

IN DEPTH

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STREAMLINED SALES TAX LEGISLATION

Since 1999, the DuPage Mayors and Managers Conference (DMMC) has identified the collection of sales taxes on Internet and catalog purchases as a legislative priority. The general principle supporting this policy is to ensure a level playing field between Main Street businesses and Internet or catalog retailers; and to ensure the continued funding of municipal services used by these out-of-state merchants.

Twice, the U. S. Supreme Court has overturned state efforts to require retailers with no substantial physical presence in that state to collect taxes on those retailers' sales to state residents. In both cases, the Court concluded that requiring collection of a tax by a retailer with no substantial significant physical presence in a state constitutes an unconstitutional burden on interstate commerce. However, the Court also said that Congress could act to give states the authority to compel collection of taxes by out-of-state retailers.

These out-of-state retailers have successfully argued that the expense and difficulty of collecting the required taxes is overly burdensome because of the vast array of tax rates, tax bases, and tax policies within the forty-five states that levy a sales tax. Thus, Congress has not compelled them to take on that responsibility.

To address this issue of tax complexity, forty-two of these states joined together in 2000 to create the Streamlined Sales Tax Project (SSTP). The SSTP is an effort to simplify and modernize sales and use tax collection and administration. The Project's proposals include tax law simplifications, more efficient administrative procedures and use of emerging technologies to substantially reduce the burden of tax collection.

Under the SSTP, there are two steps to reach compliance with the project goals. The first step is adoption of enabling legislation that would allow states to enter into an agreement with other states to simplify and modernize sales and use tax administration. In November 2002, thirty-one states, including Illinois, approved these interstate agreement provisions.

The second step is for states to amend or modify their sales and use tax laws to achieve the simplifications and uniformity required by the SSTP. As of November 2007, twenty-two states have enacted all or part of the conforming legislation. Illinois has not yet adopted these changes, though such legislation is pending (Senate Bill 1429).

But as this process moves from the conceptual idea to a specific implementation, we learn more about the changes that are necessary to comply with the SSTP. Especially with respect to the change in **sourcing rules**, we recognize the potential for significant impacts on some municipalities. We also recognize that we cannot, individually, measure or determine the magnitude of those impacts. The result is a growing discomfort among municipal officials with continuing to pursue the SSTP.

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Sourcing Rules determine where a retail sale occurs for the purpose of imposing the tax. In order to comply with the SSTP, Illinois would have to adopt destination sourcing, meaning the sales/use tax would be paid to the jurisdiction where the purchaser *takes possession* of the purchase. While this is really the only way to deal with purchases from Amazon or J. Peterman, it has implications for existing tax policies. For example, if you buy a washing machine at the Sears in Oak Brook, and have it delivered to your home in Westmont, under current sourcing rules, Oak Brook receives the sales tax for that purchase. Under destination sourcing, the sales tax would go to Westmont, because that is where you took possession of the appliance.

The change in sourcing rules will change the amount of sales taxes received by your community. Some will increase, and some will decrease. Some will increase significantly, and some will decrease significantly.

Further confusing the change in sales tax distributions as a result of destination sourcing are the changes to the sales tax base and the voluntary sales tax remittances from Internet retailers.

A prominent principle of the Streamlined Sales Tax Project is the necessity to simplify tax rates, which resulted in the requirement that each jurisdiction can have only one tax rate and one tax base. Municipalities in Illinois receive 1% of the State's 6.25% sales tax, with that 1% applied to both general merchandise and food/drugs (the State's share does not include tax on food/drugs). Municipalities can also enact home-rule and non-home-rule sales taxes on top of the 6.25%, but those taxes are only imposed on general merchandise – not on food/drugs. Under the provisions of SB 1429, all local sales taxes will apply to both general merchandise and food/drugs.

In addition, the SSTP has created incentives for Internet retailers to remit sales taxes, even though Congress has not mandated a tax. As a result, 1,061 Internet retailers have voluntarily begun collecting taxes and distributing them to local jurisdictions.

Because municipalities will be directly affected by these changes, the Conference has identified three requirements that must be met before the State moves forward on participation in the SSTP:

- Legislative authorization for every municipality to have access to sales tax collection records from the Illinois Department of Revenue;
- A detailed study from the Department of Revenue of the impact on each municipality of both the sourcing rules and the potential increased revenues from the expanded tax base and the collection of Internet and catalog sales; and
- A guaranteed mitigation plan that will hold harmless any municipality losing revenue from the sales tax changes, and that is not subject to appropriation by the General Assembly.

For more information on the Streamlined Sales Tax Project, go to www.streamlinedsalestax.org, or contact **Rick Curneal**, Legislative Director, at rcurneal@dmmc-cog.org.