NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

STATEMENT OF

SENATOR PAMELA ALTHOFF, ILLINOIS

DELEGATE SHEILA HIXSON, MARYLAND

SENATOR DEB PETERS, SOUTH DAKOTA

SENATOR CURT BRAMBLE, UTAH

NATIONAL CONFERENCE OF STATE LEGISLATURES'

EXECUTIVE COMMITTEE TASK FORCE ON STATE AND LOCAL TAXATION OF COMMUNICATIONS & ELECTRONIC COMMERCE

ON BEHALF OF THE

NATIONAL CONFERENCE OF STATE LEGISLATURES

REGARDING

"Tax Reform: What It Means for State and Local Tax and Fiscal Policy"

BEFORE THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

10:00 AM

APRIL 25, 2012

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Chairman Baucus, Ranking Member Hatch and members of the Finance 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. NCSL is the bipartisan national organization representing every state legislator from all of our nation's states, commonwealths, territories, possessions and the District of Columbia.

We are pleased to have the opportunity to inform you of the concerns state legislators have regarding state and local taxation in the new economy, specifically, the ability of state and local governments to collect the sales and use tax presently owed on transactions with out of state sellers, which ever increasingly is through electronic commerce.

NCSL Supports the Marketplace Fairness Act

We want to express our unconditional support for the Marketplace Fairness Act, S. 1832, as introduced by Senators Mike Enzi of Wyoming, Richard Durbin of Illinois, Lamar Alexander of Tennessee and 10 other of your colleagues from both parties. The Marketplace Fairness Act will provide those states that comply with the simplification requirements outlined in the legislation, the authority to require remote sellers to collect those states' sales taxes.

Let us make this very clear, state legislators are not advocating any new or discriminatory taxes on electronic commerce. We desire, however, to establish a simplified sales and use tax collection system that allows sellers, regardless of where they are located, to collect and remit the legally owed sales and use taxes.

The new economy or if you prefer, electronic commerce, is not bound by state and local borders. This makes it critical to simplify the collection of state and local taxes to ensure a level playing field for all sellers in the marketplace, enhance economic development, and avoid discrimination based upon how a sale may be transacted. Government can not allow a tax system that was designed for an economy that was established almost 80 years ago, to be the deciding factor as to where our constituents make a transaction.

State legislators and governors have been seeking the ability to collect sales taxes on out of state transactions for many years. With the growth of electronic commerce, the current financial and economic situation, and the current effort to reduce the federal deficit, the urgency to act is even more immediate.

Current State Fiscal Challenges

As you know, the recent recession has had a debilitating impact on state budgets. Because states have a constitutional or statutory requirement to adopt balanced budgets on annual or biennial basis, between FY2008-FY2012, states closed a cumulative $527.7 billion budget gap, primarily through program reductions. While some states have begun to show an increase in revenues, other states are still facing budget deficits and sluggish revenues. In FY 2012, states had to close over $72 billion in budget deficits.

With the enactment of the federal Budget Control Act and the resulting sequestration, states are preparing for additional reductions in funding for many state federal programs. Our colleagues across the country will likely have to address $400 billion - $500 billion in reductions in federal assistance for many jointly administered and funded programs but we will do so having already reduced state budgets by over $500 billion during the recession. This will mean that states have $1 trillion less for many essential programs than states had only five years ago. Sequestration holds states to the same federal mandates, maintenance of efforts requirements and obligations as if there were no reductions in federal funds. For states, it is the worst of all possible outcomes. Raising taxes in a sluggish economy is not a viable option for most states; however, closing the loophole on sales tax collection could provide states with some additional revenue without having to raise new taxes.

According to the Center for Business and Economic Research at the University of Tennessee, in 2003, the estimated combined state and local revenue loss due to remote sales was between $15.5 billion and $16.1 billion. For electronic commerce sales alone, the estimated revenue loss was between $8.2 billion and $8.5 billion. The report from the University of Tennessee further estimates that the revenue loss will grow and that this year, 2012, the revenue loss for state and local governments could be as high as $23.3 billion, of which it is estimated that $11.4 billion would be from sales over the Internet. (See Table 1)

Table 1

Combined State & Local Revenue Losses from E-Commerce and All Remote Commerce – 2012

Source: Dr. Donald Bruce & Dr. William Fox, Center for Business & Economic Research University of Tennessee

	Total All Out of State Electronic Sales	**Total All Out of State Sales**
Alabama	170,400,000	347,734,399
Alaska	1,500,000	3,035,981
Arizona	**369,800,000**	**708,628,254**

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

(States in bold have members on the Senate Finance Committee)

We believe that the Marketplace Fairness Act would allow the states to close this significant and growing loophole in our sales tax revenue and level the playing field for all sellers regardless of the medium used to conduct a transaction. S. 1832 also removes the burden from taxpayers in remitting their legally owed sales taxes on out of state sales. While the $23.3 billion in uncollected sales taxes will not match funding reductions from the federal government, it will provide states with some fiscal relief. In the words of Senator Roy Blunt of Missouri, a sponsor of this legislation, it is “fiscal relief for the states that does not cost the federal government a single dime.”

Streamlined Sales and Use Tax Agreement

Over the past twelve years, state legislators, governors and sellers worked to develop a simplified and more uniform system of administering and collecting sales taxes, the Streamlined Sales and Use Tax Agreement (Agreement) that modernizes the current 80+ year old sales tax system. Twenty-four states have enacted legislation to comply with the Agreement and as of today, 21 of those states are full member and 3 states are associate members of the streamlined sales tax system.

Full Member States

Arkansas
Georgia
Indiana
Iowa
Kansas
Kentucky
Michigan
Minnesota
Nebraska
Nevada
New Jersey

North Carolina
North Dakota
Oklahoma
Rhode Island
South Dakota
Vermont
Washington
West Virginia
Wisconsin
Wyoming

Associate Member States

Ohio
Tennessee
Utah
(States in bold have members on the Senate Finance Committee)

S. 1832 would allow the 21 full member states listed above and all other states (including the 3 associate member states) that fully comply with the Agreement the authority to require all sellers not meeting the small business exemption to begin collecting these states sales and use taxes within 90 days of the enactment of this legislation. NCSL supports this provision and urges that Congress not require the states that have complied with the Agreement to have to enact any further requirements as they have already surpassed the other simplifications requirements in the legislation for all other states.

The Marketplace Fairness Act would also allow states that do not desire to participate in the streamlined sales tax system to enact certain minimum simplifications that would grant them collection authority six months after S.1832's enactment.

We also ask the members of this Committee from the 24 states listed above to respect and honor the decision made by your state legislatures and governors to join the streamlined sales tax system. We urge you to join Senators Enzi, Durbin and Alexander as sponsors and supporters of this legislation.

Small Business Exception

State legislators are concerned about the burden of government regulations and requirements on business. It is not our desire in requiring the collection of sales taxes for out of state sales to burden our constituents cleaning out their attics or sellers from placing their items up for sale on one of the many online auction sites. Those sales are already exempt from sales taxes under existing so called “garage or yard sale” state provisions. We also value the small “mom and pop” type stores or new startup sellers that may have occasional sales across state borders and we do not want to stifle their efforts.

We support the small business exception in S. 1832, that is, no seller would be required to collect sales taxes for out of state transactions unless the seller has over $500,000 in out of state sales in a calendar year. The $500,000 level would not include sales in the state in which the seller has physical presence. We would urge caution in increasing the small business exception. Going above the $500,000 level would place many small main street merchants at a competitive disadvantage.

S. 1832 would also reduce the burden on all sellers by removing the liability for businesses collecting sales taxes, ensuring they are held harmless for calculations and collections under the information and certified technology provided by the states under the provisions of the Marketplace Fairness Act.

Myth – Requiring Out of State Sellers to Collect and Remit Is a New Tax

Some have argued that requiring out of state merchants to collect sales taxes from out of state buyers is a new tax. A study released by Jupiter Research in January 2003, *“Sales Tax Avoidance Is Imperative to Few Online Retailers and Ultimately Futile for All,”* found most people are unaware that they are not paying sales taxes when they make a purchase over the Internet. In the same study by Jupiter, only 4 percent of online buyers said that the collection of sales and use taxes would always affect their decision to buy online.

Online sellers already collect sales taxes where they have physical presence. The Marketplace Fairness Act does not require states to levy a sales tax on any product or means of buying a product. The act merely corrects a growing tax avoidance problem and removes an inherent discrimination in our current tax laws. If Congress fails to pass the Marketplace Fairness Act in this session, states still reeling from the recession and facing another $500 billion in revenue reductions may have no alternatives but to seek to put in place new or higher taxes on income, property or businesses to fund essential services like public safety, education and highways.

Other State Tax Legislation

It is our understanding that the Committee will also hear testimony on other state tax issues such as the Business Activity Tax Simplification Act, the Mobile Workforce State Income Tax Fairness Act, the Wireless Tax Fairness Act and the Digital Goods and Services Tax Fairness Act. We believe the issues raised in these bills are worthy for discussion and NCSL has been working with the various industry representatives who support these bills to craft state solutions to the concerns these pieces of legislation seek to address. Unfortunately, the solution to all of these concerns requires either a reduction of existing revenues or reassignment of funds to different states or jurisdictions. Under the states' current fiscal predicament, it is difficult for our colleagues to find solutions to these issues without having to further reduce essential services.

While these issues should be addressed in state legislatures, we can understand the desire of industry representatives to seek a federal resolution. However, as these bills will affect state revenues and in some cases actually preempt state tax statutes, we respectfully request that any decisions on these state tax bills be held until the Marketplace Fairness Act has been enacted. NCSL is prepared to work with this Committee on these other state tax issues while our Conference continues to work with industry representatives to develop state solutions. NCSL is committed to ensuring fairness for all taxpayers.

Conclusion

Enactment of the Marketplace Fairness Act is a priority for the National Conference of State Legislatures and for our colleagues across the county. We call upon the members of Congress to support the efforts of their elected state policymakers, state legislators and governors, to collect sales and use taxes on out of state transactions legally owed by their state residents. Congress, as Senator Blunt has said, can provide fiscal relief, $23 billion in 2012, without having to find one offset or take any funds from the federal Treasury. We respectfully ask that you report the Marketplace Fairness Act to the full Senate.

For additional information or questions, please contact NCSL staff, Neal Osten, neal.osten@ncsl.org – 202-624-8660 or Max Behlke, max.behlke@ncsl.org – 202-624-3586.

Thank you.