



DESK OF STEPHEN H. MYERS

SPECIAL POINTS OF INTEREST

- **The Streamlined Sales Tax Project**
- **The Marketplace Fairness Act (S 1832)**



Business

The Streamlined Sales Tax Project ("SSTP") is a nationwide effort initiated by Congress to bring uniformity among States as to the collection of sales and/or use tax for transactions over the internet. The question considering internet "sales" is not whether these transactions will be taxed, but how this can be accomplished in fifty different States without interfering with the rights of purchasers, vendors, and other States that have differing interests, and motives.

Yet, in the aftermath, multiple attempts have been made to address the many concerns of the individual states. This has brought the states no closer to fully proposing or implementing any type of legislation to address internet trade. The end goal, as stated by Senator Mike Enzi, is to "level the playing field for all in-store, catalog and on-line retailers so each has the same sales tax responsibilities."

What is known is that the major impediment to the implementation of a comprehensive bill is the difference between states as to their interpretation of the definition of "tangible personal property." As stated earlier, Constitutional Limitations further compound the problem of instituting a comprehensive solution. It should be noted that the Federal Due Process Clause in the United States Constitution mandates certain requirements concerning trade. Specifically, this Federal mandated requires that there be:

- A "minimum connection" between the taxing state and any out-of-state taxpayer. In other words, are the connections between the taxing State and the Taxpayer sufficient to justify the exercise of the State's taxing power over that individual;*

Moreover, the "Commerce Clause" in the United State Constitution requires a substantial "Nexus" between the taxing state and the out-of-state taxpayer. In addition, the tax must be fairly apportioned, and relate to the services provided by the state, and not interfere with Interstate Commerce. In other words, any attempt to tax certain interstate transactions must not facially discriminate, and must not burden Interstate or Foreign Commerce. A tax passed by a State must not reflect discriminatory intent.

The various states had reacted differently in trying to protect their interests in collecting tax from internet retail sales. It needs to be understood that sales tax is only applicable to sales involving "tangible personal property." The definition of "tangible personal property" differs between states and, as such, there is no uniformity due to individual states statutes or jurisprudential decisions. For instance, "tangible personal property" is that property that can be seen, weighed, measured, felt, touched or in any other manner perceptible by the senses. The definition of "tangible personal property" differs between the various States. This is where the irresolvable conflicts developed between the states. In order to alleviate these conflicts, multiple separate plans have been devised, but none have been accepted. As such, a uniform approach is unlikely at the present time.



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What You Don't See As A Taxpayer!

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A great deal of uniformity must be found to end up with a manageable National Sales Tax System that effectively resolves the many different State Sales Tax Systems, and the conflicting State laws and Court decisions that are currently exist.

Louisiana

Louisiana has not joined other states, and has elected to impose a "use" tax on out-of-state retailers. Considering Louisiana's dependence on sales and use taxes, this precludes it at the present time from complying with initiatives to bring about a uniform national sales tax system. Louisiana has a bifurcated system with States and local taxing jurisdictions each acting independently. It also has higher sales and use tax rates. The above, coupled with local Louisiana jurisdictions having a great dependence on sales and use taxes, would suggest that this State is unlikely to meet the mandates of any initiative to bring about any acceptable National Sales Tax System.

Even among Federal representatives, proposed legislation includes the Marketplace Equity Act (HR 3179), The Main Street Fairness Act (S 1454), and the Wireless Tax Fairness Act of 2011. All attempts to simplify, or bring uniformity, to internet sales has resulted in distinctly different approaches. All of the States that seek simplicity and uniformity have found ways to protect their tax base, and sales tax revenue. If Louisiana is to join in efforts to build a National Sales tax system States and Local sales and use authorities must unify, with all collections going to Baton Rouge. There is little chance of Louisiana becoming a part of a National Tax System because of internet Interstate or Foreign transactions. Considering Louisiana's great dependence on sales and use tax, there is a low probability that this State's sales and use tax system will evolve to a level of sophistication that will permit Louisiana to integrate into a unified National Sales Tax System.

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PROTECT YOURSELF AS A TAXPAYER!

Businesses, big and small, need to organize their business records in a certain manner to protect itself from burdensome, expensive and intrusive audits that State or parish taxing authorities can initiate at any time. Depending on the volume of business transactions, preventative measures can preclude tens of thousands of dollars in sales and use tax being imposed. If business records are properly maintained, any audit initiated by a taxing authority will be less costly and short-lived. If business records are not organized in a certain manner, the Taxpayer has a monstrous burden to locate, collect and prove that thousands of transaction are not taxable; or excluded or exempted from tax. This is especially true since most audits involve transactions that occurred more than three years after the fact. This three year gap can, and usually results in missing records, missing or invalid invoices, exemption certificates, bills of lading and other documentation which will result in the taxation of such transactions. It is the Taxpayer's responsibility to prove the taxing authority wrong. Being ill prepared is not acceptable and can result in a great deal of expense unless the Taxpayer protects himself upfront. Be aware that the Taxpayer is ill advised to just pay whatever amount of tax the State or Parish auditor claims is owed. If the Taxpayer takes this course of action, expect a new audit for other tax years since the taxing authority will consider your business as "costly pickings." The cost of protecting your business now is much less costly and disruptive than to ignore the situation in the hopes that the inevitable will not occur. Prior to finding yourself in this position, call me today and schedule a meeting to get you on the right path. This is the best way to protect yourself as a Taxpayer!

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