



DELBERT HOSEMANN
Secretary of State

**2013 Business Law Reform Study Groups
Minutes of the Revenue Fairness Study Group, Meeting #1**

June 11, 2013

Drew Snyder, Assistant Secretary of State, opened the meeting at 700 North Street at 11:05 a.m. Participating in the meeting were Crowell Armstrong, Greg Duke (representing Meg Bartlett), David Culpepper, Tonya Flesher, Karen Green, Mark Hosemann, Larry Lee, John McKay, Bob Neal, James Scheiner, Forest Thigpen, Stacy Thomas, Shari Veazey, Shad White, Scott Waller (representing Blake Wilson), Allen McBroom (via phone), Stewart Rutledge (via phone), Drew Snyder, Justin Fitch, Preston Goff, Martin Hegwood, Nathan Upchurch, and Secretary of State Delbert Hosemann.

Overview

Snyder provided some background information on the legal and political developments leading to the formation of the Revenue Fairness Study Group. Under current law, Mississippians are required to pay a use tax on purchases that are shipped or delivered into Mississippi from an out-of-state location. Compliance with the use tax requirements is low. A University of Tennessee study estimated that \$134.9 million in taxes on remote purchases went uncollected in 2012. While a state can require businesses located in the state to collect sales tax at the point of sale, the U.S. Supreme Court has held that a state cannot require a business to collect use tax on the state's behalf unless the business has a physical presence in the state. *See Quill Corp. v. North Dakota*, 504 U.S. 298 (1992). Some states have attempted to overrule the *Quill* decision through tax simplification measures such as the Streamlined Sales Tax Project or through state legislation. Efforts are also underway to pass federal legislation giving states the authority to require use tax collection from retailers with no physical presence in the state. If passed by Congress, the Marketplace Fairness Act of 2013 would authorize state governments to require out-of-state vendors to collect state sales tax on goods purchased. To take advantage of the new authority, a state must comply with certain simplification requirements. The Marketplace Fairness Act of 2013 passed the Senate in May with bipartisan support, but is not expected to pass the House of Representatives in its current form. In 2013, a bill was introduced in the Mississippi Legislature to expand the definition of physical presence. That bill passed the Mississippi House of Representatives, but was returned to committee and died. Last summer, the Secretary of State's Business Incentives Study Group studied taxation of online sales as part

of its evaluation of new revenue streams needed to fund potential business incentives. With the recent developments at the federal and state level, Secretary Hosemann was asked to form a larger group to further examine the multiple issues related to taxation of remote sales.

Current Goals

Snyder proposed some topics of discussion:

- How should the State of Mississippi respond if Congress passes the Marketplace Fairness Act or similar federal legislation?
- What changes to state law and state procedures need to be made?
- How much additional revenue would be gained because of the Marketplace Fairness Act?
- How much will it cost the State of Mississippi to implement and administer the law?
- If the state gets additional revenue through these collections, what tax reductions, if any, should be considered?

Group Discussion

The Department of Revenue's Greg Duke specified his issues with MFA including the lack of a set tax rate, a different burden is in place from remote sellers to non-remote sellers, requirements that Mississippi may not impose on remote sellers and how will Mississippi be affected by new sourcing requirements. He pointed out that the costs to the state cannot be determined until it is known the changes that will need to be made to comply.

Secretary of State Delbert Hosemann pointed out that a destination source does not affect the internet commerce clause, because we are looking at having one state tax. Right now, the amount of access is not fair. There needs to be equalized revenue set in place.

Allen McBroom, with Backstage Music, LLC, shared a retailer's perspective about the 7% disadvantage he and other retailers face with products priced the same as internet retailers. Local bricks-and-mortar retailers, McBroom said, cannot compete with online sellers' 7% advantage. Small retail businesses are dying as the percentage of internet sales go up.

Shari Veazey, Executive Director of Mississippi Municipal League, says she is in support of collecting the tax if it is like the sales tax now. She further stated that when she took this issue to D.C., she received questions about how the tax would be collected. The question raised was how many Mississippi businesses sell over the internet, and how would those businesses be affected?

Mark Hosemann, Associate with Brunini, Grantham, Grower & Hewes, PLLC, identified pressure on the state to collect. He emphasized the idea of not waiting on the federal government to pass this Act, because many other states have implemented this simplified tax process and have set a template for us to use. He suggested Mississippi bringing the Code and statutes into line based on the other state's actions.

Crowell Armstrong, President of Mississippi Retail Association, recommended getting retailers to testify to members of the Legislature to help influence decision-making. Amazon has software, for just a few hundred dollars, which will collect the state tax along with a product payment.

Stewart Rutledge asked the group to consider data privacy issues.

Dr. David Culpepper requested a matrix outlining what other states are doing and plan to do. Snyder said this information can be gathered and provided to the group.

Secretary Hosemann pointed out that it is necessary to equalize and to achieve a whole sales tax number to get this passed. Secretary Hosemann answered McBroom's earlier question by explaining the timeline for this issue consists of a finished draft in September/October and finding sponsors throughout November and December. The time frame for the study group is to complete the project in August/September.

Armstrong stated it is important to tell the people of Mississippi where this money will be coming from and where it is going. The non-collection of "use tax" is problematic; the state is losing money because of it. The bill should be aimed at big businesses like Amazon and eBay.

Forest Thigpen asked if a purchase is made out-of-state, how would one go about collecting, and who would audit their books?

Duke stated that Mississippi would never know about the out-of-state purchase if the tax was not collected. However, if the state is a participating member of Streamlined, there's an audit on software. Service providers have to be certified to ensure they're calculating tax properly. The state will have to define exactly what is supposed to be taxed; then work with providers to use software, unless the provider has their own software. In order for this to work, the state will need to get certified service providers set up, purchase the software and distribute it to providers.

Mark Hosemann indicated that the Marketplace Fairness Act does not require a uniform rate.

Allen McBroom said in 2010 the Department of Commerce estimated e-commerce to equal \$167 billion, in 2011 it was \$194 billion and in 2012 e-commerce gained \$225 billion. These totals further prove that sales are moving from local retailers to internet sales.

Shad White stressed that to receive support from the Legislature, any proposal should be revenue-neutral. He also indicated the public must be reassured that their day-to-day transactions will not be monitored. Any proposal perceived as a big government move will fail.

Secretary Hosemann suggested we look into building firewalls that will ensure information will not be used for any other purpose. The two issues he foresees that will need to

be answered are (1) the “nexus” issue and (2) the legality of state-level legislation. (To find out, we must look to other states.)

Next Actions

Snyder announced that the next meeting is Thursday, June 27. Each meeting will start at 11 a.m. on the fourth Thursday of every month until September.

Based on the discussion in the first meeting, the group will be working to (1) develop a proposal to collect existing taxes owed to the state on remote sales and (2) prepare a response plan in the event Congress passes the Marketplace Fairness Act (or similar legislation). This report will include any recommended legislation and will address diversions, data privacy, tax relief, sourcing, and some of the other issues mentioned.

Snyder ended by informing participants that all informational materials will be available on the Secretary of State website.

The meeting ended at 12:50 p.m.