

STREAMLINED SALES TAX PROJECT TASK FORCE

Study Assignment

The Streamlined Sales Tax Project Task Force, created by Senate Bill 166, shall study the final report of the Streamlined Sales Tax Project to determine how the requirements found in the report impact the sales and use tax laws of South Dakota. The study shall include an analysis on how the requirements found in the report will impact the businesses and citizens of South Dakota.

Summary of Interim

During the first meeting, Harley Duncan, Executive Director, Federation of Tax Administrators stated that the sales tax is a complex revenue source and that there is a need for uniformity and standardization among the states in the collection of revenue from remote sales. He estimated that the revenue impact of collecting taxes on all forms of Internet sales for the year 2003 is twenty-one billion dollars. He said that a uniform and streamlined sales tax among the states would result in equity among retailers and across transactions and the ultimate long-term survival of the sales tax. However, if the states adopt a uniform and standard sales tax, state governments, and particularly local governments, will lose some autonomy. In conclusion, Duncan said that it is important that states get serious about simplifying the sales tax and that the focus should be on the commonalities among the states.

Scott Peterson, Director of the Division of Business Tax for the Department of Revenue, discussed the sales tax simplification requirements. He said that the following requirements are among some of the issues for South Dakota:

1. After December 31, 2005, a state can have only one sales tax rate;
2. After December 31, 2005, the tax base to which local option sales and use taxes apply is the same as the base to which the state tax applies;
3. Local governments are allowed only one tax rate, which can vary from city to city;
4. Uniform sourcing rules for state and local taxes;
5. Uniform definitions;
6. Compensation to the service providers that will collect the sales tax.

The second meeting was held on September 11 and postponed due to the national circumstances that occurred on that date. The next meeting was held on September 18. In discussing recent activities of the Sales Tax Simplification Project, Secretary Gary Viken, Department of Revenue, reported that twenty-eight states have taken action concerning electronic commerce legislation.

Scott Peterson said that the members of the Streamlined Sales Tax Project are focusing on additional definitions—in particular, the term "digital products," which covers everything related to software, and a definition for a transaction that is not tangible personal property. The project members are also working on defining the terms "lease" and "rental."

Secretary Patricia Van Gerpen, Department of Tourism, stated that the visitor industry does not want to receive its funding from the general fund. She said that tourism is the second leading industry in South Dakota, and the industry wants a dedicated funding source that grows as the industry grows.

During the final meeting, Harley Duncan updated the task force on the activities in Congress in regard to the "Internet Tax Moratorium and Equity Act." The House of Representatives passed a two-year extension to the Internet Moratorium in October. He also discussed the bill introduced by Senator Enzi which addresses several issues concerning sales tax simplification. Gene Lebrun suggested that the task force send a letter in support of Senator Enzi's bill to the South Dakota congressional delegation.

Secretary Viken told the task force that he and Scott Peterson had met with a variety of organizations in South Dakota to discuss the streamlined sales and use tax bill and have received positive feedback on the proposed bills. He also said that since the last task force meeting, the Center for Business and Research at the University of Tennessee has issued an updated study on the estimated loss of sales tax revenue to states due to Internet sales. South Dakota will lose \$50 million in sales tax revenue by 2004 and \$66.8 million by 2006.

Peterson reviewed the draft legislation that would implement the provisions of the streamlined sales tax project. It makes state and local taxes uniform in South Dakota so retailers in other states could more easily calculate the tax obligation for South Dakota customers. The existing 4 percent state sales tax would also apply to farm machinery and oil and gas services, which are currently taxed at 3 percent. To offset the increased tax on agricultural machinery, it was proposed to exempt parts and repair services for farm machinery from sales tax. Because of the uniform sales tax rate, all municipalities in South Dakota would have to apply their local sales tax levy to groceries. Peterson also discussed the other two pieces of legislation that would create a separate taxing mechanism to replace the state tourism tax and the local bed, board, and booze tax.

Listing of Legislation Adopted

1. An Act to ratify the Uniform Sales and Use Tax Administration Act and to implement the uniform and simplified features proposed by the Streamlined Sales Tax Project.

The first eight sections of this legislation contain the Agreement for the sales and use tax simplification standards to be adopted by the participating states. The remaining sections of the bill enact, repeal, and modify the sales and use tax provisions in chapters 10-45, 10-46, and 10-52. These modifications establish a uniform rate of taxation for the state and each city and a single tax base. The legislation also defines new terms and modifies the procedures for cities to follow in changing their rate of taxation and boundaries.

2. An Act to impose a gross receipts tax on certain visitor related businesses.

This legislation creates a separate tax on visitor-related business to replace the current tourism sales tax that provides funding for the Department of Tourism. The Streamlined Sales and Use Tax Project requires that participating states only have one sales tax rate and one sales tax base, and this legislation creates a replacement tax in a new chapter.

3. An Act to authorize a municipal gross receipts tax on certain lodging, alcoholic beverages, prepared food, and admissions.

The Streamlined Sales Tax Project requires each taxing jurisdiction to use the same sales tax base as the state. This legislation creates a new taxing mechanism for municipalities to tax businesses engaged in providing lodging, alcoholic beverages, prepared food, and admissions. This tax is often referred to as the bed, board, and booze tax, and the legislation mirrors the existing tax.

Summary of Meeting Dates & Places and Listing of Task Force Members

The task force met on July 19, September 11, September 18, and November 14. All of the task force meetings were located in Pierre.

Task force members were Senator Dick Hainje, Chair of Senate Taxation Committee; Representative Richard "Dick" E. Brown, Chair of House Taxation Committee; Mr. Stan Anderson, Mr. Henry Carlson, Senator H. Paul Dennert, Mr. Brad Drake, Mr. Gary Drewes, Representative Mary Glenski, Mr. Gene Lebrun, Senator Royal "Mac" McCracken, Mr. Don Peterson, Representative Jim Peterson, Senator John Reedy, Representative Orville Smidt, and Ms. Yvonne Taylor.

Staff members were Fred Baatz, Senior Research Analyst and Teri Retrum, Senior Legislative Secretary.