

Recent SSTP Meetings

- The **Streamlined Sales Tax Implementing States** met in Chicago on November 16, 2004.
- A **Streamlined Sales Tax Project** meeting followed on November 17-18, 2004.
- I attended both meetings.

Background

- The **Streamlined Sales Tax Project**, referred to as the **SSTP** or the **Project**, was **organized in March of 2000**.
- The **Project's goal** is to substantially reduce the burden of tax collection through simplification of sales and use tax laws, implementation of more efficient administrative procedures and the use of emerging technologies.

Why Streamline?

- **Complexity:** Taxpayers are frustrated by the cost of reporting to over 7,500 taxing jurisdictions in the U.S.
- **Inequity:** Main-street retailers worry that remote sellers have an unfair tax advantage (due to Court decisions regarding nexus).
- **Lost Revenue:** Taxing authorities fear that they are missing out on billions of dollars in tax revenues.

Why Streamline?

State and Local Revenue Losses from E-Commerce in 2011 (in millions)



SSTP Terminology

- The **Participating States** (shown in orange on the map on slide one) are the 42 states (and the District of Columbia) that support the mission of the Project and that have committed to participate in the Project.
- **Observer States** (shown in white on the map on slide one) monitor the status of the Project, may send representatives to Project meetings and may participate in Project discussions but can not vote at Project meetings.

SSTP Terminology

- The **Implementing States**, a subset of the Participating States, are the 40 Participating States that have enacted legislation authorizing them to enter into the Agreement.
- The **Implementing States** have the authority to amend the Agreement prior to the time that it goes into effect.

SSTP Terminology

- The **Conforming States**, a subset of the Implementing States, are the 19 states that have enacted legislation that brings them into some degree of compliance with the Agreement.
- The states that are found in substantial compliance with the Agreement will become the **Governing Board** if and when the Agreement becomes effective.

SSTP Terminology

- The **Governing Board** will be responsible for the interpretation of, and any amendments to, the Agreement.
- The **Streamlined Sales Tax Agreement**, or simply “**the Agreement**,” is the governing document that specifies the uniform definitions and taxable transactions from which state legislatures may select -- menu style.

Aspirations for the Agreement

- **Uniform definitions.** State legislatures will still choose what is taxable or exempt in their state. However, participating states will agree to use the common definitions for key items in the tax base and will not deviate from these definitions. As states move from their current definitions to the Project's definitions, a certain amount of impact on state revenues is inevitable. However, it is the intent of the Project to provide states with the ability to closely mirror their existing tax bases through the use of common definitions.

Aspirations for the Agreement

- **Rate simplification.** States will be allowed one primary state rate and a second state rate for specified items (e.g., food and drugs). Each local jurisdiction will be allowed one local rate. A state or local government may not choose to tax telecommunications services, for example, at one rate and all other items of tangible personal property or services at another rate.

Aspirations for the Agreement

- **Rate simplification (cont'd).** State and local governments will accept responsibility for notice of rate and boundary changes and will only be able to make such changes at specified times. States will provide an on-line rate and jurisdiction databases to simplify rate determinations.

Aspirations for the Agreement

- **State-level tax administration of all state and local sales and use taxes.** Businesses will no longer file tax returns with each jurisdiction in which they conduct business in a state. States and local jurisdictions will use common tax bases.

Aspirations for the Agreement

- **Uniform sourcing rules.** States will have uniform and simple sourcing rules. The rules will be based on destination and uniform for most tangible personal property, digital property, and services. Special sourcing rules will be developed for unique industries.

Aspirations for the Agreement

- **Simplified exemption administration for use- and entity-based exemptions.** Sellers are relieved of the “good faith” requirements that exist in current law. Purchasers will be responsible for paying tax, interest and penalties when claiming unlawful exemptions. States will have uniform exemption certificates in paper and electronic form.

Aspirations for the Agreement

- **Uniform audit procedures.** Sellers who participate in one of the certified SSTP technology models will either not be audited or will have limited scope audits, depending on the technology model used. The states may conduct joint audits of large multistate businesses.

Aspirations for the Agreement

- **State funding of the system.** To reduce the financial burdens on sellers, states will assume responsibility for funding some of the technology models.

Technology Models

- If implemented, Vendors may operate under one of three technology models:
 - **Model 1:** Under this model, a **Certified Service Provider**, compensated by the states, will calculate, collect and remit the tax for a taxpayer.
 - **Model 2:** Under this model, a taxpayer may use a **Certified Automated System** just to perform the tax calculations.

Technology Models

- **Model 3:** Under this model, a taxpayer may use its own **proprietary software** once the software is **certified by the states**.

Status of the Project

- On November 12, 2002, thirty-four states and the District of Columbia ratified the Agreement.
- In early 2003, state legislatures began introducing legislation aimed at conforming their state sales and use tax statutes to the Agreement.

Status of the Project



Status of the Project

- As of July 1, 2004, twenty-one states have enacted legislation to bring them into full or partial conformity with the Agreement.
- The Agreement will go into effect when 10 states comprising at least 20 percent of the population of states imposing a sales tax are certified compliant with the Agreement.

Status of the Project

- Individual states' **Certificates of Compliance** will be approved once they demonstrate substantial compliance with the Agreement.
- **At the meetings in November, the Combined SSTP Work Groups continued reviewing Certificates of Compliance** that have been submitted to date.

Status of the Project

- On **November 1, 2004**, the Conforming States issued a **Request for Proposals** from those interested in becoming **Certified Service Providers**.

Status of the Project

- **Congress is considering legislation, S. 1736 and HR. 3184, that would give those states that are compliant with the Agreement the authority to require vendors to collect their sales and use taxes even if the vendors do not have nexus with those states.**

Projected Timeline

- In **December 2004**, states are expected to volunteer “sales tax experts” to review Certificates of Compliance and to test the systems of those that want to become Certified Service Providers.
- In **January 2005**, six additional states are expected to submit Certificates of Compliance and responses to the RFPs are due from those that want to become Certified Service Providers.

Projected Timeline

- **May 1, 2005** is the deadline for states to submit Certificates of Compliance if they want to be considered for admission to the initial Governing Board.
- **May 31, 2005** is the deadline for public comment on Certificates of Compliance.

Projected Timeline

- **June 24, 2005** is the deadline for the Compliance Committee to complete its review of the Certificates of Compliance submitted by the Petitioning States.
- In **July 2005** the Petitioning States will determine which states are in substantial compliance with the Agreement.

Projected Timeline

- At that time, if at least ten states representing at least 20% of the population of all states that impose a sales tax are found to be in substantial compliance with the Agreement, the Agreement will come into effect and the Governing Board will come into being on October 1, 2005.

Projected Timeline

- If the Agreement becomes effective on October 1, 2005, then the Governing Board will hold its organizational meeting at that time at which it will award contracts to service providers, approve bylaws, vote on Certificates of Compliance submitted by states that did not make the initial deadline, etc.

State of Conformity

- Fifteen of the nineteen Conforming States are expected to submit Certificates of Compliance and petition for membership in the initial Governing Board.
- Their combined population would satisfy the 20% threshold.
- However . . .

State of Conformity

- It remains to be seen whether ten states representing at least 20% of the applicable population will be in substantial compliance at the time that the initial vote is taken.
- For example, at the SSTP meetings in November 2004, it was apparent that many of the Conforming States had not conformed to the SSTP definition for medical equipment.

Current SSTP Issues

- **Drop shipments.** The Agreement may be amended to simplify the treatment of drop shipments by requiring that Member States allow suppliers to accept resale certificates from sellers regardless of whether the seller is registered with the state. Customers would be subject to use tax if the seller did not collect sales tax on taxable sales.

Current SSTP Issues

- **Administration of a centralized seller registration system.** Because of the role that it plays in multistate audits and VDAs, business groups are concerned that the MTC, which developed the system at the request of the SSTP, may be engaged to administer the system.
- **Tax base as it relates to coupons, discount cards, receipts from third parties, etc.** (e.g., manufacturers coupons versus store coupons).

Current SSTP Issues

- **Prepared food.** Many states and businesses are still uncomfortable with the definition of prepared food, which can turn on the proximity and availability of eating utensils.
- **Digital goods.** Still working on definitions and the categorization of digital goods.
- **Sales tax holidays.** An amendment to the agreement has been proposed that would permit states to allow sales tax holidays.

Current SSTP Issues

- **Telecommunications.** Still working on definitions for the taxation of telecommunications services and especially emerging technologies like VoIP.
- **Treatment of bundled transactions.** Some business interests are pushing for use of a “true object” test while states prefer a 10% *de minimis* test that they suggest would be less subjective and easier to administer.

Current SSTP Issues

- **Twelve month amnesty period** proposed for businesses that register to voluntarily pay taxes in SSTP states regardless of nexus. The Agreement would have to be amended to allow this.
- **Sourcing of services**, e.g., how should a funeral home be taxed for sales of caskets and funeral services that may be performed in multiple jurisdictions?

Current SSTP Issues

- **Exemption certificates.** Many businesses are concerned because the Agreement currently requires taxpayers to obtain exemption certificates before they submit their returns.

Impact of the Agreement

- Unless and until Congress intervenes, remote sellers and other taxpayers that do not have nexus with a state still will not be required to remit sales and use tax to such states.

Impact of the Agreement

- According to the Agreement, **voluntary registration and payment of sales taxes** by taxpayers under the Agreement **will not mean that the taxpayer has to pay** business activity taxes, such as **corporate franchise or income taxes**.

Impact of the Agreement

- Participating States that fall out of compliance with the Agreement may be sanctioned or expelled by the rest of the Participating States.
- States that are expelled may not vote on subsequent changes to the Agreement.
- Taxpayers that voluntarily collect tax for states that fall out of compliance may quit collecting tax for such states.

Observations

- Contrary to what many outsiders believe, the Agreement will affect both remote sellers and traditional retailers.
- Starting to see states adopt the same language but interpret it differently.

Observations

- Unless and until Congress intervenes to make collection of taxes by remote sellers and other taxpayers mandatory regardless of their nexus with a state, as the Court invited Congress to do in the *Quill* decision, states are not likely to realize the significant increases in tax revenues that they seek.

Observations

- **Congress may not act** due to concerns that small businesses and Internet businesses may raise.
- **Even if Congress does act, administrative expenses may far exceed many states' expectations** and could even surpass the increased revenues that the states expect to collect.

Observations

- If a state's tax matrix indicates that an item is taxable but the state's law may be construed such that the item is not taxable and the vendor collects and pays the tax, could the vendor find itself defending a **class action lawsuit?**

Observations

- Those who support the Project argue that it will:
 - Simplify sales and use tax laws
 - Alleviate burdens on interstate commerce
 - Protect state sovereignty
 - Level the playing field between remote sellers and traditional retailers
 - Benefit all retailers by reducing their administrative costs

Observations

- **The Projects opponents argue that it:**
 - Will require local taxing jurisdictions to surrender their autonomy
 - May result in lower tax collections rather than higher tax collections
 - Will burden small businesses
 - Will burden Internet retailers still in their infancy

More Information

- More information is available online at:
www.streamlinedsalestax.org
- The next SSTP meetings are in Phoenix on
January 5-7, 2005.

Questions ?

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