

To: Members of the Committee on Revenue

From: Mary Jane Egr Edson
Legal Counsel for the Committee

RE: LR 598 (Davis) – Impact of Federal Legislation Requiring Sales Tax Collection by Remote Sellers

Date: December 9, 2014

In 1967 the U.S. Supreme Court ruled in *National Bellas Hess v. Illinois* that a state could not require an out-of-state vendor to collect tax on its sales into the state if that vendor lacked a physical presence or “nexus” with the state. The decision has never been limited or overturned but it was heavily debated in the case of *Quill Corp. v. North Dakota* in 1992.

In that case, a mail-order stationery company was assessed sales tax by North Dakota on the basis of a licensed computer software program that some of its North Dakota customers used for checking Quill's current inventories and placing orders directly. It had no other physical presence in the state, as it conducted the rest of its sales by using catalogues, flyers, advertisements in national periodicals, and telephone calls. Deliveries were made by mail and common carrier from outside of North Dakota. The U.S. Supreme Court declined to overturn *Bellas Hess* stating, in part, that if Congress wanted to allow states to impose a collection duty on vendors operating across state lines, it had the authority to do so under the Commerce Clause of the U.S. Constitution.

Streamlined Sales Tax Agreement

Since the decision in *Quill*, states have individually and collectively attempted to address the concerns expressed by the court, primarily that each state had its own rates, base, and local tax systems which made it too burdensome under the Commerce Clause for out-of-state vendors to comply with the myriad state and local rules. Aided by advances in technology, a group of states ultimately convened what is now known as the Streamlined Sales Tax Governing Board beginning in March of 2000.

The result of this work is the Streamlined Sales and Use Tax Agreement. The purpose of the Agreement is to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance. The Agreement focuses on improving sales and use tax administration systems for all sellers and for all types of commerce through the following:

- State level administration of sales and use tax collections;
- Uniformity in the state and local tax bases;
- Uniformity of major tax base definitions;
- Central electronic registration system for all member states;
- Simplification of state and local tax rates;
- Uniform sourcing rules for all taxable transactions;
- Simplified administration of exemptions;
- Simplified tax returns;
- Simplification of tax remittances; and
- Protection of consumer privacy.

24 states, to date, have adopted the simplification measures in the Agreement (representing over 31 percent of the population) and more states are moving to adopt the simplification measures.¹

Nebraska has been an active participant in the Streamlined project from the beginning and is one of the 24 full member states. Full members are those who are in “substantial compliance” with the terms of the Agreement, which includes adopting uniform definitions in state law as well as the uniform sourcing rules and other provisions. For a more complete discussion of the uniform provisions under the Agreement please see www.streamlinedsalestax.org.

Federal Legislation.

Based on the general principles and specific uniform provisions of the Streamlined Agreement, federal legislation was drafted under the title of the “Main Street Fairness Act.” This bill would allow those states that are full members of Streamlined to begin requiring out-of-state vendors, without an in-state physical presence, to collect and remit sales tax on all sales into the member

¹ www.streamlinedsalestax.org

state. These states would be authorized to begin requiring collection and remittance six months after the bill's passage. The bill has passed the Senate and awaits action in the House as of this writing. The general consensus among Washington observers is that the House will not take action on the bill anytime in the near future.

The amount of sales and use tax foregone by states and their local governments under the *Bellas Hess* and *Quill* decisions has been hotly debated. At one point the estimated loss for Nebraska was as high as \$140 million per year. More recent estimates put the loss much lower, in the range of \$35-\$50 million per year. One reason for the lower estimate is that many out-of-state vendors have already voluntarily registered through the Streamlined system and are remitting tax. For these vendors, eliminating the constant concerns over collection obligations is worth the cost of collection and remittance. The simplified system has reduced many of the burdens under the old systems. It allows them to operate their businesses across state lines without raising potential compliance issues and can make them more responsive to changes in consumer demands.

The Nebraska Department of Revenue has been tracking these volunteer sellers since the central registration system under Streamlined went live in October of 2005. Anyone who voluntarily registers under this system is automatically registered in all 24 member states. Some of the volunteers have been registered previously in Nebraska, but many were not. The Department tracks sales and use taxes remitted by both categories of sellers and submits a quarterly report to the Streamlined Governing Board. For the period October 2005 through September 30, 2014, the "new money" collected and remitted by non-nexus volunteers is \$60,325,645. Taxes remitted by previous permit holders is \$47,997,364. For just the quarter ended September 30, 2014, non-nexus sellers have remitted \$2,918,345 to Nebraska.

From a fairness standpoint, it is easy to see why vendors who operate through a physical presence support the passage of the bill. It would effectively level the playing field for them and treat all in state purchases equally, regardless of the location of the vendor. The ability to require out-of-state vendors to collect Nebraska sales tax would also lead to greater stability and balance in the sales tax system as it makes the system more reflective of actual economic activity.

Nebraska Legislation.

LB 1057 (Davis) was introduced in the 2014 session. The general premise of the bill is that should Congress act to authorize states to mandate collection of the tax by remote sellers, the state should separately account for such “new money” and dedicate it to the Property Tax Credit Cash Fund. LB 1057 advanced from Committee but was indefinitely postponed at the end of the 2014 session. However, following the end of Session, Revenue Committee Chairman Hadley met with members of Nebraska’s Congressional delegation and impressed upon them the Committee’s desire to see federal legislation pass and dedicate any new money to tax relief.