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A SIMPLE AND UNIFORM STATE SALES TAX SYSTEM MUST BE DEVELOPED

Presently, interstate commerce and the economy are burdened by multiple, confusing and inconsistent state tax rules. Therefore, development of a simple and uniform system is critical for the continued development of the borderless marketplace enabled by electronic commerce.

One of the chief reasons the Supreme Court prohibited states from requiring out of state vendors with no physical presence in their state to collect and remit use taxes from in-state customers was because to do so would impose intolerable tax administration burdens on localized businesses participating in interstate commerce. Specifically, the Supreme Court found that the “many variations in rates of tax, in allowable exemptions, and in administrative and record keeping requirements could entangle . . . Interstate business in a virtual welter of complicated obligations to local jurisdictions with no legitimate claim to impose "a fair share of the cost of the local government.”” National Bellas Hess v. Dept. of Revenue, 363 U.S. 753 (1967); Quill, Corp.. v. North Dakota, 504 U.S. 298 (1992).

Vendors, including those using the Internet, located in a single state that ship their goods to customers in other states must collect sales taxes from their customers located in their home state. Those vendors have no protection from administrative burdens imposed by the state in which they reside.

The states should simplify and unify their sales and use tax systems so that requiring vendors physically located in a single state to collect and remit taxes for multiple states would not increase their administrative burden beyond what they already shoulder. Business then would work with the states to establish a reasonable mechanism for collecting these taxes on behalf of the states. Such a system also would reduce the compliance burden for those vendors currently under an obligation to collect and remit taxes for many states.

Some of the specific criteria that would define a meaningful, simplified system include the following:

- A centralized, one-stop, multi-state registration system for sellers.

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- Uniform definitions for goods or services that could be included in the tax base.
- Uniform and simple rules for attributing transactions to particular taxing jurisdictions.
- Uniform rules for the designation and identification of purchasers and transactions exempt from sales and use taxes, including a database of all exempt entities and a rule ensuring that reliance on such a database shall immunize sellers from liability.
- Uniform procedures for the certification of software that sellers may rely on to determine state and local sales and use tax rates and taxability and reliance on such software shall immunize sellers from liability.
- Uniform bad debt rules.
- Uniform tax returns, remittance forms, and filing and remittance dates.
- Uniform electronic filing and remittance methods.
- State administration of all sales and use taxes in such state.
- Uniform audit procedures, including a provision giving a seller the option to be subject to no more than a single audit per year using those procedures; provided that if the seller does not comply with the procedures to elect a single audit, any state can conduct an audit using those procedures; however, if elected, the single audit binds other states.
- Reasonable compensation for tax collection by sellers.
- Exemption from use tax collection requirements for remote sellers falling below a specified de minimis threshold of less than \$5,000,000 in prior year gross annual sales, or less than \$100,000 in any state during that prior year. This exemption would not, however, operate to exempt a seller with less than \$5,000,000 in prior year gross annual sales for any obligation to collect and remit sales or use taxes imposed by the state in which that seller is located.
- Appropriate protections for consumer privacy.
- A single, uniform statewide sales and use tax rate on all transactions on which a sales or use tax is imposed.

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- For those states that impose a sales or use tax on digital products, an origin state default rule for transactions where the location of the customer is not disclosed during the transaction and that permits the seller to rely upon information given by the customer during the transaction.
- Appropriate bright-line nexus standards for business activity tax nexus purposes that limit business activity tax nexus to sellers that lease or own substantial tangible property in or have a number of employees or actual agents in the taxing jurisdiction for more than 30 days during the taxable year.
- Uniform dates, not to exceed two (2) in any calendar year, on which changes to sales and use tax rates may become effective, and a requirement that a state give at least 120 days notice before any change in its sales or use tax rate becomes effective.
- An effective enforcement mechanism that allows the United States Court of Federal Claims to resolve conflicts that arise with regard to interpretation of similar sales and use tax provisions of the different states.

Simplification has always been a critical and essential component of this debate. The Internet Tax Freedom Act of 1998, which imposed the moratorium, also created the Advisory Commission on Electronic Commerce. Legislation that passed the House by a vote of 352-75 in the 106th Congress (HR 3709) would have extended the moratorium and also laid out specific simplification criteria for the states. Congress should build on this history and adopt a moratorium extension with a purpose: to encourage states to enact meaningful sales tax simplification that does not pose an undue burden on businesses.

Congress should not consider exercising its power under the Commerce Clause to grant states the authority to impose tax collection responsibilities on out-of state businesses unless and until the states have demonstrated that they have enacted clear, simple and uniform rules. Only when the states have taken all the necessary steps to simplify and unify their sales and use tax systems (including appropriate uniform, bright line standards for business activity tax nexus), and Congress has considered the views of the business community on those steps, should Congress consider expanding the duty of remote vendors to collect and remit sales or use taxes.

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