Monday, May 22nd 10:30am to 12:10pm

Tax Systems for 21st Century Commerce

MODERATOR
Mike Bailey
Director of Technology, City of Redmond, WA

SPEAKERS
Craig Johnson
Executive Director, Streamlined Sales Tax Board

Chris Morrill
Incoming Executive Director / CEO, GFOA

Bill Pound
Executive Director,
National Conference of State Legislatures
Framing the Issue

• The Problem

• Commerce is changing
  – Sales tax systems are outdated
  – Local retailers struggle to compete
  – State and local revenues are not being collected

• Disruption is the “new normal”
  – Shared economy
  – Retailing (Amazon / Alibaba)
Impact on Your Revenues

• Our sales taxes are growing again
  – But not as quickly as our economy
• Remote sales are growing by double digits every year
  – Even during the recession
• Sales / Use taxes are owed, but not paid
• Your local retailers are struggling to compete
• Local government issues are central to these discussions
• These problems need resolution
• This requires leadership (You’ll hear from some leaders in a moment)
• You can help lead – and GFOA is here to help you
Our Speakers

• Craig Johnson
  – “Streamlined Sales Tax Project”

• Chris Morrill
  – Local Advocacy – A Case Study

• Bill Pound
  – What’s happening in the states

• Mike Bailey
  – Wrap up and questions
Streamlined Sales Tax
An Overview

Craig Johnson - SSTGB
Executive Director
May 22, 2017
Agenda

- Who We Are
- What We Do
- Why We Do It
- Federal Legislation
- Possible Supreme Court Action?
Who We Are

- Voluntary Association of States
  - State legislators
  - Tax administrators

- Local Government Officials
  - GFOA
  - USCM
  - NLC
Streamlined State Status 01-01-17

- **Full Member States**
- **Associate Member States – flex to full**
- **Advisory States – Not Conforming**
- **Non-sales tax states**
- **Project states – Not Advisory**
- **Non-participating state**
Who We Are

- Business Community
  - Trade Associations
  - Individual Businesses
  - Accountants - Attorneys
What We Do

“Assist states as they administer a simpler and more uniform sales and use tax system.”

- Simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance.

- Improve sales and use tax administration systems for all sellers and for all types of commerce.
Streamlined’s Goals

- Create a simpler system for administering the various state and local sales taxes
- At least make processes uniform if they cannot be made simple
- Balance the interests of state and local sovereignty with the interests of simplicity and uniformity
- Leverage the use of technology to ease the retailer’s tax collection and reporting
Why We Do It


- Compliance with sales tax laws by multi-state corporations is too complex

- Local merchants suffer from lack of level playing field

- Significant losses of tax revenue due to growth in electronic commerce and inability of states to administer use tax with consumers
Why We Do It - Identifying What Makes the System Burdensome

- Separate state and local tax administration
- Unclear rules on who has the right to tax a transaction
- Too many tax rates within each state and locality
- Different state and local tax bases
Why We Do It - Identifying What Makes the System Burdensome

- Separate state definitions
- Retailer’s held liable for tax when a buyer lies or fails to provide proof of an exempt sale
- Returns different in every state
- Separate registration required in every state
Why We Do It - What Needed to be Done?

1999: National Governors Association and National Conference of State Legislatures requested tax administrators to develop a sales tax system:

- Less complex
- Address unlevel playing field for merchants
- Address loss of revenue from states unable to collect taxes already imposed
Why We Do It - What Needed to be Done?

A cooperative effort between state legislators, tax authorities and the business community to develop methods of addressing the burdens identified - particularly for multistate sellers.
Results: Streamlined Sales and Use Tax Agreement (SSUTA)

- SSUTA effective October 1, 2005
- Current membership (5/1/2017)
  - 23 Full members
    - Arkansas, Georgia, Kansas, Kentucky, Indiana, Iowa, Michigan, Minnesota, Nebraska, New Jersey, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming
  - 1 Associate members
    - Tennessee
Key Features of SSUTA

- State level administration of local sales and use taxes
- Common state and local tax bases within a state
- Uniform destination-based sourcing rule for goods and services
- States can choose origin sourcing for intrastate delivered products
Key Features of SSUTA

- One-stop central registration
- Uniform definitions
- Rate and boundary databases
- Taxability matrix
- Uniform returns
- Simplified exemption administration
- CSP Model
Certified Service Providers (CSP Model)
CSP Certification Process (Minimum Standards)

- Corporate Background and Experience
- Financial Soundness
- Project Staffing and Organization
- Technical Approach
- General Controls
- Application Controls
- System Modification Accuracy
- Sufficiency of Information
- Data Security
- Privacy Standards
CSP Certification Process (Requirements)

- Person uses a Certified Automated System
- Integrates its system with seller’s system
  - Calculate and collect tax at time of sale
    - Determines jurisdiction and rate
    - Determines taxability in that jurisdiction
- Agrees to prepare and file returns on behalf of sellers
- Agrees to remit tax as required by SSTGB
- Agrees to protect privacy of information
- Enters into contract with SSTGB and agrees to comply with requirements
CSP Certification Process (Initial Testing Process)

- What is initially tested?
  - Taxability rules
    - Taxability matrix
    - Entity exemptions
  - Sourcing
    - State and local jurisdictions/rates
  - Tax Calculation
  - SER Preparation
  - Test Decks
Certified Service Providers (CSP)

Benefits of Using CSPs

Sellers

- Sales tax returns are automatically generated and filed.
  - Merchant assured of on-time compliance.
  - Merchant avoids late-filing penalties and interest.

- Seller makes a single automated payment for all remittances.

- CSP distributes the money to appropriate jurisdictions.

- CSP assumes responsibility for audit(s).
  - Liability relief
Certified Service Providers (CSP)

- How much does this cost sellers?
  - Volunteer sellers in Streamlined States
  - Non-volunteer sellers in Streamlined States
  - Non-Streamlined States

- How is the CSP compensated?
  - Who pays?
Certified Service Providers (CSP)

- The CSP program is alive and well – and not just “theoretical”

- CSPs have been providing services for over 10 years

- CSPs offer a wide range of services for merchants of any size (and budget)

- Model public/private partnership

- SSTGB has full confidence in their abilities
People used to say that the world was flat... but that did not make it true.
Success to Date

- Completely voluntary system
- Nearly 3,500 active retailers voluntarily collecting
- Over $2.8 billion collected by member states and local govts.
- Continue to look for improvements
Federal Remote Seller Collection Authority
Federal Legislation: Intent of the Proposals

- Provide states and local governments with sales and use tax collection authority over businesses making remote sales into their taxing jurisdictions
- Require states and local governments to enact a minimum level of simplification
- Protect small businesses
- Establish a framework for software providers to provide remote sellers what they need to calculate and file returns in states where they are remote sellers
Federal Legislation - The Proposals

Since 2005, the following types of legislative bills have been introduced:

- Main Street Fairness Acts (MSFA)
- Marketplace Equity Act (MEA)
- Marketplace Fairness Acts (MFA)
- Remote Transactions Parity Act (RTPA)
- Online Sales Simplification Act (draft only)
- No Regulation Without Representation Act
Current Federal Remote Seller Collection Authority Bills

- The Marketplace Fairness Act of 2017 - Destination sourcing
- The Remote Transactions Parity Act of 2017 - Destination sourcing
- The Online Sales Simplification Act (discussion draft) - Hybrid origin sourcing - Last Session
The Marketplace Fairness Act

- Passed Senate in 2013
- Re-introduced April 27, 2017 (S. 976)
- Provides a state two options for gaining the Congressional authorization to require remote sellers to collect sales tax:
  - SSUTA member states have to provide 180 days notice that they will exercise authority under the Act;
  - Non-SSUTA members must comply with minimum simplification requirements.
The Marketplace Fairness Act

The minimum simplification requirements include:

- Central administration;
- One audit per state;
- Uniform sales and use tax base among all state and local jurisdictions;
- Uniform sourcing rules;
- Information on the taxability of products and services;
- State must provide software, free of charge, capable of calculating sales tax due on remote sales and filing returns;

- Small seller exception of $1M in remote sales
- One year delayed effective date
The Remote Transactions Parity Act

- Introduced April 27, 2017 (H.R. 2193)
  - Bi-partisan support in House
- Provides states with two options for gaining Congressional authorization, similar to the MFA
- Includes the minimum simplification requirements contained in the MFA, plus additional protections for remote sellers and certified software providers
The Remote Transactions Parity Act

Additional Protections include:

- If a remote seller uses a certified software provider, audits must go through that provider and not the seller;
- Software must include integration, set-up and maintenance;
- Remote sellers with less than $5M of gross receipts in the taxable year may not be audited, except in cases of fraud;
- A mandatory 3 year statute of limitations for assessments;
- The state must provide a taxability and exemption table;
- The state must provide rates and boundary database;
- Central registration system
Online Sales Simplification Act (Goodlatte Proposal)

- **Hybrid origin** sourcing
  - Remote seller collects at destination rate
    - Destination rate is limited to one rate per state
  - Tax base (e.g., taxability) determined by origin state laws
- Remittance by remote seller is to origin state
- Origin state remits to clearinghouse
- Clearinghouse remits to destination state
Online Sales Simplification Act (Goodlatte Proposal)

Concerns:
- Tax parity is not achieved
- Taxation without representation
- Steps on State (and local) sovereignty
- Tax increase
- Additional taxing regime
What Can You Do?

- Contact with State and Federal Legislators
- Contact with Governor’s Office
- Joint action with local business groups - Chambers of Commerce, NRF
- Adopt resolution urging passage of MFA or other destination-based sourcing legislation
Contact Information

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Streamlined Sales Tax Governing Board
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Our challenges

• Since 2008, cut $30.7 million to balance budget
  reduced positions by 10%

• Reduced capital plan by 25% and restructured and
  refocused to maintain critical infrastructure

• Reformed pension for sustainability

• Strengthened financial policies for financial resiliency

• Improved efficiency and customer service through
  Lean process improvement

• Made strategic investments in infrastructure and
  livability

• Built regional partnerships to invest in tourism,
  broadband, and economic development
Action producing returns

• Reversed 30 year population decline
• Increased graduation rate from 58% to 87% and improved other key education indicators
• Brought crime rate to 34 year low
• 2016 was our best year ever for economic development with $166 million in private sector investment and 740 new jobs
• Neighborhoods and downtown on path to revitalization
• Through strong regional relationships developed Broadband Authority, Industrial Facilities Authority
• Recognized nationally for innovation
September, 2017


Not long ago the city’s downtown was home to just 15 people. Now it’s bustling. Here’s how it rebooted.

By Colin Woodard
Sales Tax important revenue source

At its peak, Sales Tax was 14.3% of Local revenues
Economy growing but sales tax declines

- FY06: $20.6
- FY07: $22.0
- FY10: $18.1
- FY13: $19.4
- FY16: $20.6
- FY17 (Projected): $19.1
Inability to collect internet sales taxes owed hurting our community and stifling economic development momentum
What can you do?

In Roanoke, we took action
A RESOLUTION urging the United States Congress to enact legislation that will enable State and Local governments to collect revenues due to local governments that are essential for expansion of our local and regional economies, creation of thousands of new jobs, enhancement of the quality of life within our communities, and preservation of limited State and Local revenue sources.
WHEREAS, following the passage of the Marketplace Fairness Act by the United States Senate in 2013, the House of Representatives did not vote on the Marketplace Fairness Act or any alternative to address this critical economic development issue, and this inaction by the House caused the Senate to reintroduce the Marketplace Fairness Act in 2015;
WHEREAS, 2017 is now the opportunity for the 115th Congress to demonstrate **political courage** and break this unwarranted and unjustified stalemate by moving...legislation to collect and remit sales taxes structured on a **system of collection based on the purchaser’s location**...in order to protect localities and level the playing field between local retailers and remote sellers;
Thank you

Now, adopt your resolutions
2017 State Legislative Sessions

• First year of biennium. Every state is in session.

• 25% of legislators are new, which is average after elections.

• States are watching Congress and the new administration.

• Substantial federal changes could force states back into session at the end of the year.
  • Tax Reform
  • Changes to the ACA
  • Infrastructure Spending
  • Regulatory changes
  • Change in Federal budget process
It Starts and Ends with the Budget

Total State Funds vs. State Funds Only

Total State Expenditures
- Medicaid 25.8%
- K-12 19.5%
- Higher Education 10.1%
- Transport 7.7%
- Corrections 3.1%
- Public Assistance 1.4%
- All Other 32.4%

State Funds
- Medicaid 15.3%
- K-12 24.2%
- Higher Education 12.9%
- Transport 6.8%
- Corrections 4.5%
- Public Assistance 0.9%
- All Other 35.4%

Source: NASBO State Expenditure Report
State Budgets and Federal Spending

Percentage of State Revenue From Federal Funds, FY 2000-14

Source: PEW Charitable Trusts
FIGURE 2

State General Revenue, 1977-2014

In general, state revenues have only slowly rebounded since the Great Recession.

Adjusting for inflation, state revenues nationally slightly declined in 2016 compared to 2015.

Revenues were at their weakest since 2010.

State tax revenue grew 1.2% in fiscal year 2016, a drop from 4.7% growth in fiscal 2015. But after adjusting for inflation, it actually declined slightly in 2016.

The Rockefeller Institute for Government warns that state forecasters are anticipating continued slow growth in tax revenues for the rest of fiscal 2017 and 2018.

Compared to 2008, in 2016 inflation-adjusted sales tax collections were higher in twenty-six states and personal income tax collections were higher in twenty-eight states.
The largest decline in revenue relative to a state’s prior peak was in Alaska, where real total tax collections were down 89.4%. The steep tax revenue decline in Alaska is attributable to its high reliance on severance taxes.

Sales tax and personal income tax, which combined represent over two-thirds of state tax revenue, had weak growth of only 0.2 and 0.9%, respectively, after adjusting for inflation.

Motor fuel tax, which represents slightly less than 5% of total taxes, grew 1.6% in 2016 after adjusting for inflation.

Corporate Income Tax revenue declined both in nominal and real terms, and is now only 5.0% of total tax revenues, the lowest point since 1970.
Severance taxes fell 40.1% in real terms, driven by substantial declines in oil and gas prices and a slowdown in production.

While severance taxes are only about 1% of total taxes for the nation as a whole, they constitute a much larger share of tax revenues in the nine states with economies that depend heavily on oil and mineral production.

Those nine states are: Alaska, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, Texas, West Virginia, and Wyoming.

States that rely heavily on severance taxes have seen the biggest drops in tax receipts.
Sales Taxes Alone account for 34% of state revenue

Online commerce continues to grow.

This past Black Friday, for the second consecutive year, more people shopped online than did in stores.

For the last five years, e-commerce annually grew by 15% and now accounts for 10% of all retail sales.

Average of the 50 State Revenue Sources

- Individual Income: 37%
- Sales and Gross Receipts: 46%
- Motor Vehicle License: 3%
- All Other Taxes: 7%
- Corporate Income: 5%
- Property: 2%

Source: United States Census Bureau
Tax Challenges, Disruption and the Digital Economy
Over-the-Top Taxes

• Taxation of Digital Services and Products is all-but Inevitable
Colorado Requires retailers that do not collect sales or use taxes to notify any Colorado customer of the state’s tax requirement and to report tax-related information to those customers and the Colorado Department of Revenue.

*Direct Marketing Association v. Brohl*

Law’s constitutionality was challenged.
On February 22, 2016, the United States Court of Appeals for the Tenth Circuit upheld the constitutionality of the Colorado law.

The court held that the notification and reporting requirements do not violate the Commerce Clause because they do not discriminate against or unduly burden interstate commerce.

On December 12, 2016, the United States Supreme Court denied DMA’s petition to hear the case, thus allowing the Colorado to begin enforcing its law.

On February 22, 2017 the state’s Department of Revenue and DMA reached a settlement agreement where the DOR agreed to waive penalties for noncompliant retailers until July.
States are No Longer Waiting for Congress...

“Given these changes in technology and consumer sophistication, it is unwise to delay any longer a reconsideration of the Court’s holding in Quill. A case questionable even when decided, Quill now harms States to a degree far greater than could have been anticipated earlier.”

State Legislative Considerations

States are considering three primary options:

I. Nexus expansion provisions to increase the scope of state ‘doing business’ language.

II. Marketplace collection/reporting provisions to require online and other marketplaces to collect and remit, or report, sales and use tax if a retailer sells products on the marketplace.

III. Reporting provisions similar to Colorado.
The statute, signed into law in March 2016, requires remote retailers with annual in-state sales exceeding $100,000 or 200 separate transactions to collect and remit sales tax.
“The Legislature recognizes that the enactment of this law places remote sellers in a complicated position, precisely because existing constitutional doctrine calls this law into question. Accordingly, the Legislature intends to clarify that the obligations created by this law would be appropriately stayed by the courts until the constitutionality of this law has been clearly established by a binding judgment, including, for example, a decision from the Supreme Court of the United States abrogating its existing doctrine, or a final judgment applicable to a particular taxpayer.”
South Dakota’s Litigation

• March 6, 2017: South Dakota’s legislation is one step closer to its intended destination: the U.S. Supreme Court.

• The South Dakota Sixth Judicial Circuit ruled March 6 that the state’s economic nexus regime (S.B. 106) is unconstitutional.

• Pending before the South Dakota Supreme Court.
Activity in 2017

• Legislation has been introduced in at least 30 states to address the remote sales tax collection problem

• Notable legislation enacted so far this year in:
  • Indiana (South Dakota Model of Economic Nexus)
  • North Dakota (Contingent upon federal collection authority)
  • Virginia (Adds "storage of inventory" to definition of nexus)
  • Wyoming (South Dakota Model of Economic Nexus)

• Notable Regulations:
  • Massachusetts
  • Tennessee (Economic Nexus - $500,000)
How You Can Help

• As Chris says, “Now adopt your resolutions”

• Get familiar (ask for help)
  – GFOA (Emily Brock)
  – SST (Craig Johnson)
  – Your state Revenue Department
  – Me (mebailey@redmond.gov)

• Take the Lead on this issue
Questions?