

## Streamlined Sales Tax

Scott Peterson - SSTGB

## Introduction and Background

- 45 states plus District of Columbia impose sales and use taxes
- Over 7,000 local jurisdictions impose sales and use taxes...administered by the state except in AL, CO, LA and some in AZ
- Retailers required to collect and remit sales tax to states where retailer has physical presence
- Use tax is owed by consumer when retailer does not collect the sales tax

## Why doesn't seller always collect sales tax?

- For decades, states have sought to require out-of-state retailers to collect their tax
- 1992 Supreme Court decision in *Quill Corp. v. North Dakota* held: requiring collection of tax by out-of-state retailers **with no physical presence** in a state would be burden on interstate commerce and would therefore violate Commerce Clause of U.S. Constitution

## Remote sales: Big Picture Issues

- 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

## "E-retail puts together back-to-back double-digit growth quarters"

- "The U.S. Commerce Department reported that e-commerce sales grew 14.3% in the first quarter, following the fourth's quarter 14.6% gain."
- "E-commerce grew 14.3% compared to the first quarter of 2009, after adjusting for seasonal variations, total retail sales grew only 6.3%."
- "Counting retail sales of all types, the web accounted for 4.0% of total sales in the first quarter of 2010 versus 3.7% a year earlier."
- Source: **Internet Retailer's Daily News Service (May 18, 2010)**

## Remote sales: What is at stake?

- "State and Local Government Sales Tax Revenue Losses from Electronic Commerce," April 2009 update to report by professors Bill Fox, Don Bruce and LeAnn Luna at Univ. of Tennessee: State and local governments will fail to collect **\$6.9 billion** in sales tax in 2009 **just** from electronic commerce
- Trend increases: By 2012 the projected loss for state and local governments is **\$23.3 billion**, including **\$11.4 billion** from remote electronic commerce, **\$6.8 billion** from business-to-consumer catalog sales, and **\$5 billion** from business-to-business catalog sales

### History of Streamlined Sales Tax Effort

- 1999: National Governors Association and National Conference of State Legislatures requested tax administrators to develop a sales tax system
  - ◆ That is less complex
  - ◆ Addresses unlevel playing field for merchants
  - ◆ Addresses loss of revenue from states unable to collect taxes already imposed

### Who's Involved

- 44 States, DC and Puerto Rico
  - Legislative Branch
  - Executive Branch
  - Indian Tribes
- Local Governments
- Tax Practitioners
- Business community

### Ideas from people who collect on how to make the system easier

- One level of tax administration per state ...no locally administered sales taxes
- Have one rule that establishes who has the right to tax a transaction
- Have fewer tax rates within each state and locality
- Have the same state and local tax bases
- Have common definitions for the same product
- Do not make the retailer liable when a buyer lies or fails to provide proof of an exempt sale

### Streamline's goals

- Create a simpler system for administering the various state and local sales taxes
- Make processes uniform if they cannot be made simple
- Balance the interests of a state's sovereignty with the interests of simplicity and uniformity
- Leverage the use of technology to ease the retailer's tax collection

### Results: Streamlined Sales and Use Tax Agreement (SSUTA)

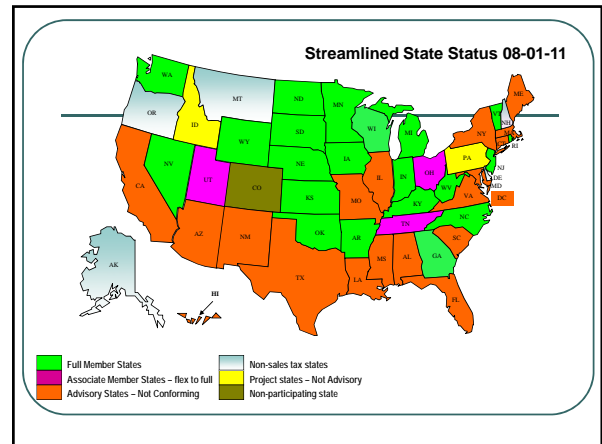
- SSUTA approved November 2002 by the states, and amended since
- Provisions are based on simplification, uniformity and technology principles
  - ◆ Simplification (e.g., state-level administration of tax)
  - ◆ Uniformity (e.g., uniform definition of "lease," lease sourcing rule)
  - ◆ Technology (e.g., certification of tax calculation software)
  - ◆ Balancing interests of state sovereignty

### Results: Streamlined Sales and Use Tax Agreement (SSUTA)

- SSUTA effective October 1, 2005
- Current membership
  - ◆ 21 Full members
    - ✓ Arkansas, Georgia, Kansas, Kentucky, Indiana, Iowa, Michigan, Minnesota, Nebraska, New Jersey, Nevada, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Vermont, Washington, West Virginia, Wisconsin, Wyoming
  - ◆ 3 Associate members
    - ✓ Ohio, Tennessee, Utah

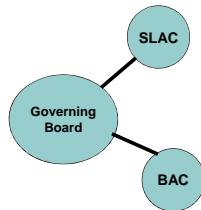
### New "Member States"

- Georgia became a member on January 1, 2011



### Governance of SSUTA

- All member states have seat on the Governing Board
- Governing Board formed non-profit entity: Streamlined Sales Tax Governing Board, Inc
- Governing Board advised by
  - State and Local Advisory Council
  - Business Advisory Council



### Governance of SSUTA



### Governing Board

- Interpretations of and Amendments to SSUTA
  - ¼ vote requirement
- Certifies tax technology systems and service providers
- Reviews state compliance with SSUTA
- Implements Administrative mechanisms
  - Vendor compensation
  - Multi-state audit procedures
- Handles dispute resolution

### State and Local Advisory Council

- Voice for states and local governments not on the Governing Board
- Ex officio membership on Governing Board
  - Chair – Jane Page (SD)
  - Vice Chair – Sherry Harrell (TN)
- Develops new definitions and analyzes proposed amendments
- Develops rules and advises on requests for interpretations
- Works with Business Advisory Council ("BAC")

### Business Advisory Council

---

- Voice of business community members
- Provides input to Governing Board and State and Local Advisory Committee related to administration, interpretation, compliance with and amendments to the agreement
- Members include businesses, associations, and practitioners
- Two ex officio seats on Governing Board
  - ◆ Stephen Kranz, Sutherland
  - ◆ Richard Prem, Amazon.com

### SSUTA: Key Features

---

- State level administration of local sales and use taxes
- Rate simplification
  - ◆ One general state rate per state, with a second rate (which could be zero) on food and drugs
  - ◆ One single local rate per jurisdiction
- No caps and thresholds

### SSUTA: Key Features

---

- Common state and local tax bases within a state
- Uniform sourcing rule for goods and services
  - ◆ Destination based, but states can choose origin sourcing for intrastate delivered products and direct mail
- Uniform sourcing rule for
  - ◆ Telecommunications
  - ◆ Lease or rental of property
  - ◆ Direct mail

### SSUTA: Key Features

---

#### Uniform Definitions

<ul style="list-style-type: none"> <li>➤ Food and food ingredients</li> <li>➤ Prepared food</li> <li>➤ Candy</li> <li>➤ Soft drinks</li> <li>➤ Dietary supplement</li> <li>➤ Clothing</li> <li>➤ Lease or rental</li> <li>➤ Tangible personal property</li> <li>➤ Bundled Transaction</li> </ul>	<ul style="list-style-type: none"> <li>➤ Drugs</li> <li>➤ Durable Medical Equipment</li> <li>➤ Computer Software</li> <li>➤ Prewritten Computer Software</li> <li>➤ Delivered Electronically</li> <li>➤ Load and Leave</li> <li>➤ Sales Price</li> <li>➤ Specified digital products</li> </ul>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

### SSUTA: Key Features

---

- Uniform treatment of bank holidays
- Uniform rules for sales tax holidays
  - ◆ limited to defined products and within administrative guidelines
- Uniform drop shipment rule
- Uniform rule for bad debt credits

### SSUTA: Key Features

---

- Simplified electronic tax return
- Uniform exemption certificate and simplified exemption processing
- Uniform rounding rule

### SSUTA: Key Features

- Central Registration System
  - ◆ [www.sstregister.org/sellers](http://www.sstregister.org/sellers)
  - Must register for all full member states
  - May register for associate member states
- The Governing Board notifies sellers when a new state becomes a full member and the seller is automatically registered to collect taxes in that state
- Must register on Central Registration System to be eligible for AMNESTY

### SST Agreement Key Features: Amnesty Provisions

- Sellers who register to collect tax receive amnesty against liability for prior sales regardless of nexus
- The state must offer the amnesty from date it joins the Governing Board until one year after it has been a full Member State
- The amnesty is not available
  - To any seller that has received an audit notice from a state
  - To any seller who was registered with state during preceding year
  - To any seller that is being audited
- Sellers must remain registered and collect sales tax for 36 months
- The amnesty only applies to the seller's sales tax liability
- Currently available in Georgia, Ohio, Tennessee, and Utah

### State Liability Protection Obligations

- States must provide
- Database matching tax rates to local jurisdictions
  - Database of boundary information for local jurisdictions
  - Taxability matrix that identifies whether defined products are exempt or taxable under the state's laws

### Technology Implementation

- Certification of sales tax administration software
- Central registration system

### Taxability matrix

- A state database that tells sellers what is and what is not taxable
- A list of uniformly defined products and services, but will eventually include more
- Sellers are not liable for errors in how something is taxed if they follow what is in the taxability matrix

### Technology Implementation

- Model 1 Sellers use services of a Certified Service Provider (CSP)
- Model 2 Sellers use a Certified Automated System (CAS)
- Model 3 sellers have an in-house (Proprietary) System

### SSTP Technology Model One: The "Certified Service Provider" (CSP)

- CSP is a third party that provides "cradle to grave" tax service that includes liability determination, return filing and tax remittance
- CSP software applications must apply certification standards and must receive approval by the Governing Board
  - Calculation accuracy standards
- Six CSPs have contract with Governing Board
  - Accurate Tax
  - ADP
  - Avalara
  - Exactor
  - Fed-Tax
  - Speedtax
- Businesses who volunteer to collect tax in state may use CSP's at no cost – states pay CSP for services to volunteer sellers
- As of 12/01/11 there were 206 companies using a CSP

### CSP - Responsibilities & Liabilities

- Integration of software with seller's order processing system
- Applied data & tax calculations
- Tax liability & statistical reporting
- Funds transfers
- System performance & security

### SSTP Technology Model Two: The "Certified Automated System" (CAS)

- CAS is a third party that provides liability determination tax administration service
- CAS software applications must apply certification standards and must receive approval by the Governing Board
  - Calculation accuracy standards
  - Technology standards (e.g., ISO 17799, SAS70)
- One CAS has contract with Governing Board
  - ADP
  - Speedtax
- Businesses who use CAS pay the CAS for services

### CAS - Responsibilities & Liabilities

- Integration of software with seller's order processing system
- Applied data & tax calculations
- Tax liability & statistical reporting
- System performance & security

### Central Registration System

- The Streamlined Sales Tax Registration System (SSTR) is a web-based system that enables taxpayers to register to collect in the Streamline states
- Taxpayers can use SSTR for both new registrations and to update previously submitted registration information
- This system passes data to the states who incorporate the data into their state system

### Central Registration System

- As of January 1, 2011 there were 1,409 companies registered on the central registration system
- As of January 1, 2011 those companies had collected \$708.6 million in sales tax for the Streamline states

### Compliance Review and Interpretations Committee

---

- Committee role and process
- Interpretation Requests
- Impact on ruling requests, dispute resolution process
- On going work to establish guidelines for business

### Interpretations

---

- 2006-01: Amnesty/treatment of taxes already collected
- 2006-02: Amnesty extension for users of CSP model
- 2006-03: Sourcing of down payments on leases
- 2006-04: Prepared food/eating utensils
- 2006-05: Fur clothing excise tax
- 2006-06: Amnesty related to de-registration

### Interpretations

---

- 2006-07: Guidance on MPU- "concurrently available"
- 2006-08: Amnesty related to de-registration
- 2006-09: Amnesty for predecessor entities
- 2006-11: Definition of food sold with eating utensils provided by the seller
- 2006-12: Whether billing invoices, return envelopes and any additional marketing materials are included in the definition of "direct mail"
- 2007-01: Whether the word "drug" is limited to an item or liquid that is consumed internally by the person or used externally on a person

### State and Local Advisory Council Update

---

- **Relief for purchasers who rely on rate jurisdiction databases and taxability matrices**
- **Replacement taxes**
  - listing of taxes
  - rules
- **Definition of sales price / sale for resale**
- **Converting issue papers in rules**
  - Telecommunication definitions
  - Drop shipments
  - Exemptions

### Strategic Goals

---

- Recruit remote sellers
- Expand legislative leadership
- Recruit additional member states
- Resolve outstanding compensation issues with Model 3 and 4 sellers
- Work with Congress on federal legislation

### Streamlined Sales Tax

---

Questions

[Scott.Peterson@sstgb.org](mailto:Scott.Peterson@sstgb.org)

615-460-9330

[www.streamlinedsalestax.org](http://www.streamlinedsalestax.org)