE IS AUTHORIZED TO REQUIRE A PERSON WHO IS SUBJECT TO THE PERSONAL JURISDICTION OF THE STATE TO

COLLECT AND REMIT A STATE SALES TAX, A LOCAL SALES TAX, OR BOTH, WITH RESPECT TO TANGIBLE PERSONAL PROPERTY IF-

(1) THE DESTINATION OF THE TANGIBLE PERSONAL PROPERTY IS IN THE STATE,

(2) DURING THE 1-YEAR PERIOD ENDING ON SEPTEMBER 30 OF THE CALENDAR YEAR PRECEDING THE CALENDAR YEAR IN WHICH THE TAXABLE EVENT OCCURS, THE PERSON HAS GROSS RECEIPTS FROM SALES OF SUCH TANGIBLE PERSONAL PROPERTY-

(A) IN THE UNITED STATES EXCEEDING $3,000,000, OR

(B) IN THE STATE EXCEEDING $100,000, AND

(3) THE STATE, ON BEHALF OF ITS LOCAL JURISDICTIONS, COLLECTS AND ADMINISTERS ALL LOCAL SALES TAXES IMPOSED PURSUANT TO THIS ACT.

(B) STATES MUST COLLECT LOCAL SALES TAXES.- EXCEPT AS PROVIDED IN SECTION 4(D), A STATE IN WHICH BOTH STATE AND LOCAL SALES TAXES ARE IMPOSED MAY NOT REQUIRE STATE SALES TAXES TO BE COLLECTED AND REMITTED UNDER SUBSECTION (A) UNLESS THE STATE ALSO REQUIRES THE LOCAL SALES TAXES TO BE COLLECTED AND REMITTED UNDER SUBSECTION (A).

(C) AGGREGATION RULES.-ALL PERSONS THAT WOULD BE TREATED AS A SINGLE EMPLOYER UNDER SECTION 52 (A) OR (B) OF THE INTERNAL REVENUE CODE OF 1986 SHALL BE TREATED AS ONE PERSON FOR PURPOSES OF SUBSECTION (A).

(d) DESTINATION.-FOR PURPOSES OF SUBSECTION (A), THE DESTINATION OF TANGIBLE PERSONAL PROPERTY IS THE STATE OR LOCAL

JURISDICTION WHICH IS THE FINAL LOCATION TO WHICH THE SELLER SHIPS OR DELIVERS THE PROPERTY, OR TO WHICH THE SELLER CAUSES THE PROPERTY TO BE SHIPPED OR DELIVERED, REGARDLESS OF THE MEANS OF SHIPMENT OR DELIVERY OR THE LOCATION OF THE BUYER.

SEC. 4. TREATMENT OF LOCAL SALES TAXES.

(a) UNIFORM LOCAL SALES TAXES.-

(1) IN GENERAL.-SALES TAXES IMPOSED BY LOCAL JURISDICTIONS OF A STATE SHALL BE DEEMED TO BE UNIFORM FOR PURPOSES OF THIS ACT AND SHALL BE COLLECTED UNDER THIS ACT IN THE SAME MANNER AS STATE SALES TAXES IF-

(A) SUCH LOCAL SALES TAXES ARE IMPOSED AT THE SAME RATE AND ON IDENTICAL TRANSACTIONS IN ALL GEOGRAPHIC AREAS IN THE STATE, AND

(B) SUCH LOCAL SALES TAXES IMPOSED ON SALES BY OUT-OF-STATE PERSONS ARE COLLECTED AND ADMINISTERED BY THE STATE.

(2) APPLICATION TO BORDER JURISDICTION TAX RATES.-A STATE SHALL NOT BE TREATED AS FAILING TO MEET THE REQUIREMENTS OF PARAGRAPH (1) (A) IF, WITH RESPECT TO A LOCAL JURISDICTION WHICH BORDERS ON ANOTHER STATE, SUCH STATE OR LOCAL JURISDICTION-

(A) EITHER REDUCES OR INCREASES THE LOCAL SALES TAX IN ORDER TO ACHIEVE A RATE OF TAX EQUAL TO THAT IMPOSED BY THE BORDERING STATE ON IDENTICAL TRANSACTIONS, OR

(B) EXEMPTS FROM THE TAX TRANSACTIONS WHICH ARE EXEMPT FROM TAX IN THE BORDERING STATE.

(B) NONUNIFORM LOCAL SALES TAXES.-

(1) IN GENERAL.-EXCEPT AS PROVIDED IN SUBSECTION (D), NONUNIFORM LOCAL SALES TAXES REQUIRED TO BE COLLECTED PURSUANT TO THIS ACT SHALL BE COLLECTED UNDER ONE OF THE OPTIONS PROVIDED UNDER PARAGRAPH (2).

(2) ELECTION.-FOR PURPOSES OF PARAGRAPH (1), ANY PERSON REQUIRED UNDER AUTHORITY OF THIS ACT TO COLLECT NONUNIFORM LOCAL SALES TAXES SHALL ELECT TO COLLECT EITHER-

(A) ALL NONUNIFORM LOCAL SALES TAXES APPLICABLE TO TRANSACTIONS IN THE STATE, OR

(B) A FEE (AT THE RATE DETERMINED UNDER PARAGRAPH (3)) WHICH SHALL BE IN LIEU OF THE NONUNIFORM LOCAL SALES TAXES DESCRIBED IN SUBPARAGRAPH (A).

SUCH ELECTION SHALL REQUIRE THE PERSON TO USE THE METHOD ELECTED FOR ALL TRANSACTIONS IN THE STATE WHILE THE ELECTION IS IN EFFECT.

(3) RATE OF IN-LIEU FEE.-FOR PURPOSES OF PARAGRAPH (2)(B), THE RATE OF THE IN-LIEU FEE FOR ANY CALENDAR YEAR SHALL BE AN AMOUNT EQUAL TO THE PRODUCT OF-

(A) THE AMOUNT DETERMINED BY DIVIDING TOTAL NONUNIFORM LOCAL SALES TAX REVENUES COLLECTED IN THE STATE FOR THE MOST RECENTLY COMPLETED STATE FISCAL YEAR

FOR WHICH DATA IS AVAILABLE BY TOTAL STATE SALES TAX REVENUES FOR THE SAME YEAR, AND

(B) THE STATE SALES TAX RATE.

SUCH AMOUNT SHALL BE ROUNDED TO THE NEAREST 0.25 PERCENT.

(4) NONUNIFORM LOCAL SALES TAXES.-FOR PURPOSES OF THIS ACT, NONUNIFORM LOCAL SALES TAXES ARE LOCAL SALES TAXES WHICH DO NOT MEET THE REQUIREMENTS OF SUBSECTION (A).

(C) DISTRIBUTION OF LOCAL SALES TAXES.-

(1) IN GENERAL.-EXCEPT AS PROVIDED IN SUBSECTION (D), A STATE SHALL DISTRIBUTE TO LOCAL JURISDICTIONS A PORTION OF THE AMOUNTS COLLECTED PURSUANT TO THIS ACT DETERMINED ON THE BASIS OF-

(A) IN THE CASE OF UNIFORM LOCAL SALES TAXES, THE PROPORTION WHICH EACH LOCAL JURISDICTION RECEIVES OF UNIFORM LOCAL SALES TAXES NOT COLLECTED PURSUANT TO THIS ACT,

(B) IN THE CASE OF IN-LIEU FEES DESCRIBED IN SUBSECTION (B) (2)(B), THE PROPORTION WHICH EACH LOCAL JURISDICTION'S NONUNIFORM LOCAL SALES TAX RECEIPTS BEARS TO THE TOTAL NONUNIFORM LOCAL SALES TAX RECEIPTS IN THE STATE, AND

(C) IN THE CASE OF ANY NONUNIFORM LOCAL SALES TAX COLLECTED PURSUANT TO THIS ACT, THE GEOGRAPHICAL LOCATION OF THE TRANSACTION ON WHICH THE TAX WAS IMPOSED.

THE AMOUNTS DETERMINED UNDER SUBPARAGRAPHS (A) AND (B) SHALL BE CALCULATED ON THE BASIS OF DATA FOR THE MOST RECENTLY COMPLETED STATE FISCAL YEAR FOR WHICH THE DATA IS AVAILABLE.

(2) TIMING.-AMOUNTS DESCRIBED IN PARAGRAPH (1) (B) OR (C) SHALL BE DISTRIBUTED BY A STATE TO ITS LOCAL JURISDICTIONS IN ACCORDANCE WITH STATE TIMETABLES FOR DISTRIBUTING LOCAL SALES TAXES, BUT NOT LESS FREQUENTLY THAN EVERY CALENDAR QUARTER. AMOUNTS DESCRIBED IN PARAGRAPH (1) (A) SHALL BE DISTRIBUTED BY A STATE AS PROVIDED UNDER STATE LAW.

(3) TRANSITION RULE.-If, upon the effective date of this Act, a State has a State law in effect providing a method for distributing local sales taxes other than the method under this subsection, then this subsection shall not apply to that State until the 91st day following the adjournment sine die of that State's next regular legislative session which convenes after the effective date of this Act (or such earlier date as State law may provide). Local sales taxes collected pursuant to this Act prior to the application of this subsection shall be distributed as provided by State law.

(d) EXCEPTION WHERE STATE BOARD COLLECTS TAXES.-NOTWITHSTANDING SECTION 3(B) AND SUBSECTIONS (B) AND (C) OF THIS SECTION, IF A STATE HAD IN EFFECT ON JANUARY 1, 1995, A STATE LAW WHICH PROVIDES THAT LOCAL SALES TAXES ARE COLLECTED AND REMITTED BY A BOARD OF ELECTED STATES OFFICERS, THEN FOR ANY PERIOD DURING WHICH SUCH LAW CONTINUES IN EFFECT-

(1) THE STATE MAY REQUIRE THE COLLECTION AND REMITTANCE UNDER THIS ACT OF ONLY THE STATE SALES TAXES AND THE UNIFORM PORTION OF LOCAL SALES TAXES, AND

(2) THE STATE MAY DISTRIBUTE ANY LOCAL SALES TAXES COLLECTED PURSUANT TO THIS ACT IN ACCORDANCE WITH STATE LAW.

SEC. 5. RETURN AND REMITTANCE REQUIREMENTS.

(a) IN GENERAL.-A STATE MAY NOT REQUIRE ANY PERSON SUBJECT TO THIS ACT-

(1) TO FILE A RETURN REPORTING THE AMOUNT OF ANY TAX COLLECTED OR REQUIRED TO BE COLLECTED UNDER THIS ACT, OR TO REMIT THE RECEIPTS OF SUCH TAX, MORE FREQUENTLY THAN ONCE WITH RESPECT TO SALES IN A CALENDAR QUARTER, OR

(2) TO FILE THE INITIAL SUCH RETURN, OR TO MAKE THE INITIAL SUCH REMITTANCE, BEFORE THE 90TH DAY AFTER THE PERSON'S FIRST TAXABLE TRANSACTION UNDER THIS ACT.

(B) LOCAL TAXES.-THE PROVISIONS OF SUBSECTION (A) SHALL ALSO APPLY TO ANY PERSON REQUIRED BY A STATE ACTING UNDER AUTHORITY OF THIS ACT TO COLLECT A LOCAL SALES TAX OR IN-LIEU FEE.

SEC. 6. NONDISCRIMINATION AND EXEMPTIONS.

Any State which exercises any authority granted under this Act shall allow to all persons subject to this Act all exemptions or other exceptions to State and local sales taxes which are allowed to persons Located within the State or local jurisdiction.

SEC. 7. APPLICATION OF STATE LAW.

(a) PERSONS REQUIRED TO COLLECT STATE OR LOCAL SALES TAX.-ANY PERSON REQUIRED BY SECTION 3 TO COLLECT A STATE OR LOCAL SALES TAX SHALL BE SUBJECT TO THE LAWS OF SUCH STATE RELATING TO SUCH SALES TAX TO THE EXTENT THAT SUCH LAWS ARE CONSISTENT WITH THE LIMITATIONS CONTAINED IN THIS ACT.

(B) LIMITATIONS.-EXCEPT AS PROVIDED IN SUBSECTION (A), NOTHING IN THIS ACT SHALL BE CONSTRUED TO PERMIT A STATE-

(1) TO LICENSE OR REGULATE ANY PERSON,

(2) TO REQUIRE ANY PERSON TO QUALIFY TO TRANSACT INTRASTATE BUSINESS, OR

(3) TO SUBJECT ANY PERSON TO STATE TAXES NOT RELATED TO THE SALES OF TANGIBLE PERSONNEL PROPERTY.

(C) PREEMPTION.-EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, THIS ACT SHALL NOT BE CONSTRUED TO PREEMPT OR LIMIT ANY POWER EXERCISED OR TO BE EXERCISED BY A STATE OR LOCAL JURISDICTION UNDER THE LAW OF SUCH STATE OR LOCAL JURISDICTION OR UNDER ANY OTHER FEDERAL LAW.

SEC. 8. TOLL-FREE INFORMATION SERVICE.

A State shall not have power under this Act to require any person to collect a State or local sales tax on any sale unless, at the time of such sale, such State has a toll-free telephone service available to provide such person information relating to collection of such State or local sales tax. Such information shall include, at a minimum, all applicable tax rates, return and remittance addresses and deadlines, and penalty and interest

information. As part of the service, the State shall also provide all necessary forms and instructions at no cost to any person using the service. The State shall prominently display the toll-free telephone number on all correspondence with any person using the service. This service may be provided jointly with other States.

SEC. 9. DEFINITIONS.

For the purposes of this Act-

(1) the term “compensating use tax” means a tax imposed on or incident to the use, storage, consumption, distribution, or other use within a State or local jurisdiction or other area of a State, of tangible personal property;

(2) the term “local sales tax” means a sales tax imposed in a local jurisdiction or area of a State and includes, but is not limited to-

(A) a sales tax or in-lieu fee imposed in a local jurisdiction or area of a State by the State on behalf of such jurisdiction or area, and

(B) a sales tax imposed by a local jurisdiction or other State-authorized entity pursuant to the authority of State law, local law, or both;

(3) the term “person” means an individual, a trust, estate, partnership, society, association, company (including a limited liability company) or corporation,

whether or not acting in a fiduciary or representative capacity, and any combination of the foregoing;

(4) the term “sales tax” means a tax, including a compensating use tax, that is-

(A) imposed on or incident to the sale, purchase, storage, consumption, distribution, or other use of tangible personal property as may be defined or specified under the laws imposing such tax, and

(B) measured by the amount of the sales price, cost, charge or other value of or for such property; and

(5) the term “State” means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

SEC. 10. EFFECTIVE DATE.

This Act shall take effect 180 days after the date of the enactment of this Act. In no event shall this Act apply to any sale occurring before such effective date.

LOAD-DATE-MDC: March 16, 1995