



NATIONAL CONFERENCE *of* STATE LEGISLATURES

*The Forum for America's Ideas*

STATEMENT OF

**SENATOR SHARON WESTON BROOME, LOUISIANA  
SENATOR DEB PETERS, SOUTH DAKOTA  
CO-CHAIRS, NCSL STEERING COMMITTEE**

ON BEHALF OF THE

**NATIONAL CONFERENCE OF STATE LEGISLATURES**

REGARDING

**“Exploring Alternative Solutions on the Internet Sales Tax Issue”**

BEFORE THE

**COMMITTEE ON JUDICIARY  
UNITED STATES HOUSE OF REPRESENTATIVES**

**MARCH 12, 2014**



COMMITTEE ON JUDICIARY  
UNITED STATES HOUSE OF REPRESENTATIVES

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Statement of

Senator, Sharon Weston Broome, Louisiana  
Senator Deb Peters, South Dakota  
Co-Chairs, NCSL Steering Committee

National Conference of State Legislatures

Chairman Goodlatte, Ranking Member Conyers, and members of the Judiciary Committee, we are pleased to submit this statement on behalf of the National Conference of State Legislatures (NCSL) and respectfully request that you submit it for the record. The National Conference of State Legislatures is the bipartisan national organization representing every state legislator from all fifty states and our nation's commonwealths, territories, possessions and the District of Columbia.

We are pleased that the Judiciary Committee is committed to exploring the issue of remote sales tax collection to determine a legislative solution that would level the playing field for all retailers and would allow states the authority to collect taxes they are already owed. We believe that your efforts, coupled with the passage of legislation by an overwhelming bipartisan Senate vote last year to allow states to require the collection of sales taxes on remote transactions, will ensure that this tax compliance issue will be fixed before the next holiday buying season. We also want to acknowledge the leadership of your colleagues, Congressman Steve Womack of Arkansas, Congresswoman Jackie Speier of California, and over 65 members of Congress in sponsoring the Marketplace Fairness Act.

Fixing the remote sales tax collection loophole is the top priority of NCSL and has been for over a decade. This loophole, developed as a result of two Supreme Court decisions, has resulted in growing losses of revenues for state and local governments and has created an unlevel playing field for our main street and community retailers. NCSL advocates for passage of e-fairness legislation because it levels the playing field for local businesses, which are the economic backbones of our communities, and protects an important revenue stream for state and local governments to provide vital services. As sales taxes **account for over a third of revenues for most states**, including over **half of tax collections for six states**, the inability to collect taxes that are legally owed constrains states' options to reform their tax code elsewhere. This includes lowering tax rates or requiring states to raise certain tax rates to fund necessary government services.



Additionally, the recent recession has had a debilitating effect on state budgets. According to NCSL's survey of state legislative fiscal officers, between FY 2008-2013, states closed a cumulative \$527.7 billion budget gap, primarily through program reductions. Raising taxes in the sluggish economy remains an unviable option for most states, so closing the sales tax compliance problem could provide states with the option of using some of the additional revenue to offset federal spending reductions.

In the absence of federal action, states have sought solutions to the remote sales tax loophole in order to protect their budgets as well as their main street retailers. Over half the states have enacted legislation to respond to the concerns raised in the Supreme Court decisions to remove the burden and cost on out of state sellers to collect and remit sales taxes, a number of states have enacted affiliate nexus or "Amazon" laws, some have increased reporting requirements on retailers, and others have tried other mechanisms to collect the taxes they are already owed. Unfortunately, state attempts alone will not solve the problem; it must be solved by Congress.

Moreover, states have also adopted policies contingent upon passage of a federal bill, including plans to use the money to lower other taxes or eliminate them altogether. States have also obligated the money to programs that were drained of funding during the Great Recession, such as infrastructure and transportation investment.

As you are aware, NCSL was instrumental in crafting the Streamlined Sales and Use Tax Agreement, which addresses the concerns of the United States Supreme Court in the *Quill v. North Dakota* Case in 1992. Today, 24 of the 45 states that levy sales taxes are members of the Agreement, which has proven that remote sales tax collection is not only possible, but that it can be done with no additional burdens being placed on remote retailers. However, we acknowledge that it is unlikely that every state will enact simplifications required by the Agreement and that an alternative method must be considered to address remote sales tax collection in every state.

As the committee considers alternative proposals, NCSL stands ready to work with you and your staffs to provide solutions that will allow states to collect taxes without inhibiting the burgeoning sector of electronic commerce. However, doing nothing will continue to jeopardize your main street sellers and the millions of Americans employed by these small businesses. Please find the attachments which detail state revenue losses from remote commerce in FY 2012 and also outline state activity in the area of remote sales tax collection.

Thank You.



*Attachment 1*  
**Combined State & Local Revenue Losses Remote Commerce – 2012<sup>1</sup>**

	<u>All Out of State Electronic Sales</u>	<u>All Out of State Sales</u>
<b>Alabama</b>	<b>170,400,000</b>	<b>347,734,399</b>
Alaska	1,500,000	3,035,981
<b>Arizona</b>	<b>369,800,000</b>	<b>708,628,254</b>
Arkansas	113,900,000	236,311,930
<b>California</b>	<b>1,904,500,000</b>	<b>4,159,667,947</b>
Colorado	172,700,000	352,563,574
Connecticut	63,800,000	152,367,405
District of Columbia	35,500,000	72,517,182
<b>Florida</b>	<b>803,800,000</b>	<b>1,483,690,010</b>
<b>Georgia</b>	<b>410,300,000</b>	<b>837,610,389</b>
Hawaii	60,000,000	122,514,495
<b>Idaho</b>	<b>46,400,000</b>	<b>103,120,482</b>
<b>Illinois</b>	<b>506,800,000</b>	<b>1,058,849,588</b>
Indiana	195,300,000	398,817,708
<b>Iowa</b>	<b>88,700,000</b>	<b>181,012,560</b>
Kansas	142,900,000	279,224,028
Kentucky	109,900,000	224,484,309
<b>Louisiana</b>	<b>395,900,000</b>	<b>808,311,357</b>
Maine	32,100,000	65,430,824
Maryland	184,100,000	375,944,240
Massachusetts	131,300,000	268,002,460
<b>Michigan</b>	<b>141,500,000</b>	<b>288,954,339</b>
Minnesota	235,300,000	455,219,250
Mississippi	134,900,000	303,286,360
<b>Missouri</b>	<b>210,700,000</b>	<b>430,191,928</b>
Nebraska	61,300,000	118,052,068
Nevada	168,900,000	344,923,618
New Jersey	202,500,000	413,390,425
New Mexico	120,500,000	245,989,786
<b>New York</b>	<b>865,500,000</b>	<b>1,766,968,251</b>
<b>North Carolina</b>	<b>213,800,000</b>	<b>436,517,492</b>
North Dakota	15,300,000	31,274,219
<b>Ohio</b>	<b>307,900,000</b>	<b>628,613,189</b>
Oklahoma	140,800,000	296,348,658
<b>Pennsylvania</b>	<b>345,900,000</b>	<b>706,241,542</b>
<b>Rhode Island</b>	<b>29,000,000</b>	<b>70,436,458</b>
<b>South Carolina</b>	<b>124,500,000</b>	<b>254,290,538</b>
South Dakota	29,800,000	60,826,849
<b>Tennessee</b>	<b>410,800,000</b>	<b>748,480,889</b>
<b>Texas</b>	<b>870,400,000</b>	<b>1,777,090,593</b>
<b>Utah</b>	<b>88,500,000</b>	<b>180,658,961</b>
Vermont	25,100,000	44,759,329
<b>Virginia</b>	<b>207,000,000</b>	<b>422,651,971</b>
<b>Washington</b>	<b>281,900,000</b>	<b>540,968,704</b>
West Virginia	50,600,000	103,284,206
<b>Wisconsin</b>	<b>142,100,000</b>	<b>289,006,114</b>
Wyoming	28,600,000	61,744,705
<b>Total</b>	<b>11,392,700,000</b>	<b>23,260,009,564</b>

<sup>1</sup> Source: Dr. Donald Bruce & Dr. William Fox, Center for Business & Economic Research University of Tennessee



## **State Activity to Collect Remote Sales**

### **Streamlined Sales Tax (SST) States**

The Streamlined Sales and Use Tax Agreement was created by the National Governor's Association (NGA) and the National Conference of State Legislatures (NCSL) in the fall of 1999 to simplify sales tax collection. Streamlined has proven that remote sales tax collection is not only possible, but can be done very efficiently, without creating an undue burden on retailers. Since 2005, streamlined states have collected over \$1 billion in taxes remitted voluntarily by retailers.

#### **The states that have joined SST are:**

Arkansas; Georgia; Indiana; Iowa; Kansas; Kentucky; Michigan; Minnesota; Nebraska; Nevada; New Jersey; North Carolina; North Dakota; Ohio; Oklahoma; South Dakota; West Virginia; Rhode Island; Utah; Vermont; Washington; Wisconsin; Wyoming.

### **Expanded Nexus/Affiliate Nexus**

In 2008, New York State passed the nation's first "affiliate nexus law," which declared that the connection between a remote vendor and an in-state entity, which performs certain work that can be attributed to the remote vendor, constitutes nexus in the state. Thus, the remote vendor would now be required to collect and remit New York sales tax.

Since 2008, other states have enacted legislation that expanded the definition of "nexus" in an effort to collect the taxes they are owed. While the laws' effectiveness vary by state, generally, states have not come close to collecting anticipated revenue. In fact, some states may have lost money after enacting "affiliate legislation" as a consequence of out-of-state vendors severing their relationships with in-state entities. In such instances, the state was still unable to collect the owed taxes and many in-state entities, which saw declining revenues due to the severance of the contract with the remote vendor, reported less income tax.

#### **States that have expanded their definition of nexus are:**

Alabama; Arkansas; California; Georgia; Illinois; Iowa; Kansas; Maine; Minnesota; Missouri; New York; North Carolina; Pennsylvania; Rhode Island; South Dakota; Vermont; West Virginia.



## Individual State Actions

In addition to joining SST and expanding the definition of “nexus,” states have also tried other mechanisms to collect remote sales taxes and have also allocated expected funding to specific areas, including tax reduction and infrastructure spending.

### Tax Reduction

#### **Arizona**

House Bill 2465 passed the House Ways and Means Committee in February and awaits consideration by the Rules Committee before being considered by the full House. It would require state tax authorities to determine how much in new sales taxes were collected in out of state sales including those made online in the first year and reduce the following year's income tax rate by the same amount.

#### **Iowa**

“I want to be transparent in my intentions regarding any additional revenues if the Marketplace Fairness legislation ultimately becomes law -- I intend to utilize any related revenue that the State would receive to enable further tax relief to Iowans, including income tax reductions.”

– Governor Branstad in a Letter to Representative Steve King

#### **Maine**

“I have pledged to lower Maine income taxes and stop wasteful government spending. One powerful tool in achieving these goals would be to have the ability to collect taxes that are already due.”

– Governor LePage in a Letter to Senators Olympia Snow and Susan Collins

#### **Missouri**

In 2013, Governor Jay Nixon vetoed legislation that would have made any revenue collected from federal remote sales tax legislation be offset with reductions to the personal income tax. The issue is again under consideration in 2014.

#### **Ohio**

In 2013, Governor Kasich signed into law a budget that would dedicate all revenues from federal e-fairness legislation to reducing their state's income tax.



## **Rhode Island**

In his state of the state address on January 15, Governor Chafee proposed to lower the corporate income tax rate from 9 percent to 6 percent contingent on whether Congress allows states to collect the sales tax on purchases made through out of state sellers including those made online.

## **Utah**

In 2013, Utah enacted Senate Bill 58, which creates a restricted account for all sales tax revenue collected from online merchants and suggests the revenue be used to cut taxes.

## **Tennessee**

Governor Bill Haslam, House Speaker Beth Harwell, and Senate Speaker Ron Ramsey, all support the Marketplace Fairness Act and have indicated that they would like to use some of the revenue generated from online sales tax collection toward reducing current state taxes.

## **Wisconsin**

In 2013, Governor Walker signed into law a budget that would dedicate all revenues from federal e-Fairness legislation to reducing their state's income tax.

## **Infrastructure Funding**

### **Maryland**

The enacted transportation bill of 2013 depends on e-fairness revenue for transportation funding. If a federal bill does not pass by January 2015, an additional gas sales tax is triggered.

### **Virginia**

The enacted budget of 2013 depends on e-fairness revenue for the transportation plan's funding. If a federal bill does not pass by January 2015, the wholesale gas tax will increase 1.7% to cover additional funding cost.

## **Reporting Requirement**

### **Colorado**

Enacted in February 2010, Colorado requires online retailers to provide a detailed purchase report, by January 31 of each year, to customers with made more than \$500 of annual Colorado purchases the previous year. Colorado also requires the remote retailers to provide a summary purchase report, with the total amount of each customer's annual Colorado purchases, to the Colorado Department of Revenue by March 31. This law is currently the subject of a legal challenge brought



by the Direct Marketing Association and others. In the meantime, the U.S. District Court has suspended enactment of the law while the legal challenge proceeds.

**Oklahoma**

Enacted in June 2010, retailers selling into Oklahoma are required to provide notice to consumers who may owe use tax on the purchase.

**South Dakota**

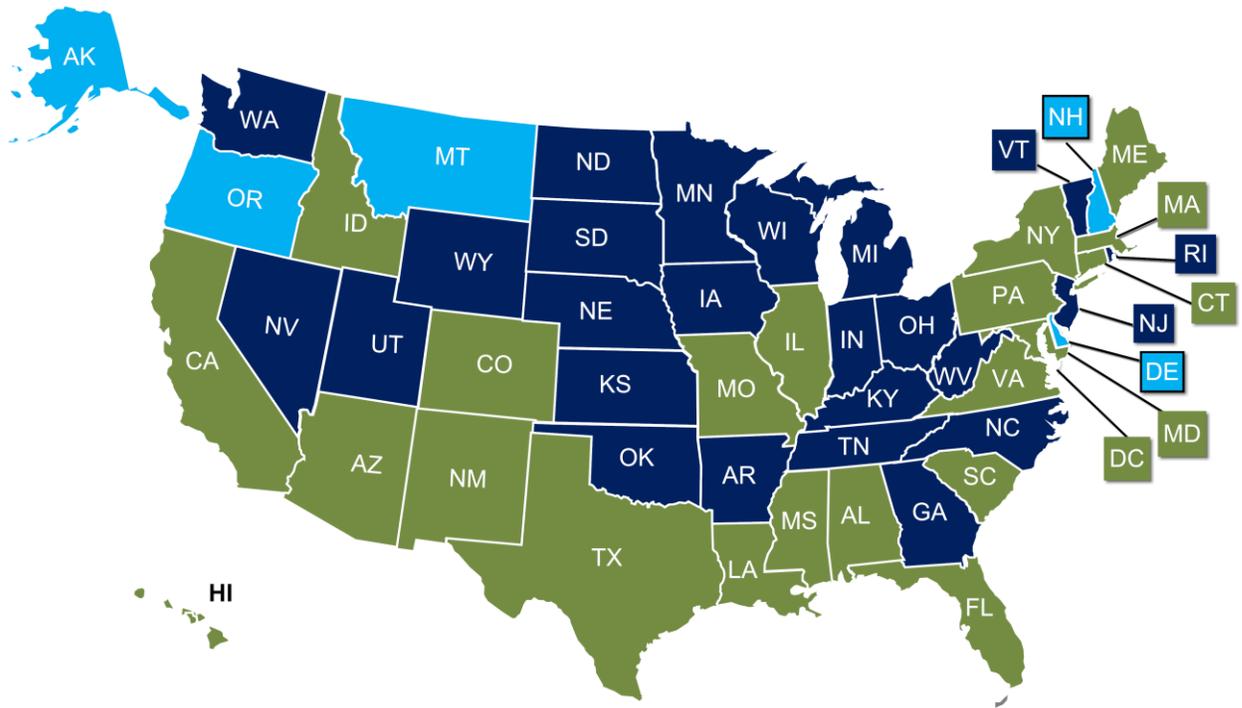
Enacted in April 2011, retailers selling into South Dakota are required to provide notice to consumers who may owe use tax on the purchase.

**Vermont**

Enacted in May 2011, retailers selling into Vermont are required to provide notice to consumers who may owe use tax on the purchase.



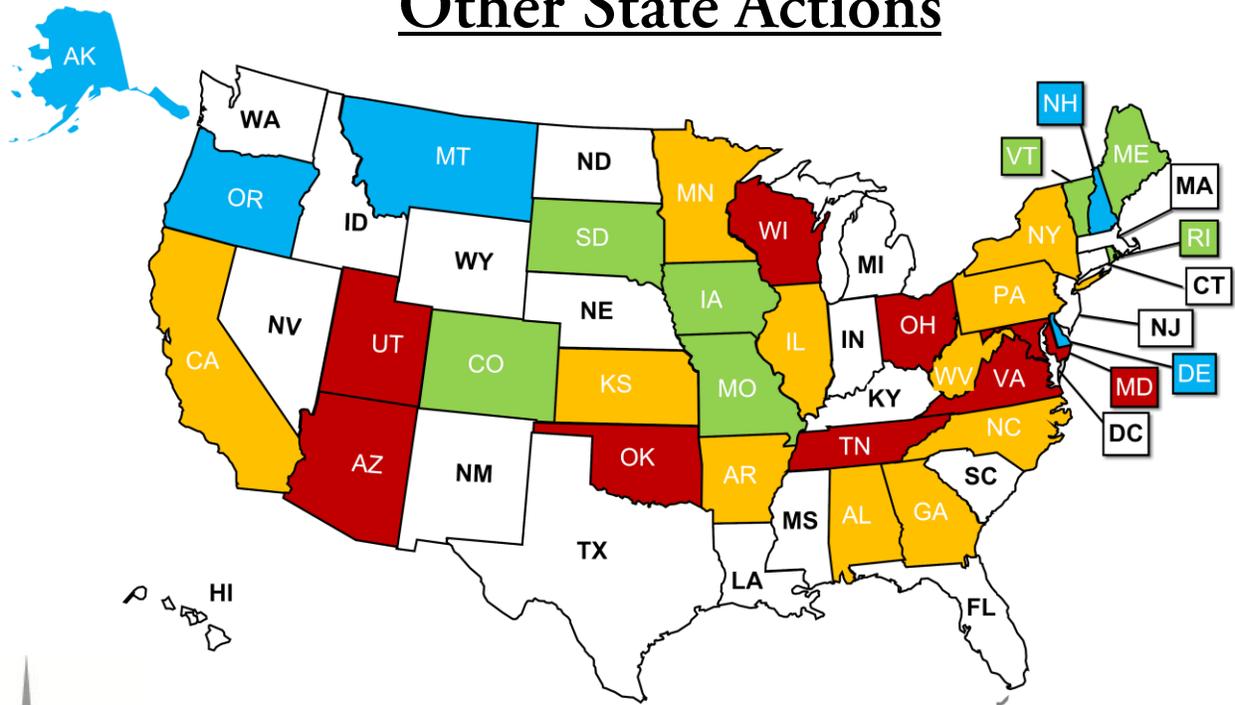
# Streamlined Sales Tax States



**LEGEND**

- States that have joined SST
- States that have not joined SST
- States with No Sales Tax

# Other State Actions



**LEGEND**

- Expanded/Affiliate Nexus
- Individual State Initiatives
- Multiple State Initiatives
- States with No Sales Tax

