

State Activity Regarding Remotes Sales Tax Collection

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Senate Finance Committee

Vermont Legislature



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NCSL Task Force on State and Local Taxation

In 1999, the NCSL Executive Committee established the Task Force on State and Local Taxation to review the issue of collection of sales and use taxes from out-of-state transactions and then recommend legislative solutions to Congress.

That was 17 years ago....

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.”

– Justice Kennedy in *DMA v. Brohl*, March 3, 2015

States are No Longer Waiting for Congress...

Task Force Discussion Regarding a State Solution

➤ November 20-21, 2015

➤ January 8, 2016

- Task Force members heard from a Supreme Court expert and discussed a state legislative proposal.
- Proposal was sent to legislative leaders and tax chairs across the country.

State Legislative Proposal

The proposal consists of three primary parts:

- I. Nexus expansion provisions to increase the scope of state ‘doing business’ language.
- II. Marketplace collection provisions to require online and other marketplaces to collect and remit sales and use tax if a retailer sells products on the marketplace.
- III. Reporting provisions requiring referral marketplaces to report information.

State Legislative Proposal: Marketplaces

The provisions focus on two types of marketplaces.

- The first are “standard” or “traditional” marketplaces where multiple sellers sell products, sometimes the same products, on a single platform.
- The second type is a “referral” marketplace in which customers may search for products and are then referred to a place to purchase those products.

Because under the referral model the marketplace provider typically has no information regarding when a sale occurs or the amount of the sale, the draft provisions do not require the marketplace provider to collect and remit but rather impose a reporting requirement with penalties.

States are No Longer Waiting for Congress...

- Alabama- Law enacted.(2015)
- Arkansas- Legislation expected.
- Louisiana- Legislative expected.
- Massachusetts- H.B. 2569
- Minnesota- Legislation expected.
- Mississippi- S.B. 2052
- Nebraska- L.B. 1087
- Ohio- H.B. 232
- Oklahoma- S.B. 1251, S.B. 1301,
H.B. 2925
- Rhode Island- H.B. 7375, H.B. 7230
- South Dakota- S.B. 106
- Utah- S.B. 65, H.B. 235
- Washington- H.B. 2224

South Dakota S.B. 106

Requires an out-of-state seller to follow all applicable procedures and requirements of law as if the seller had a physical presence in the state, if they:

- 1) Generated more than \$100,000 in revenues from sales into the state the previous calendar year, or
- 2) Had more than 200 separate transactions (sales) into the state the previous calendar year.

South Dakota S.B. 106: Constitutionality

“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.”

What's Next?

State activity will either force Congress to act or it will ultimately lead to a Supreme Court decision....

Questions?