

SB 1355

EDT

JOAN WAGNON

FEBRUARY 4, 2011

Testimony on Senate Bill 1355 Conforming the State of Hawaii's Sales Tax to the Streamlined Sales and Use Tax Agreement

Madam Chair and Members of the Economic Development and Technology Committee:

I am Joan Wagnon from Topeka, Kansas. For eight years I served as Secretary of Revenue for the State of Kansas and was a delegate to the Streamlined Sales Tax Governing Board. I served as President of the Governing Board in 2007-2008 and have remained active until my retirement January, 2011. I am still involved as a volunteer for events such as today's hearing. I have attached a brief biography at the end of this testimony.

It was my privilege to meet Senator Fukunaga and several members of the SST workgroup in Seattle in 2005 where we discussed Hawaii's interest in the Streamlined Sales Tax project. At that time the Governing Board had just formed. Much has been done since that first meeting.

I am pleased to report that Georgia's entry as an Associate Member State on January 1, 2011 brings the total number of Governing Board to twenty-four. I know everyone would love to see Hawaii become the twenty-fifth. You came close in a previous legislative session – let's hope this bill captures the Governor's signature, and quickly.

Mr. Campbell's testimony effectively and succinctly deals with two of the issues – the legal prohibition against requiring out of state retailers to collect your sales tax and the technological change that has invalidated that argument. And in fact, the technology has changed so much since Kansas first implemented Streamlined Sales Tax in 2003 that SST is already revising its registration system, CSP requirements and a host of things.

So I'd like to focus on the significant changes that have occurred in the Streamlined Sales and Use Tax Agreement – SSUTA for short—and how those affect Hawaii. And, then make a few comments about what is happening in Congress to pass federal legislation to overturn Quill and Bellas Hess.

First, a little background. The rise of the Streamlined Sales Tax Project is an amazing phenomenon. Forty-four states came together to create the first Streamlined Sales Tax Agreement in 2002. Their motivation was to create a voluntary system to demonstrate to Congress and business that we can simplify sales taxes. States began to work in their legislatures to pass conforming legislation, as you are attempting to do here. The leadership exerted by the National Conferences of State Legislatures, the National Governor's Association, the Federation of Tax Administrators, and the Multistate Tax Commission was enormously helpful.

The commitment and guidance from the business community was remarkable. They have formed a Business Advisory Council that meets regularly to advise the Governing Board and regularly elect two ex officio members on the Governing Board. In my 20 plus years in government, I've never seen a coalition like this come together and work to solve problems.

The initial threshold to form the Governing Board was 10 states with 20 percent of the population. The Governing Board was formed in 2005 with 13 states and slightly more than 20 percent of the population. Today, with twenty-four states, we have 32.7% of the nation's population. Several other states are considering such legislation in this legislative season, including Florida, Missouri and Texas. Certainly, the fiscal crisis for state revenues is pushing legislators to consider SST because the uncollected amount of revenue just continues to grow.

A recent news article in the Kansas City Star just reinforced what journalists around the country have been reporting for several years: online sales reported yet another double digit increase this holiday season while bricks and mortar stores are struggling to keep their market share. The Kansas City Star article reported the 2010 Christmas season saw a 13 percent jump over 2009, tallying \$32.4 billion in online sales in barely two months. Overall retail sales rose just 5.7 percent.

(<http://www.kansascity.com/2011/01/30/v-print/2621301/states-try-to-collect-online-sales.html>)

This news story is just another example of how **retailing is changing rapidly**. So rapidly, that in fact, without the federal legislation allowing states to require remote retailers to collect the sales tax on interstate sales, whether catalog or internet, **states will experience an ever-accelerating loss** in their sales tax bases. This continued explosion in growth of online sales is at the expense of the brick and mortar stores in our hometowns. The competitive advantage of shopping without sales tax collection is huge. Most consumers don't remit the compensating use tax which their laws have imposed, so the loss to the states is quite real. And that loss is growing faster than our sales taxes grow. In Kansas, for example, our sales tax collections are flat, and the money coming in from the use tax collected under the voluntary SST program because we are a streamlined state, is quite necessary to balance our budget.

Kansas passed its legislation in 2003 and was the first state to switch from origin-based sourcing to destination-based. It was a struggle, but with lots of hand-holding, and technology we made the switch. Today, I never hear anything about SST being a burden. I do hear constant complaints about unfair competition. And, since Kansas is facing a \$500 million shortfall in this next fiscal year, many legislators are glad we have the SST money coming in now, and would really like for Congress to act to help us claim that which is owed, but not collected. I understand your legislature is facing similar shortfalls, and cannot afford to allow this kind of tax gap to continue to exist, especially when your citizens import many of the goods they buy –and often without sales tax. The attachment, “Uncollected Use tax from all remote sales in 2012” was prepared by the Governing Board to illustrate how much money states are losing.

How much money has been collected?

Our Annual Report for 2007 noted that **sellers who registered voluntarily to conduct business in their states collected \$88,958,093 in sales tax for the 2007 fiscal year**. This represents tax that was owed but would otherwise not have been collected or paid to those states. This number wasn't reported on the website in succeeding years, but has grown steadily.

Has the system been simplified? Absolutely!

These collections were made possible, in part, because the Governing Board contracted with **Certified Service Providers** such as Fed-Tax to provide services, free of charge, to remote sellers to collect and distribute these sales taxes. What could be simpler? The payments to these CSP's come from the new money that is collected. All reporting is electronic on a simplified reporting form used by all states. The development of this single form and the ability to transmit

electronically is a huge accomplishment and simplification. Some change in the SER (simplified electronic return) must occur to take into account the compensation formula which was passed at the last Governing Board meeting.

A **Rates and Boundaries data base**, provided by each member state, ensures that the monies collected go to the appropriate jurisdiction. CSP's and retailers are held harmless if they use these state tools and they inaccurately distribute the funds. In the past, concerns have been raised about the existence of software to handle this tax collection function. Technology is available to distribute the taxes, as you heard from Mr. Campbell, but what was missing was accurate information about tax rates and district boundaries. These Rates and Boundaries data bases make it possible to collect taxes at the destination of the goods and services. Hawaii will have to develop such a data base in order to participate in SST.

A **Taxability Matrix** (sample enclosed) makes it easier for businesses to know what is taxable and what is not. Businesses that use the SST matrix can rely on its accuracy, and if a state fails to update it, business is not penalized.

The Governing Board maintains a web site with a **central registration system**, making it easy for these remote retailers to register, and also provided amnesty during the first 12 months in order to encourage retailers to register. Every effort is made to balance the burden, relieve sellers of responsibility when the state doesn't function or makes an error, and to work electronically.

The Agreement, itself, has been modified regularly since it was first signed, largely to embrace issues, such as the handling of **digital products, direct mail, vendor compensation, small sellers, and telecommunications** which were not included in the original agreement. The basic simplification requirements remain unchanged; however some issues just simply needed more discussion and work to match up to the requirements in federal bills which have been proposed. It is envisioned that changes in the future will be fewer and much further between since the large number of unresolved issues has now been addressed.

Other simplification has been achieved in the form of a **single, simplified report form, electronic registration and reporting, uniform product definitions, availability of a certified service provider for collecting and reporting to the states, uniform sourcing and rounding rules, elimination of caps and thresholds, state administration, consistency between local and state tax bases**, and a host of other things, most of which are included in your legislation. I have attached the Simplification Requirements of the SSUTA to this testimony.

What's next?

There always seem to be issues that arise, or interpretations that are needed, but basically the Agreement would work the way that it is now. The previous President, Jerry Johnson of Oklahoma spent a lot of time trying to be sure that when federal legislation passes, the Governing Board and its process are ready to implement it. Telecommunications is likely to continue to be discussed, as is the alternate sourcing rule which was approved in Dallas in 2008, but hasn't been implemented yet because the 5 state threshold hasn't yet been triggered.

The Governing Board is making a huge effort this year to pass federal legislation since the changes to the Agreement which were adopted in 2010 should make that easier. They are also pursuing

adding more states to reinforce the voluntary system as well as continuing to approach large retailers to convince them to collect the tax.

I have volunteered to assist the SST Executive Committee in approaching other states that are interested in becoming member state. Getting to come to Hawaii on my first assignment is pretty cool. I think I have to go to New Jersey next – maybe not so cool given how much snow they've had in the Northeast!

Finally, with regard to federal legislation, I will be happy to answer any questions you have. We are now calling the bill the Mainstreet Fairness Act. A new draft was developed and introduced in the 2010 Congress by Rep. Delahunt who has since retired. The task at hand is to find cosponsors and lead sponsors from both political parties who will champion this on behalf of our mainstreet retailers, our states, and anyone who believes that fairness in taxation ought to be the goal.

We have met the challenges of the Court to overturn Quill. The States have created the necessary simplifications and have demonstrated that in a voluntary system. It is now up to Congress.

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About the Presenter:

Joan Wagon served as Secretary of Revenue for the State of Kansas from January, 2003 – January, 2011. During her term as Secretary she also served as President of the Streamlined Sales Tax Governing Board in 2007-08, Chair of the Multistate Tax Commission from 2005-2007 and was a member of the Federation of Tax Administrators Board of Directors from 2005 – 10. In addition to service in the Executive Branch, she also served as a state legislator for 12 years, 1983-1994, Mayor of Topeka for 4 years (1997-2001) and president of Central National Bank in Topeka. She says all these were helpful experiences in working with the Streamlined Sales Tax Governing Board since SST brings together state legislators and state tax administrators with business interests and local governments. It's quite a balancing act for the Board, but they recognize the importance of respecting the partnerships that have been created in this process and continuing to work together.

Uncollected Use tax from all remote sales in 2012

	Non-electronic B2C	Non-electronic B2B	Electronic B2B and B2C	Total
Alabama	101,657,313	75,677,086	170,400,000	347,734,399
Alaska	880,149	655,832	1,500,000	3,035,981
Arizona	220,741,594	118,086,660	369,800,000	708,628,254
Arkansas	67,947,572	54,464,358	113,900,000	236,311,930
California	1,136,801,607	1,118,366,340	1,904,500,000	4,159,667,947
Colorado	103,065,552	76,798,022	172,700,000	352,563,574
Connecticut	38,022,475	50,544,930	63,800,000	152,367,405
District of Columbia	21,211,612	15,805,570	35,500,000	72,517,182
Florida	479,769,709	200,120,301	803,800,000	1,483,690,010
Georgia	244,857,701	182,452,688	410,300,000	837,610,389
Hawaii	35,822,100	26,692,395	60,000,000	122,514,495
Idaho	27,636,706	29,083,776	46,400,000	103,120,482
Illinois	302,507,519	249,542,069	506,800,000	1,058,849,588
Indiana	116,619,861	86,897,847	195,300,000	398,817,708
Iowa	52,897,008	39,415,552	88,700,000	181,012,560
Kansas	85,286,525	51,037,503	142,900,000	279,224,028
Kentucky	65,659,182	48,925,127	109,900,000	224,484,309
Louisiana	236,320,247	176,091,110	395,900,000	808,311,357
Maine	19,099,252	14,231,572	32,100,000	65,430,824
Maryland	109,930,722	81,913,518	184,100,000	375,944,240
Massachusetts	78,333,340	58,369,120	131,300,000	268,002,460
Michigan	84,494,390	62,959,949	141,500,000	288,954,339
Minnesota	140,471,923	79,447,327	235,300,000	455,219,250
Mississippi	80,533,715	87,852,645	134,900,000	303,286,360
Missouri	125,773,420	93,718,508	210,700,000	430,191,928
Nebraska	36,614,235	20,137,833	61,300,000	118,052,068
Nevada	100,865,178	75,158,440	168,900,000	344,923,618
New Jersey	120,844,580	90,045,845	202,500,000	413,390,425
New Mexico	71,908,246	53,581,540	120,500,000	245,989,786
New York	516,559,974	384,908,277	865,500,000	1,766,968,251
North Carolina	127,621,735	95,095,757	213,800,000	436,517,492
North Dakota	9,153,558	6,820,661	15,300,000	31,274,219
Ohio	183,775,298	136,937,891	307,900,000	628,613,189
Oklahoma	84,054,315	71,494,343	140,800,000	296,348,658
Pennsylvania	206,483,165	153,858,377	345,900,000	706,241,542
Rhode Island	17,338,952	24,097,506	29,000,000	70,436,458
South Carolina	74,372,666	55,417,872	124,500,000	254,290,538
South Dakota	17,779,027	13,247,822	29,800,000	60,826,849
Tennessee	245,209,761	92,471,128	410,800,000	748,480,889
Texas	519,552,484	387,138,109	870,400,000	1,777,090,593
Utah	52,808,993	39,349,968	88,500,000	180,658,961
Vermont	14,962,548	4,696,781	25,100,000	44,759,329
Virginia	123,573,045	92,078,926	207,000,000	422,651,971
Washington	168,284,660	90,784,044	281,900,000	540,968,704
West Virginia	30,189,141	22,495,065	50,600,000	103,284,206
Wisconsin	84,846,450	62,059,664	142,100,000	289,006,114
Wyoming	17,074,908	16,069,797	28,600,000	61,744,705
Total	6,800,214,113	5,067,095,451	11,392,700,000	23,260,009,564

**Streamlined Sales Tax Governing Board
Section 328 Taxability Matrix
Library of Definitions
(Revised July 2009)**

State: Kansas
Completed by: Richard Cram
E-mail address: Richard_Cram@kdor.state.ks.us
Phone number: 785-296-8042
Date: July 1, 2009

Each of the items listed in the chart is defined in the Library of Definitions in the Streamlined Sales and Use Tax Agreement (SSUTA) as amended through May 12, 2009. Refer to Appendix C of the SSUTA for each definition.

Place an "X" in the appropriate column under the heading "Treatment of definition" to indicate the treatment of each definition in your state. If a product definition was not adopted by your state, enter "NA" in the column under the heading "Reference" and indicate in the "Treatment of definition" columns the treatment of the product in your state. In accordance with the SSUTA, your state must adopt the definitions in the Library of Definitions that apply to your state without qualifications except for those allowed by the SSUTA. For this reason, do not enter any comments or qualifications in the two columns under the heading "Treatment of definition". If your state has adopted a definition in the Library of Definitions with a qualification not specified in the SSUTA, do not place an "X" in either column under the heading "Treatment of definition" but include a comment in the "Reference" column explaining the qualification. Enter the applicable statute/rule cite in the "Reference" column.

Sellers and certified service providers are relieved from tax liability to the member state and its local jurisdictions for having charged and collected the incorrect amount of sales and use tax resulting from the seller or certified service provider relying on erroneous data provided by the member state relative to treatment of the terms defined in the Library of Definitions.

Administrative Definitions	Treatment of definition		Reference
	Included in Sales Price	Excluded from Sales Price	
<ul style="list-style-type: none"> Charges by the seller for any services necessary to complete the sale other than delivery and installation 	X		KSA 79-3602(II)(1)(C)
<ul style="list-style-type: none"> Telecommunication nonrecurring charges 	X		NA
<ul style="list-style-type: none"> Installation charges 	X		KSA 79-3602(II)(1)(E)
<ul style="list-style-type: none"> Value of trade-in 		X	KSA 79-3602(II)(3)(D)
<ul style="list-style-type: none"> Delivery Charges for personal property or services other than direct mail. The following charges are included in the definition of sales price unless your state excludes them from sales price when such charges are separately stated on the bill to the purchaser. For responses below assume the charges are separately stated on the bill to the purchaser. 	Included in Sales Price	Excluded from Sales Price	Statute/Rule Cite/Comment
<ul style="list-style-type: none"> Handling, crating, packing, preparation for mailing or delivery, and similar charges 	X		KSA 79-3602(i), (II)(1)(D)

<ul style="list-style-type: none"> • Transportation, shipping, postage, and similar charges • Delivery Charges for direct mail. The following charges are included in the definition of sales price unless your state excludes them from sales price when such charges are separately stated on the bill to the purchaser. For responses below assume the charges are separately stated on the bill to the purchaser. • Handling, crating, packing, preparation for mailing or delivery, and similar charges • Transportation, shipping, and similar charges • Postage 	Included in Sales Price	Excluded from Sales Price	KSA 79-3602(i), (II)(1)(D) Statute/Rule Cite/Comment
	X	X	KSA 79-3602(i)
		X	KSA 79-3602(i)
		X	KSA 79-3602(i)
Sales Tax Holidays			
	Yes	No	Statute/Rule Cite/Comment
Sales Tax Holidays: Does your state have a sales tax holiday?			
If yes, indicate the tax treatment during your state sales tax holiday for the following products.	Taxable	Exempt	Statute/Rule Cite/Comment
• All Energy star qualified products			
• Specific energy star qualified products or energy star qualified classifications			
➤			
➤			
➤			
• School supply			
• School art supply			
• School instructional material			
• School computer supply			
Other products defined in Part II of the Library of Definitions included in your state sales tax holiday.	Taxable	Exempt	Statute/Rule Cite/Comment
• Clothing			
• Computers			
• Prewritten computer software			
•			
•			
•			
Product Definitions			
Clothing and related products	Taxable	Exempt	Statute/Rule Cite/Comment
• Clothing	X		NA
➤ Essential clothing priced below a state specific threshold	X		NA
➤ Fur clothing	X		NA
• Clothing accessories or equipment	X		NA
• Protective equipment	X		NA
• Sport or recreational equipment	X		NA

THE FEDERAL TAX AUTHORITY®

PREPARED TESTIMONY SUBMITTED FOR THE RECORD OF THE
PUBLIC HEARING REGARDING PROPOSED
LEGISLATION TO CONFORM TO THE STREAMLINED SALES AND USE TAX
AGREEMENT (HAWAII SENATE BILL 1355)

*THE ECONOMIC DEVELOPMENT AND TECHNOLOGY COMMITTEE OF THE
HAWAII STATE SENATE*

FEBRUARY 7, 2011

TESTIMONY BY

R. DAVID L. CAMPBELL

CHIEF EXECUTIVE OFFICER, THE FEDERAL TAX AUTHORITY

I. PREAMBLE

Before I get started, I would like to thank Senator Chun Oakland and Chairperson Fukunaga, along with the other distinguished members of the Economic Development and Technology Committee for providing this forum so that your constituents and members of the business community can voice our perspectives and opinions on the proposed Senate Bill 1355, which would enable Hawaii to conform to the provisions of the Streamlined Sales and Use Tax Agreement, commonly known as SSUTA.

II. BACKGROUND

For the record, my name is R. David L. Campbell. I am the chief executive officer and co-founder of the Federal Tax Authority, or FedTax.net, founded in 2008. We are a Washington State Limited Liability Company with operations in Washington and Connecticut. Our management team includes highly experienced professionals who have been directly involved in building some of the most recognizable brands in e-commerce, including MasterCard, Google, WebMD, Microsoft, Expedia, and American Express. FedTax.net has been designated a Certified Service Provider by the Streamlined Sales Tax Governing Board specifically for our TaxCloud service, which I will discuss further in a moment.

III. PURPOSE OF S.B. 1355

As you know, S.B. 1355 would adopt a single rate of excise tax and make changes to Hawaii's tax law so that Hawaii may become a full member of the Streamlined Sales and Use Tax Agreement (SSUTA). This bill is very important to alleviate the imbalance being felt by retailers across the Aloha State, as increasingly they are seeing consumers browse their stores and ask clerks questions, only to go home and buy from online retailers to save on excise tax. Over time, the vanishing excise tax revenue has hurt not only the state, which is losing the excise tax proceeds, and local retailers, who are losing business, but even Hawaiian residents themselves, as the loss of excise tax revenue has resulted in dramatic cuts to local services, including police protection, schools, and hospitals.

In addition, by adopting this legislation Hawaii would send a clear message to Washington, DC, that it is time for federal action to correct the growing inequity between local retailers that have to collect sales tax and online retailers that do not. It's time to shift the burden of calculating, reporting, and remitting tax on online purchases from individual consumers to online retailers. It's time for local communities to start receiving the tax revenue they are due, so they can stop cutting services because the money isn't there. It's time to recognize that collecting sales tax on online purchases is fair, easy, and the right thing to do. It's time to pass the Main Street Fairness Act.

IV. BACKGROUND ON THE STREAMLINED SALES AND USE TAX AGREEMENT

I will restrain myself from a detailed description of the history and many accomplishments achieved by the SSUTA in order to yield that analysis to the Honorable Joan Wagon, who is also scheduled to testify here today. Instead I will briefly describe SSUTA. It is the result of the cooperative efforts of forty-four states, the District of Columbia, local governments, and the business community, and it aims to make collecting sales tax easy and simple in order to enable Congress to finally pass legislation allowing states to require out-of-state retailers to collect sales tax.

The SSUTA achieves this goal by reducing or eliminating most, if not all, of the costs and administrative burdens of collecting sales taxes, by:

1. **Simplifying common definitions**, so that the tax category "candy," for instance, means the same thing in all states
2. **Standardizing critical sales tax data**, such as sales tax rates, tax base definitions, and jurisdictional boundary definitions, so they can be consistently applied in all states
3. **Standardizing reporting procedures**, so that merchants don't have to submit different sales tax returns in each state

These measures are intended to ensure that neither merchants *nor* states must expend an undue amount of resources to collect the taxes due.

As of January 2011, twenty-four states have met most or all of the legal and infrastructure requirements to become SSUTA member states, and more states are currently moving to adopt these measures.

V. THESIS

As I am sure many in attendance today will agree, the Streamlined Sales and Use Tax Agreement is important for Hawaii for numerous reasons. Given the very specific nature of this hearing, and out of respect for this forum and the time constraints of the numerous attendees, I will spare the committee my complete range of arguments in support of the pending legislation. Instead, my goal today is to discuss and preemptively refute the two main arguments you will likely hear in opposition to this bill:

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1. A remote retailer with no operations within the Aloha State would find it far too difficult to monitor and keep track of all of Hawaii's tax rules.
2. Even if technology does make it possible to keep track of all of Hawaii's tax rules, sales tax management systems are prohibitively costly to acquire and difficult to implement, making them well out of the reach of most businesses.

These two arguments can be boiled down to one idea: For out-of-state retailers, collecting sales tax is prohibitively complex and costly.

This idea can be traced back to its genesis in the 1967 Supreme Court ruling in *National Bellas Hess v. Illinois Department of Revenue*. In its majority opinion, the court ruled that “the **many variations in rates** of tax, in allowable **exemptions**, and in administrative and **record-keeping requirements** could entangle National's interstate business in a virtual welter of complicated obligations to local jurisdictions” (emphasis added). You may notice that the three main goals of SSUTA, mentioned earlier, are designed to alleviate these three concerns.

I frequently cite this quote because it summarizes the ruling's basis in complexity and burden, which has rippled forward to today and created a tidal wave of unanticipated consequences. This ruling has shielded all out-of-state retailers from the obligation to collect sales tax, based purely on the notion that it would be too complex and place too much of a burden on businesses—and perhaps it would have, in 1967. That was the year the floppy disk was invented at IBM. It was also one year before Gordon Moore and Robert Noyce started a microprocessor company named Intel, and one year before Dr. Larry Roberts published a plan to develop ARPANET, which laid the foundation for the internet we know today.

Clearly, the world is a very different place now, forty-four years after the Supreme Court's ruling in *Bellas Hess*. Today, auction sites like eBay and music services like iTunes easily manage millions of items for sale at any given moment. Today, keeping track of a few thousand local tax rates is no longer an insurmountable technical or administrative burden. The basis for the *Bellas Hess* ruling no longer applies.

Modern technology, including the sales tax management service offered by my company, has made it easy for retailers to collect sales tax for any state in the U.S. I am proud to say that our service, TaxCloud, enables any merchant of any size to easily comply with all the provisions of the SSUTA. For Hawaii in particular, where it is estimated that over \$122 million in tax could escape collection by 2012,¹ the importance of these advances cannot be overstated: The old objections no longer apply. Collecting sales tax for any state is not difficult. It's easy, and it costs retailers nothing.

¹ University of Tennessee: Bruce, Fox, Luna et al. “State and Local Government Sales Tax Revenue Losses from Electronic Commerce,” 4/13/2009, <http://tinyurl.com/26wyj49>

VI. CERTIFIED SERVICE PROVIDERS

Recognizing that technology is the key to making it easy for any retailer to collect sales tax for any state, and that technology providers are well-positioned to provide merchants with automated systems to collect and remit sales tax, the SSUTA established a certification process whereby technology providers have their systems tested and verified by each of the SSUTA member states. Upon successful completion of this process, these companies earn the title of "Certified Service Provider" (CSP) and are authorized to perform *all* of the sales tax functions for companies. Due to the logistical complexity of the certification process (it takes about a year of coordinated efforts among all member states to certify a CSP), companies may apply to become CSPs only during a brief application period every other year.

I am pleased to say that my company, FedTax.net, was designated a Certified Service Provider on July 1, 2010. In addition, we are currently the only CSP that is providing these services at absolutely no cost to merchants.

VII. MAKING SALES TAX CALCULATION AND COLLECTION EASY

As a Certified Service Provider, we handle every aspect of sales tax calculation, collection, and remittance for our clients. Our TaxCloud service calculates, in real time, the applicable sales tax rate for any transaction. It determines whether an item is tax-exempt and automatically integrates changes and updates to tax codes, rates, and jurisdictions. Finally, TaxCloud keeps track of all collected sales taxes to be remitted by merchants, generates and files all state-by-state sales tax returns, and remits tax payments to all applicable jurisdictions.

What's more, TaxCloud is extremely easy for anyone to use. Most merchants are able to set up TaxCloud in less than 20 minutes, and it can be integrated into virtually any accounting or e-commerce shopping cart system.

Because we are a SSUTA Certified Service Provider (CSP), we take full responsibility for any state audit requests on behalf of our TaxCloud clients. In addition, as a CSP we are compensated by SSUTA-participating states, so we can provide TaxCloud to merchants for free. In short, we're offering a service that handles all sales tax management obligations for merchants at absolutely no cost to them.

The very existence of TaxCloud refutes the primary argument of those who say that collecting sales tax on remote purchases would be burdensome for small businesses, that it is too costly and time-consuming. It is difficult to see the merits of this argument when a free service is available that handles every aspect of sales tax management at absolutely no cost to merchants. With no complicated tax rules to figure out, no returns to prepare, no fees to pay or costly software to install, it's difficult to understand what burdens the collection of sales tax would impose on small businesses. TaxCloud costs nothing and takes very little time to monitor and operate. A business of any size,

even a sole proprietorship, would have no trouble collecting sales tax with TaxCloud or a similar sales tax management service.

VII. CONCLUSION

By enacting legislation to conform to the SSUTA, Hawaii would be taking a much-needed step toward closing its \$844 million budget gap² and recovering millions of dollars in uncollected sales tax. Senate Bill 1355, in conjunction with federal legislation such as the Main Street Fairness Act, would mandate that all merchants collect sales tax, based upon the simplification and streamlining measures already established by forty-four states.

Ten years ago most localities got 40% of their revenue from local sales taxes; those taxes paid for schools, police, and other local initiatives and priorities. Today they get about 16% from sales tax, and funding for local communities is being cut everywhere. This trend cannot be considered a coincidence—as more and more consumers go online, less and less funding goes to locally approved initiatives. By enacting S.B. 1355, Hawaii will take an important step to ensuring that much-needed revenue is returned to its communities, secure in the knowledge that with CSPs like FedTax and sales tax management services like TaxCloud, any merchant can easily come into compliance with the provisions of the SSUTA and automatically calculate and remit local sales taxes for every jurisdiction in the country—at no cost to the merchant.

True, joining the SSUTA is just a first step to resolving the unfair practice of requiring local small businesses to collect sales tax, while not requiring the same obligation of larger and frequently more technologically sophisticated out-of-state retailers. It's just a first step, but it's a crucial step. Momentum on this issue is building, and Hawaii now has the opportunity to stand united with twenty-four other states and say that the problem of uncollected sales tax, which affects nearly every state in the nation, needs a national solution, and that national solution has been provided by the SSUTA. This is why Hawaii should adopt Senate Bill 1355 and join the Streamlined Sales and Use Tax Agreement.

Mahalo once again for allowing me this opportunity to express our support for Senate Bill 1355.

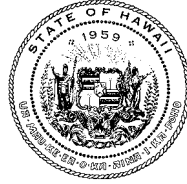


R. David L. Campbell
Chief Executive Officer
The Federal Tax Authority (FedTax.net)

²Governor Neil Abercrombie, State of the State Address, January 24, 2011.

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
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PHONE NO: (808) 587-1530
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FREDERICK D. PABLO
INTERIM DIRECTOR OF TAXATION

RANDOLF L. M. BALDEMOR
DEPUTY DIRECTOR

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT & TECHNOLOGY

TESTIMONY OF THE DEPARTMENT OF TAXATION REGARDING SB 1355 RELATING TO TAXATION

TESTIFIER: FREDERICK D. PABLO, INTERIM DIRECTOR OF
TAXATION (OR DESIGNEE)
COMMITTEE: EDT
DATE: FEBRUARY 7, 2011
TIME: 1:15PM

POSITION: COMMENTS

The purpose of this bill is to conform Hawaii law to the requirements of the Streamlined Sales and Use Tax Agreement ("SSUTA").

The Department of Taxation ("Department") **suggests that this bill be passed out of committee for further discussion.**

The Department notes that the SSUTA is an undertaking of numerous states with the intent of collecting unpaid use taxes on internet purchases. The Department continues to study the effectiveness of the SSUTA and its implementation, especially in light of the projected budget deficit. However, the Department continues to see unresolved issues with the SSUTA, including inherent limitations in a "voluntary" system of collection by vendors; the uncertainty of potential revenue that could be expected to benefit the general fund; as well as policy limitations placed on participant States by becoming a full member of SSUTA.

However, if Congress passes a federal law allowing states to require out-of-state vendors to collect state use taxes, SSUTA would be more attractive.

Charlotte A. Carter-Yamauchi
Acting Director

Shawn Nakama
Assistant Director for Research

Research (808) 587-0666
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LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol
415 S. Beretania Street, Room 446
Honolulu, Hawaii 96813

Written Testimony

SB1355 RELATING TO TAXATION

Testimony by the Legislative Reference Bureau
Charlotte A. Carter-Yamauchi, Acting Director

Presented to the Senate Committee on Economic Development and Technology

Monday, February 7, 2011, 1:15 p.m.
Conference Room 016

Chair Fukunaga and Members of the Committee:

I am Charlotte Carter-Yamauchi, Acting Director of the Legislative Reference Bureau (Bureau). The Bureau appreciates this opportunity to provide written comments on Senate Bill No. 1355:

- (1) S.B. No. 1355, among other things, enacts the Streamlined Sales and Use Tax, and creates a committee to oversee the implementation of the new law by the Department of Taxation.
- (2) Section 32(d) of the measure directs the Bureau to assist the Department of Taxation or its contractor in drafting any proposed legislation needed to further implement the new law.

The Bureau takes no position on the merits of this measure but notes that, as the measure is presently drafted, the functions required of us appear to be manageable, and we would undertake them to the best of our ability.

Thank you again for this opportunity to provide written comments.



Senator Carol Fukunaga, Chair
Senator Glenn Wakai, Vice Chair
Committee on Economic Development & Technology
State Capitol, Honolulu, Hawaii 96813

HEARING Monday, February 07, 2011
 1:15 pm
 Conference Room 016

RE: SB1355 Relating to Taxation

Chair Fukunaga, Vice Chair Wakai, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing about 200 members and over 2,000 storefronts, and is committed to supporting the retail industry and business in general in Hawaii.

RMH supports SB1355, which adopts amendments to Hawaii's tax laws to implement Streamlined Sales and Use Tax Agreement.

Through our affiliation with the National Retail Federation, the world's largest retail trade association, and a major participant in the Streamlined Sales Tax Project, RMH has watched the development and progress of this program over the past nine years and has supported Hawaii's initiatives to participate in the multi-state discussions.

As electronic commerce continues its dramatic increase, traditional brick and mortar retailers, which are required by law to collect taxes for government, experienced further erosion of their sales base to remote sellers, which, under most circumstances, are not subject to tax mandates. The Streamlined Sales and Use Tax Project will level the playing field. The unfair disadvantage our local small businesses are experiencing leads to less commerce at brick-and-mortar establishments that most certainly affects employment. It's important to understand that collecting the sales tax won't hurt small businesses that operate online; in fact, there will be exemptions for the smallest sellers.

The reality is that the State of Hawaii has huge liabilities and unfunded mandates that cannot be satisfied without additional revenue or cutting essential services. It is more than reasonable to collect a tax that's already due before instituting new taxes on everyone. Tax revenue generated from online sales can be used to pay down deficits and get Hawaii back on track toward fiscal responsibility.

Retailers nationally are encouraged that current initiatives in Congress, primarily The Main Street Fairness Act, hold greater promise to ameliorate this unfair situation, and there is consensus that this legislation will be enacted soon. SB1355 makes the necessary amendments to Hawaii tax laws to facilitate our compliance.

We respectfully request that you pass SB1355. Thank you for your consideration and for the opportunity to comment on this measure.

Carol Pregill, President

RETAIL MERCHANTS OF HAWAII
1240 Ala Moana Boulevard, Suite 215
Honolulu, HI 96814
ph: 808-592-4200 / fax: 808-592-4202

February 4, 2010

The Honorable Carol Fukunaga, Chair

Senate Committee on Economic Development & Technology
State Capitol, Room 016
Honolulu, Hawaii 96813

RE: S.B. 1355, Relating To Taxation

HEARING: Monday, February 7, 2011 at 1:15 p.m.

Aloha Chair Fukunaga, Vice Chair Wakai and Members of the Committee:

I am Craig Hirai, a member of the Subcommittee on Taxation and Finance, here to testify on behalf of the Hawai'i Association of REALTORS® (“HAR”), the voice of real estate in Hawai'i, and its 8,500 members in Hawai'i. HAR **supports** S.B. 1355, Relating to Taxation, which adopts amendments to Hawaii tax laws to implement the Streamlined Sales and Use Tax Agreement.

The Report of the 2001-2003 Tax Review Commission states that Hawaii would potentially achieve not only the benefit of better definitions, uniformity, and certainty, but also increase tax compliance by interstate vendors (primarily mail order and e-commerce merchants) who agree to pay state taxes under the Streamlined Sales Tax Project. The Report goes on to state that because of Hawaii's uniquely broad based General Excise and Use Tax system, by joining the Streamlined Sales Tax Project, Hawaii may be able to better maintain the viability of its broad revenue base.

The Report of the 2005-2007 Tax Review Commission, however, states that while the Commission believes that the goal of coordinating the collection of taxes on interstate sales, such as via the internet, is desirable, and that Hawaii should remain involved in discussions on the Streamlined Sales Tax Project, the Commission did not think that Hawaii should make a formal commitment yet.

HAR believes that the procedures set forth in Section 32 of S.B. 1355 should help alleviate some of the concerns of the 2005-2007 Tax Review Commission, and that S.B. 1355 should eventually level the playing field for local merchants who must deal with the high cost of doing business in Hawaii and still compete with mail order and e-commerce merchants from outside of the State.

HAR looks forward to working with our state lawmakers in building better communities by supporting quality growth, seeking sustainable economies and housing opportunities, embracing the cultural and environmental qualities we cherish, and protecting the rights of property owners.

Mahalo for the opportunity to submit comments.



International Council of Shopping Centers

**Hawaii Senate
Committee on Economic Development and Technology
Hearing on SB 1355
February 7, 2011**

Testimony submitted by:
Robert L. Dye SCSM
CB Richard Ellis, Wailea

On behalf of:
Hawaii Members of the International Council of Shopping Centers

Dear Committee:

Thank you for the opportunity to submit testimony on SB 1355, sponsored by Senator Suzanne Chun Oakland. The Hawaii members of the International Council of Shopping Centers (ICSC) strongly support this measure. SB 1355 will simplify and streamline Hawaii's sales and use tax codes and is critical for bringing fairness to Main Street retailers.

ICSC is the premier global trade association for the shopping center industry. In 2010, ICSC members in Hawaii provided 55,920 jobs, representing 9.5% of total employment in the state. Our members also contributed \$300 million in state sales tax revenue on top of other revenue generated from business and property taxes. Especially during these difficult economic conditions, our industry continues to be an important part of the Hawaiian economy.

The shopping center industry now more than ever needs the Hawaii Legislature to level the playing field for brick-and-mortar retailers. Currently, out-of-state vendors have an unfair advantage over Main Street retailers by taking advantage of the sales tax loophole that allows them to avoid collecting sales taxes. These remote vendors, without a local community presence or the desire to reinvest in our neighborhoods, are crippling traditional downtown retailers.

Passage of SB 1355 is the first step in closing the loophole and leveling the playing field for all retailers. This bill will allow Hawaii to join 24 other states that have passed the Streamlined Sales and Use Tax Agreement (the Agreement). The Agreement minimizes costs and administrative burdens on retailers that collect sales tax. It encourages "remote sellers" selling over the Internet and by mail order to collect tax on sales to customers living in the Streamlined states. It levels the playing field so that local "brick-and-mortar" stores and remote sellers operate under the same rules. The Agreement ensures that all retailers can conduct their business in a fair, competitive environment. Furthermore, with Congressional action, Hawaii will be positioned to collect currently lost revenues on remote purchases, which are estimated to be more than \$53 million in 2011 alone, according to a 2009 University of Tennessee study.

Not only will SB 1355 help provide needed revenue for the state, but it is also critical to creating a fair and competitive environment for brick-and-mortar retailers in Hawaii. We strongly encourage you to vote for SB 1355.

From: [Lee McIntosh](#)
To: [EDTestimony](#)
Subject: SB1355; 2/7/2011; 1:15 pm
Date: Thursday, February 03, 2011 12:20:09 AM

SB1355
2/7/2011
1:15 pm

Dear Senators,

Aloha, my name is Lee McIntosh. I live in Kau on the Big Island. I am writing in regards to SB1355, urging you not to pass it. I do not live near many stores, and those that I can drive to shop at usually do not carry the products that I need. So I do a lot of online shopping over the Internet. This bill will place a heavier burden on me by increasing the cost to purchase items that I need with my limited income. This bill will also have a negative impact on the economy and Internet sales. I implore you to please not pass this bill. I thank you for taking the time to read and consider my testimony concerning this matter...

Lee McIntosh



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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The State Senate
The Twenty-Sixth Legislature
Regular Session of 2011
Committee on Economic Development and Technology

LATE

Testimony by
Hawaii Government Employees Association

February 7, 2011

S.B. 1355 – RELATING
TO TAXATION

The Hawaii Government Employees Association strongly supports the purpose and intent of S.B. 1355, which adopts amendments to Hawaii tax laws to implement the State streamlined sales and use tax agreement.

There is a compelling reason for taxing Internet-based transactions. Retail trade has been transformed by the Internet. As the popularity of “e-commerce” grows, fairness dictates that Internet-based transactions should be treated in the same manner as other retail transactions. Retail transactions that are taxable by “bricks and mortar” retailers should also be taxable when sold through the Internet.

People in Hawaii and across the country are going online to buy a variety of goods (clothes, furniture, computers and electronics) in an effort to save money. While buying such goods may cost less than in a retail store, the purchases adversely affect tax revenue while still relying upon infrastructures supported by government.

Hawaii continues to lose millions of dollars in revenues due to Internet-based sales. The revenues from these sales could be used to fund public education and other important state-priorities.

Thank you for the opportunity to testify in strong support of this important measure.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Streamlined sales and use tax

LATE

BILL NUMBER: SB 1355; HB 1265 (Identical)

INTRODUCED BY: SB by Chun Oakland, Baker, Fukunaga, Ige, Kidani, Tokuda and 3 Democrats; HB by Mizuno

BRIEF SUMMARY: Adds a new chapter to the law to set out sections of HRS chapter 237 which establish transactions subject to the 0.5% general excise tax rate.

Adds a new chapter to the law to set out sections of HRS chapter 238 which establish transactions subject to the 0.5% use tax rate.

Adds a new chapter to the law to set out sections of HRS chapter 237 which establish transactions subject to the 0.15% general excise tax rate. The measure delineates provisions governing commissioned sellers of insurance to replace references to agents, general agents, subagents, or solicitors with the term “insurance producers.”

Adds several new sections to HRS chapter 237 to establish sourcing rules to determine when a product or service is taxed, including telecommunication services. The measure delineates provisions defining “direct mail” and how the sourcing of direct mail transactions will be ascertained.

Adds a new section to HRS chapter 237 to allow a seller to take a deduction from taxable sales for bad debts.

Adds several sections to HRS chapter 255D to establish provisions relating to the determination of the proper general excise or use tax rates between different tax jurisdictions, rounding on tax computations, amnesty for registered sellers who pay, collect, or remit general excise or use taxes in accordance with the terms of the streamlined sales and use tax agreement, tax rate changes by a county, certified service provider, confidentiality of records, liability for uncollected tax and rate changes, and customer refund procedures.

Amends HRS sections 237-8.6 and 238.2.6 to prohibit a county to conduct an independent audit of sellers registered under the streamlined sales and use tax agreement.

Amends HRS section 237-24.3 to redefine the term “prosthetic device.”

Establishes a committee to oversee the department of taxation’s implementation, administration, and compliance of the streamlined sales and use tax agreement. The committee shall be administratively attached to the department of taxation. Requires the committee to hold meetings to carry out this act and serve as the state’s official delegation to the streamlined sales and use tax governing board when establishing the state’s criteria for compliance.

Permits the department of taxation to seek technical assistance with legal professionals that have a background and practice in taxation. Allows the department of taxation to secure services in an expeditious manner as soon as possible. The legislative reference bureau shall assist the department of taxation or contractor in drafting any legislation.

This act shall take effect when the state becomes a party to the streamlined sales and use tax agreement; provided that: (1) the amendments made to HRS section 237-9 by this act shall not be repealed when that section is reenacted on June 30, 2014, pursuant to section 13(3) of Act 134, SLH 2009; (2) the amendments made to HRS section 237-24 by this act shall not be repealed when that section is reenacted on December 31, 2013, pursuant to section 4, Act 70, SLH 2009; and (3) the amendments made to HRS section 237-24.3 by this act shall not be repealed when that section is reenacted on December 31, 2014, pursuant to section 4, Act 239, SLH 2007, as amended by section 5, Act 196, SLH 2009, as amended by section 1 of Act 91, SLH 2010.

EFFECTIVE DATE: Upon approval as noted in the measure

STAFF COMMENTS: The Streamlined Sales Tax Project's Model Agreement and Act is a project undertaken with other states that is intended to simplify sales and use tax administration as it relates to multiple sales and use tax rates, definitions, and taxing jurisdictions.

Goals of the project include the establishment of a single sales tax rate, uniform definitions of sales and use tax terms, requiring states to administer any sales and use taxes, and a central electronic registration system to allow a seller to register to collect and remit sales and use taxes for all states.

At the national level, there appears to be a number of difficulties in the negotiations and unanimous agreement is far from reality. Before jumping on the band wagon, lawmakers should exercise care as it should be remembered that Hawaii does not have a sales tax as found in other states. To the contrary, the general excise tax, while viewed as a sales tax, is a far cry from the retail sales tax structure found on the mainland.

The 2005 legislature had approved a measure to direct the department of taxation to identify issues that need to be resolved to effectuate the orderly enactment and operation of a streamlined sales and use tax based on the Streamlined Sales Tax Project's Model Agreement and Act. The act also repealed the streamlined sales and use tax advisory committee council which was to consult with the department of taxation on the implementation of the streamlined sales and use tax agreement in Hawaii. When this measure was sent to the governor, the governor vetoed it due to the repeal of the advisory council, unrealistic deadlines in the measure, and concerns of allowing a third party to access confidential tax return information. A special session of the legislature overrode the governor's veto and the measure passed as Act 3 of the Special Session of 2005.

Basically the measure attempts to turn Hawaii's gross receipts tax imposed for the privilege of doing business in Hawaii into a retail sales tax structure with respect to where the tax is imposed. Much of the bill is devoted to separating the wholesale imposition of the tax from the retail and then reworking where the tax is applied otherwise known as "sourcing." The general excise tax, as we know it today, would be radically changed to accommodate the format adopted by the Streamline Sales Tax Project (SSTP).

What is not evident in the measure is that by participating in the consortium known as the SSTP, Hawaii businesses will be required to collect the sales taxes of other states when purchases are made by residents of that state. The cost of collecting, accounting, and remitting those taxes will add even more overhead costs to operating a business in Hawaii. So why is there such enthusiasm on the part of the legislature to participate in the SSTP? Lawmakers have been promised hundreds of millions of dollars that could be had if the state would just participate in the project. The suggestion came to the 2001-2003 Tax Review Commission on the recommendation of their consultant who was already an advocate of the project.

Of course, no thought was given to how this would affect Hawaii businesses and what additional costs there would be. Given the fact that Hawaii businesses will now have to operate in a different mode insofar as the general excise/SSTP sales tax, will lawmakers compensate businesses for undertaking the collection of other state's retail sales taxes? Indeed, the law being proposed in this measure is a hybrid of the current general excise tax law and a retail sales tax. It retains the two-tiered wholesale/retail system and keeps the tax imposed on services as well as on business-to-business transactions. So the measure attempts to have the best of both worlds - to force other states to collect our general excise tax while retaining the pyramiding features of the general excise tax. This is a major change in the state's largest source of general fund revenues. Care should be taken in making this transition as it could alter not only the past interpretation of the general excise tax, but it may also have a major impact on the revenue producing capacity of the tax.

One of the key issues still under discussion amongst the members who have already signed on is "where" does the sale occur. For a number of the larger states like California, Illinois, and Texas which have much at stake since they are states that manufacture goods shipped to other states, the sourcing rules they adopted use "origin" based rules, that is the tax that is imposed at the place from which the goods are shipped and not where the purchaser takes possession. The proposed bill here is ambiguous, at best, as in some cases being origin based as long as the purchaser takes possession of the goods at the place of the business but provides, on the other hand, for the taxation at the address to which the goods are delivered. It is this destination rule that causes the most problems for businesses as they must now deal with a plethora of rates depending on the number of states from which they receive orders for their goods.

While some states may elect destination, there is no doubt that the larger states will elect origin sourcing as they are probably net exporters of goods. That being the case, Hawaii residents will probably end up paying the Illinois or California sales tax on their purchases from out-of-state vendors and in the long run, the purported windfall will turn into a disaster for Hawaii. Under current law, the use tax would otherwise have been due on those sales and while it has been difficult to enforce and collect on individual sales, more of an effort should be placed on the collection of the use tax where Hawaii already has jurisdiction.

Again, a main area of concern is whether the states can afford the streamlined system itself. Given the promises that have been made and not delivered upon such as the software that is supposed to facilitate the collection and remittance of the various states' sales taxes, to the promise to pay the cost of funding the administrative structure of the governing board, it appears that all of these are promises with no intent to make it happen. As such, it is premature for Hawaii to jump on the throttling locomotive engine that appears to be headed for a brick wall. This proposal needs more discussion in the interim and further clarification as well as a discussion with taxpayers who must carry out the duty of the actual

collection.

Curiously, this is what the 2005-2007 Tax Review Commission recommended, that until the member states of the SSTP agreement come to a definitive conclusion, it is premature for Hawaii to jump on board. With this latest development, it appears that Hawaii will be a net loser as its residents will end up paying other state's sales taxes.

While the proposed measure attempts to conform Hawaii's general excise and use tax laws to the streamlined sales and use tax agreement, due to its complexity and technical aspects, it is questionable whether members of the legislature are qualified to determine whether this measure will be sufficient to comply with the Streamlined Sales and Use Tax Agreement.

In 2006 a bill that would adopt the streamline sales tax agreement was introduced and nearly passed the legislature but for a small glitch in the closing moments of the session. This, despite the fact that the State Auditor had a consultant assess the revenue potential of participating in the project. Instead of the hundreds of millions of dollars the promoters of the project had promised, the consultant estimated that Hawaii would benefit at the very least by about \$10 million and at the most \$50 million.

At the same time, when the department of taxation was asked what it estimated it would cost the department to implement the project for Hawaii, the price tag was set at \$15 million. Thus, it came as no surprise that when the Tax Review Commission looked at the issue, the decision was a no brainer, Hawaii would stand to gain about \$10 million in revenue, but it would cost the state \$15 million to implement. And that doesn't include the cost to businesses in Hawaii that would be required to collect the sales taxes of other states.

So the Commission's advice to the legislature and administration was to wait. In its recommendation it was noted that "the largest states (by economic size) have failed to sign on to the project, jeopardizing the chances of becoming an effective vehicle for collecting the Use Tax. Until the Project shows greater promise of producing results, it is premature for Hawaii to incur the expense to join it."

In 1992, in *Quill Corp. v. North Dakota*, the U.S. Supreme Court reaffirmed that the power of states to impose taxes on interstate commerce is limited by their geographic border. Although some academics resent this "physical presence rule," it remains the law of the land and is essential to prevent revenue officials from wreaking havoc on national markets by reaching beyond their borders for tax revenues. Since no working alternative to the physical presence rule has been developed, abandoning it would result in states harming themselves by harming the whole.

The SSTP was formed in reaction to *Quill*, though not necessarily to create an alternative to the physical presence rule. The SSTP is a working group of revenue officials and experts with the stated purpose of bringing simplicity and uniformity to sales taxes in the United States. (The governance structure raises some questions of democratic accountability and whether SSTP receives or seeks genuine public input.) Member states must adopt reforms to align their tax code with the SSTP. The hope is that simple and uniform sales tax statutes will allow the collection of interstate sales taxes without placing burdens on interstate commerce.

Simplicity and uniformity are both important goals, but the SSTP has, at best, mixed success in achieving them. There are nearly 8,000 sales taxing jurisdictions in the United States, each with their

own bases and rates, and the enormous complexity involved in tracking borders and changes is a huge stumbling block to state efforts to impose taxes on online sales.

While the SSTP has made some progress on uniformity (they have succeeded, for instance, in a single accepted definition of “candy”- something everyone defined differently before), the SSTP appears to be giving up the effort on simplicity. At their New Orleans meeting in July 2008, for instance, the SSTP panel was asked if any effort was being made to reduce the number of sales taxing jurisdictions, and/or to align them with 5-digit zip codes. “No and no,” were the short, but honest answers.

Rather than requiring that states simplify before reaching out beyond their borders to tax out-of-state companies, the SSTP seems content to let states continue the status quo. One panelist noted that far from requiring substantial reforms, “States still get to do 99.9% of what they want to do” under the SSTP agreement. This demonstrates either disingenuousness or how little the SSTP recognizes that many existing sales taxes are in need of substantial reform.

The SSTP already abandoned the notion of taxing like transactions alike when they adopted “destination sourcing” for online sales, but permitted states to adopt “origin sourcing” for intrastate sales. This, in effect, requires Internet companies to collect sales taxes based on where their customer is located, but allows brick-and-mortar stores to collect sales taxes based on where the store is located. In this way the SSTP prevents a level playing field between Internet businesses and brick-and-mortar businesses.

Coupled with the SSTP’s non-worry about reducing the number of jurisdictions (they spoke optimistically of providing maps of sales tax jurisdictions, having rejected even aligning jurisdictions with 9-digit zip codes), full implementation of the SSTP, at this time, without serious reforms, could result in a serious and inequitable burden on e-commerce.

Another recent example involves clothing taxes. The SSTP requires that all states have a uniform definition of clothing, and tax all of it (or none of it) at the same rate. Minnesota did so, but then imposed a “separate” fur tax on fur sales. Rather than recognizing this as an end-run around tax uniformity, the SSTP upheld Minnesota’s action.

The SSTP is attempting to persuade Congress to permit SSTP member states to begin collecting sales taxes on online purchases, premised on the belief that the SSTP’s simplification and uniformity mission has been accomplished. **The SSTP has not accomplished its mission.** The SSTP should look again at serious simplification efforts before declaring themselves a success and seeking to expand state taxing power.

States should be willing to adopt uniform definitions worked out by the SSTP so as to reduce transaction costs between state statutes. However, the ability of any state to collect sales tax on online transactions is wholly dependent on the willingness of other states to simplify their laws and adopt uniform definitions as well. It is also dependent on the creation of a working alternative to the physical presence standard that provides certainty and prevents multiple taxation. Neither the wholesale adoption nationwide of uniform sales tax statutes, nor the development of a working alternative that provides the certainty needed for long-term investment, are likely in the foreseeable future.

For these reasons, lawmakers and other states should understand that SSTP membership does not lead to a sudden influx of free tax money. In any event, this money will come from Hawaii residents and should be looked at as a tax increase notwithstanding the existing liability under the use tax laws. The SSTP's goals are good ones, but their success is mixed at best, and whatever effect it has will not be seen in the short-term.

A few years ago, a similar measure was vetoed by the governor. In her veto message, she stated that the "bill is objectionable because it would abdicate the authority of the state to establish, administer, and change its general excise tax structure; grants amnesty to certain taxpayers, absolving them of the requirement to pay taxes due the state, and treats out-of-state vendors more favorably than in-state vendors." She further stated that in order to comply with the Streamline Sales and Use Tax Model Agreement and Act (SSUTA), the state and each county would have to establish a single tax rate and once the state participates in the SSUTA, the state must certify to a national governing board that the state's law complies with the SSUTA and may relinquish control over the state's ability to determine its own tax revenue collections. The governor also had concerns about the provision of the SSUTA requiring the state to pay out-of-state vendors for collecting Hawaii taxes since the taxes the state would be receiving would be reduced by the collection fee paid to the out-of-state vendor, thereby giving out-of-state vendors an unfair advantage since local businesses are not compensated for collecting and paying required taxes.

The long and short of this measure is that it is nothing more than a tax increase that will probably end up benefitting other states if the majority of states adopt "origin" based sourcing and continuing a tradition of passing the cost to administer and complying with the proposal on to businesses in Hawaii, adding yet another nail in the coffin for businesses in Hawaii. It is certainly a reflection of the lack of understanding of Hawaii's unique general excise tax and how generous it is in producing revenues for the state.

Digested 2/7/11