

Subj: Level Playing Field: Perspectives of Americans For Tax Reform
From: Grover Norquist, 202-785-0266
Americans For Tax Reform (ATR)
To: Internet Caucus Advisory Committee

The following is Commissioner Grover Norquist's Personal Statement in the Report of the Advisory Commission on Electronic Commerce

The Internet is giving ordinary people access to extraordinary information and opportunities. Some people say it is changing everything. One thing it has not changed, however, is the irresistible urge by many in government to regulate and tax.

Throughout this Commission's work, we have witnessed the extraordinary lengths to which some in the political class will go to justify using the Internet as a means to impose new tax burdens on the American people. While most Americans rightly see the Internet as a fantastic new phenomenon that can improve the national economy and a family's economy at the same time, those who would tax it see it as a threat, dangerously outside the control of government.

Ultimately, a majority of the Commission chose to reject the alarmist claims and empty rhetoric of state and local politicians whose appetite for more taxes surpasses even the record budget surpluses most governments enjoy today. This Commission has embraced an approach that slashes taxes on consumers, encourages reform of the incomprehensible myriad known as the sales and use tax system, and help bridge the "digital divide."

In addition, the Commission has directly and forcefully rejected attempts by those who would tax the Internet to link simplification of sales and use taxes to guaranteed new powers to impose tax burdens on individuals and businesses outside of a government's jurisdiction. The Commission wisely recognized that simplification is good for its own sake, and need not be traded like some political football for a policy that would increase the tax burden on American consumers.

FALSE CLAIMS OF "FAIRNESS"

Politics makes for strange bedfellows, and this Commission proved to be no exception. In an attempt to divert attention from their real goal of raising taxes, the politicians who support a risky new tax collection scheme for cyberspace enlisted the support of a handful of "traditional" retailers, playing on their fears that the cyber-economy will leave them behind.

While some of these groups speak of "fairness," they advocate nothing of the sort. A clothing store in Arlington, Virginia need collect and remit taxes for only a single jurisdiction, and follow a single tax rate for a single table of taxable goods. Yet the advocates of "fairness" believe a clothing store operating in cyberspace should be responsible for collecting sales taxes for 6,600 different jurisdictions, each with their own tax rates, tables, audits, and reporting requirements.

The Commission ultimately recognized that these calls for "fairness" were actually an effort to squelch the online economy by forcing every e-vendor to become the tax collector for 6,600 different agencies. Rather than a prescription for "fairness," such a system would turn the Internet's global nature into a liability for anyone engaging in e-commerce. Rather than seize the opportunities presented by the Internet, these groups would rather destroy their online competitors and go back to business as usual. This option was rejected, and the Commission was correct for doing so.

Subj: Economic Impact on States: Perspectives of International Mass Retail Association (“IMRA”)
From: IMRA, 703-841-1184
To: Internet Caucus Advisory Committee

IMRA SUPPORTS A LEVEL PLAYING FIELD FOR SALES TAX COLLECTION

The International Mass Retail Association (“IMRA”) believes that all retailers—including traditional brick-and-mortar retailers and Internet or other remote sellers—should be on a level playing field for sales tax collection.

Deciding whether remote sellers should be required to collect the taxes rests with the Congress, under the U.S. Constitution’s Commerce Clause. The Supreme Court’s 1992 decision in *Quill Corporation v. North Dakota* held that the Constitution prevents states from requiring sales/use tax collection by out-of-state sellers without a physical connection to the state, but that Congress has the power to require such out-of-state sellers to collect the taxes.

Brick-and-mortar retailers are now at a competitive disadvantage because, unlike many of their Internet and other remote selling counterparts, they must collect sales taxes on most in-store sales. Furthermore, customers who do not have access to the Internet—often lower income individuals, who can least afford the burden of taxes—must pay sales taxes, while Internet shoppers in most cases do not.

Because most remote sellers do not have to collect sales taxes, traditional brick-and-mortar retailers and their consumers in effect subsidize Internet and other remote retailers and their consumers. This is simply unfair.

IMRA believes that a more reasonable approach would be to treat all retail sellers of goods in the same way.

To achieve a level playing field, IMRA believes that extensive simplification and other reforms are necessary to reduce the burden of collecting sales taxes. To offset collection costs, IMRA suggests that sellers be allowed to keep a percentage of the taxes collected. Finally, IMRA believes it is essential that a level playing field for sales tax collection does not change the rules on taxing sellers’ income.

Subj: Level Playing Field: Perspectives of IPI: Center for Technology Freedom
From: Bartlett Cleland <bcleland@ipi.org, (972) 874-5139>
Institute for Policy Innovation
To: Internet Caucus Advisory Committee

Strawmen, Non-Problems And Real Problems That Solve Themselves

Utah Governor Michael Leavitt, speaking on behalf of the National Governors Association (NGA) at the National Press Club on November 16, 1999, acknowledged that uncollected sales and use taxes from Internet sales pose no fiscal problem currently. The Governors' concern is that as e-commerce expands, uncollected taxes will also increase and pose a revenue problem for state and local governments. This concern is misplaced, as it arises from a static view of the relationship between a growing economy and government revenues. This static framework leads the state-and-local lobby to erroneously focus narrowly on the static "revenue loss" that supposedly occurs because states are constitutionally prohibited from forcing online companies outside their borders to collect sales and use taxes on remote e-commerce transactions. Ronald Reagan confronted the same kind of static mentality in cutting tax rates in the early 1980s.

Focusing exclusively on so-called "lost" sales tax revenues from remote sales when evaluating the Internet's impact on state treasuries is misleading. First, there is no evidence that the Internet has given rise to a zero-sum game between e-commerce and local-merchant purchases, and there is every reason to anticipate a positive-sum relationship. For example, the advent of the VCR did not mean that people stopped going to the cinema to view movies. People still value, and are willing to pay a fair amount to enjoy, the "theater experience." The overall movie industry today has never been stronger.

There is every reason to believe that if policy makers do not undermine economic growth with ill-conceived policies, the retail-sales industry will continue to evolve, adapt and thrive in this changing environment.

Governor Leavitt himself, ironically, offered a profound insight that undermines the pessimism espoused by his own organization. "In the century ahead, 'e-tailing' will not simply replace brick-and-mortar retailing. The two will converge in a new world of 'clicks and mortar.'" How right he is when he predicts that, "The successful retailer of the future will have a retail presence, a catalogue presence and an Internet presence." Where he goes astray, however, is in failing to see the implications of his own insight. He says, "convergence [between e-tailing and brick-and-mortar retailing] **demand**s a level playing field as its first principle." But, convergence doesn't demand a level playing field *a priori*, and by implication with government policy to do the leveling. **The convergence itself will create the level playing field without government having to lift a finger** every retail-presence/storefront-locations that Governor Leavitt foresees will create nexus and solve the problem about which the NGA and her sister "public interest groups" are currently wringing their hands.

At least one established major bookseller with retail stores nationwide has attempted to sever nexus by establishing a completely separate online business operation, which not only sells an identical inventory as the bricks-and-mortar stores but also allows e-commerce customers to use local stores for the return and exchange of merchandise purchased over the Internet. When this type of arrangement is inevitably challenged, the courts are likely to pierce any 'corporate veil' of efforts by companies selling the same merchandise online and over the counter. To organize e-commerce operations into 'separate' legal entities to break the nexus for sales tax purposes will not stand—they will have to collect the sales and use tax.¹⁹ As long ago as 1941, the Supreme Court ruled that Sears could not avoid Iowa taxation on its mail-order service when it had such a substantial physical retail presence in the state.²⁰

Listen to Governor Leavitt's own prediction: "Amazon.com recently established six distribution centers throughout the country. This gives Amazon nexus to those seven states—the physical connection that triggers the obligation under the laws of those states and their municipalities [*sic* — what he really means is "under the Commerce Clause rulings of the Supreme Court"] to collect sales tax. **It means even Amazon.com will be subject to an Industrial Age sales tax system.** If, as the Governor predicts, "savvy consumers expect to be able to integrate the Web with in-store shopping," which is quite likely, the problem of uncollected sales and use taxes solves itself.

Governor Leavitt constructs two straw men to create the impression of serious problems where none actually exist. In the first case he describes a single brick-and-mortar store with a cash register, a catalog mail order terminal and an Internet terminal allowing customers using both the catalog and Internet forms of ordering to avoid the sales or use tax while the customer one aisle over paying at the cash register must pony up the tax.

"Would this be fair?" he asks, not bothering to mention that not only would it not be fair it would most likely be illegal. Absent other factors, the very existence of the store front and the physical presence of the computer terminals in it should be sufficient to establish 'nexus' obligating the business to collect tax on purchases made from the store's catalog and terminals.

The second over-stated problem relates to what Governor Leavitt describes as a "campaign to prohibit state and local governments from creating tax systems in their own communities." The only effort that approaches this description consists of a single bill introduced by Senator John McCain and Rep. John Kasich, which would have the federal government preempt states from even collecting sales or use tax on Internet sales *within* the state. The state-and-local-government lobby misleads the public by taking an isolated instance of a bad idea (the McCain/Kasich bill), which is separate and distinct from the Internet tax moratorium currently in effect, and associate it in the minds of the public with the moratorium as a "campaign" to deprive states and localities of the sovereign right to tax. The irony is doubly rich when one considers the extraordinary extent to which Governor Leavitt's own NGA scheme erodes states' tax sovereignty.

Once all the strawmen, non-problems and real problems that will correct themselves are swept aside, a dynamic view of the Internet economy reveals a much more optimistic outlook for state revenues in the upcoming Cyber Century than the state-and-local lobby would have us believe. Ernst & Young has produced an estimate of sales and use taxes not collected in 1998 as a result of the increase in remote sales from the Internet: \$170 million. That is only one-tenth of one percent of total state and local sales and use tax collections. Anyway, eighty percent of transactions conducted online are business-to-business sales, which are either non-taxable or paid directly by in-state business purchasers, and most of the business-to-consumer transactions are non-taxable securities and information services, or airline tickets for which applicable taxes are in fact collected.

Furthermore, states are not as dependent on sales tax revenues as their lobbyists would have the world believe. While salivating over all the sales tax revenue "lost" to remote sales, state and local officials tend to overlook the fact that more aggressive efforts to coerce and/or entice companies to collect these taxes will set in motion reactions by consumers and online firms that will thwart the collection efforts.

Sixty percent of state revenue and 75 percent of state and local revenue combined comes from non-sales taxes, such as income and property taxes. A static estimate used by NGA puts the revenue "loss" from uncollected sales taxes at \$10 billion in 2003. A more realistic study, which takes consumers' behavioral responses into account, estimates that the volume of sales over the Internet would decline 30 percent if sales taxes were collected on all remote Internet sales as consumers purchased less (anywhere from one-third to three-fourths less according to the empirical research). This study places the revenue "loss" from uncollected sales and use taxes at \$2.6 billion in 2002.²¹

The reduction in overall GDP from more aggressive efforts to collect sales and use taxes on remote Internet sales would result from more than just reduced retail sales. A reduction would come about as the entire information technology industry contracted in reaction to the gloomier outlook for e-commerce. Right now, e-commerce is the tip of the Internet economy iceberg: only about 35 percent of all revenues in the Internet economy came from e-commerce in 1999. The remaining 65 percent came from the infrastructure, applications and intermediary companies that build and maintain the hard and soft framework and backbone of cyberspace. In the first quarter of 1999, the Internet infrastructure, application and intermediary companies generated \$80 billion in revenue compared to \$37.5 billion in e-commerce.

Economist Austan Goolsbee's research illustrates the fallacy of static framework employed by the state-and-local-government lobby. He found that if more aggressive efforts to collect these taxes on remote Internet sales reduced economic growth by no more than one-third of one percentage point, the dynamic revenue lost from other sources would offset any additional sales tax revenue likely to be collected. This does not include the additional collateral damage done to the Internet.²²

[Editor's Note: Footnotes unavailable. Please see <http://www.ipi.org> for more information]

Subj: Economic Impact on States: Perspectives of David Bullington, Vice President of Taxes, Wal-Mart and the International Mass Retail Association (“IMRA”)
From: Wal-Mart, IMRA, 703-841-1184
To: Internet Caucus Advisory Committee

WAL-MART AND IMRA SUPPORT A LEVEL PLAYING FIELD FOR SALES TAX COLLECTION

The Impact of the Proposals on Retailers

With great interest and significant financial stake in both Internet sales and our existing store operations, Wal-Mart and the other member companies of the International Mass Retail Association (IMRA) have eagerly looked forward to these discussions. We hope the time has arrived for all the stakeholders affected by the deliberations here to work together to achieve a solution that is economically sound and is fair and equitable for all.

IMRA is an alliance of retailers and their product and service suppliers that is committed to bringing price-competitive value to the world's consumers. IMRA represents over 200 retail companies, which operate more than 133,000 stores worldwide and have sales of over \$450 billion annually. IMRA represents over 600 supplier companies with sales totaling over \$600 billion per year. Together, IMRA's membership represents over \$1 trillion in sales and employs millions of workers.

IMRA and Wal-Mart are among the founding members of the e-Fairness Coalition—a coalition that advocates fairness for businesses and consumers, and which supports a level playing field that ensures that consumers are treated fairly no matter where they choose to shop.

We believe the fundamental issue to be resolved is the appropriate tax policy to be applied to the collection of the sales and use tax on interstate sales of tangible products. This is not a new issue; it is decades old. It was not created by this wonderful new medium of electronic commerce, but it must be resolved fairly so that we can then address the tax issues that are unique to the Internet. Reasonable minds can conceive appropriate tax treatments for digitized products, entertainment downloads and other services.

Wal-Mart has been described as a “click and mortar” retailer. Wal-Mart currently collects the sales tax on all its Internet sales, based upon delivery destination. Admittedly, this is difficult and not all its determinations regarding jurisdictional lines and item taxability are perfect. It is also an expensive process, and one that is a major burden for any mid-sized retailer. It may be an impossible requirement for small or mom-and-pop web sites. ***Major simplification and greater uniformity need to be achieved by all of the 46 states that currently impose a sales tax.***

The “Tax-Free” Internet Proposals

Proposals to make the Internet a “sales tax-free zone” are attractive, but have potentially devastating economic, tax and social consequences. These proposals would shift so much commerce to the Internet that they would, in effect, dramatically impair state sales and use tax collections. Equally dramatic increases in state property and income taxes would likely follow to offset lost revenues. Also, providing special treatment—what amounts to a government subsidy paid by all other sellers—to one sector of the economy, to the detriment of other competing sectors does not make for rational economic or tax policy.

The reality is that, given the current stalemate, we are currently in a “no-tax” environment when it comes to the sales tax on remote sales of tangible products. Consumers have the option of paying sales tax, depending upon how and with whom the order is placed. Similarly, companies selling on the Internet have the option to collect or not collect sales taxes—regardless of whether they have brick-and-mortar stores in multiple states.

Lawyers, accountants and web consultants have advised many companies that they can sell products without collecting sales tax by establishing a separate “dot.com” subsidiary, as long as they preserve the separateness of the entity. Some even advise that they can contract for the inadvertent handling of returned Internet purchases to a physical store.

These experts cannot, however, advise a company about the number of states in which it should plan to litigate the issue. Wal-Mart and other large retailers are, however, pretty adept at tax litigation. Perhaps such litigation

would provide the certainty we all seek on the *Quill* question of whether the burden is too great in today's high-tech environment. ***Sound tax policy requires a system with certainty for all of us.***

The tax-free Internet proposals raise additional questions. Can Wal-Mart provide its customers with Internet access within the store to take advantage of the tax-free zone? Some proposals say no. Why should the physical location of the computer make a difference? Will lower-income consumers have the opportunity to pay a cashier for an Internet order when they have neither a home computer nor a credit card? ***Sound economic and social policy requires a tax system that does not unfairly favor one form of distribution over another, and does not favor one group of taxpayers over another.***

Simplification Proposals

The simplification proposals generally call for states to fix the existing system. We agree that a major overhaul of state systems is required. We believe, however, that the states need help and direction in this process. Significant hurdles include the fundamental state sovereignty issues and the difficulty of moving 46 states in the same direction over a relatively short period of time.

Several proposals call for meaningful collection allowances to be provided to the retailer to offset the burden of collection and encourage the merchant to collect voluntarily. So as not to disrupt existing collections, such allowances could be limited to sales of tangible products being delivered in interstate commerce.

Going a step further, we recommend that the collection allowance percentage be structured to reward states that move to a single statewide rate and adopt uniform provisions on tax base, exemptions and product definitions. States that do nothing on simplification and have the most burdensome systems should have to pay a higher collection allowance.

In the five states that allow local administration, collection and audit of the local jurisdiction's tax, state and local governments should be encouraged to simplify. If it were not for these states, national retailers could file returns and make remittances to only 46 locations. ***Meaningful simplification combined with incentive-based collection allowances are needed.***

With the right direction from the Commission, we believe that states will take the necessary legislative steps. The Commission should recommend to Congress a federally legislated, incentive-based collection allowance. That same legislation should establish the threshold of uniformity and simplification at which remote sellers can be compelled to collect.

Technology Proposals

The proposals that rely on technology are meaningful steps toward a common ground and may very well serve as interim, even ongoing, solutions. Surely, the technology-savvy companies that drive the Internet have the ability to help create workable solutions in this area. Still, uniformity and simplification are needed for the technology to succeed. ***Technology solutions should be encouraged as part of encouraging significant and rapid movement toward simpler systems with greater consistency across state lines.***

Wal-Mart and IMRA support a level playing field for businesses and consumers. We support a level playing field that ensures consumers are treated fairly no matter where they choose to shop. We are opposed to new and discriminatory taxes on the Internet itself. We are simply talking about the fairest, most efficient way to collect existing taxes—sale and use taxes on sales of tangible personal property.

Testimony of David Bullington
Vice President of Taxes
Wal-Mart Stores, Inc.
Before the Advisory Commission on Electronic Commerce
December 15, 1999