

2013 Annual ATRA Outlook Conference National Perspective on State & Local Tax Issues

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Agenda

- Remote Seller Collection Authority
 - Where we have been
 - Where we are
 - Where are we going?
- Other Federal Legislation
- Issues with Tax Reform Efforts to Expand Sales Tax Base
- COST's Scorecards Review of Arizona

Remote Seller Collection Authority

Where We've Been



Timeline of Sales Tax Nexus Developments

- 1921 – WV imposes first sales tax
- 1933 – Depression era – 11 states enact sales/use taxes
- 1944 – Early US SCt cases (*McLeod, General Trading & Int'l Harvester*)
- 1954 – *Miller Bros.*
- 1960 – *Scripto*
- 1967 – *Nat'l Bellas Hess*
- 1992 – *Quill*
- 1994 – DMA talks
- 1998 – ITFA enacted, creating ACEC
- 1999 – NTA Electronic Commerce Tax Project Final Report
- 2000 – ACEC recommendations; SST Project Started; Federal SST proposals
- 2002 – SSUTA adopted
- 2005 – SST Governing Board officially formed (at least 10 states w/20% of US population_
- 2011 – Federal legislation proposed bypassing SSUTA

Prior Main Street Fairness Acts

- Prior Acts required SSUTA membership
 - Authorized federal US Court of Federal Claims Review
 - Concern was review was arbitrary and capricious actions by Governing Board
 - Concern with the acts being over 20 pages

Prior Main Street Fairness Acts

18 Minimum Simplifications

1. Central registration system
2. Uniform Definitions
3. Uniform Sourcing
4. Uniform Bad Debts & Rounding Rules
5. Uniform Certified Service Provider (CSP) Requirements
6. Uniform Returns & Remittance Requirements

Prior Main Street Fairness Acts

18 Minimum Simplifications Continued

7. Allow Electronic Filing and Remittance
8. Single State-Level Tax Administration
9. Limitations on Caps and Thresholds
10. Require Taxability Matrix, including as required by Gov. Board exemptions
11. Seller Relief for Reliance on State & Gov. Board Data
12. Ability to Request Single Audit - Discretionary

Prior Main Street Fairness Acts

18 Minimum Simplifications Continued

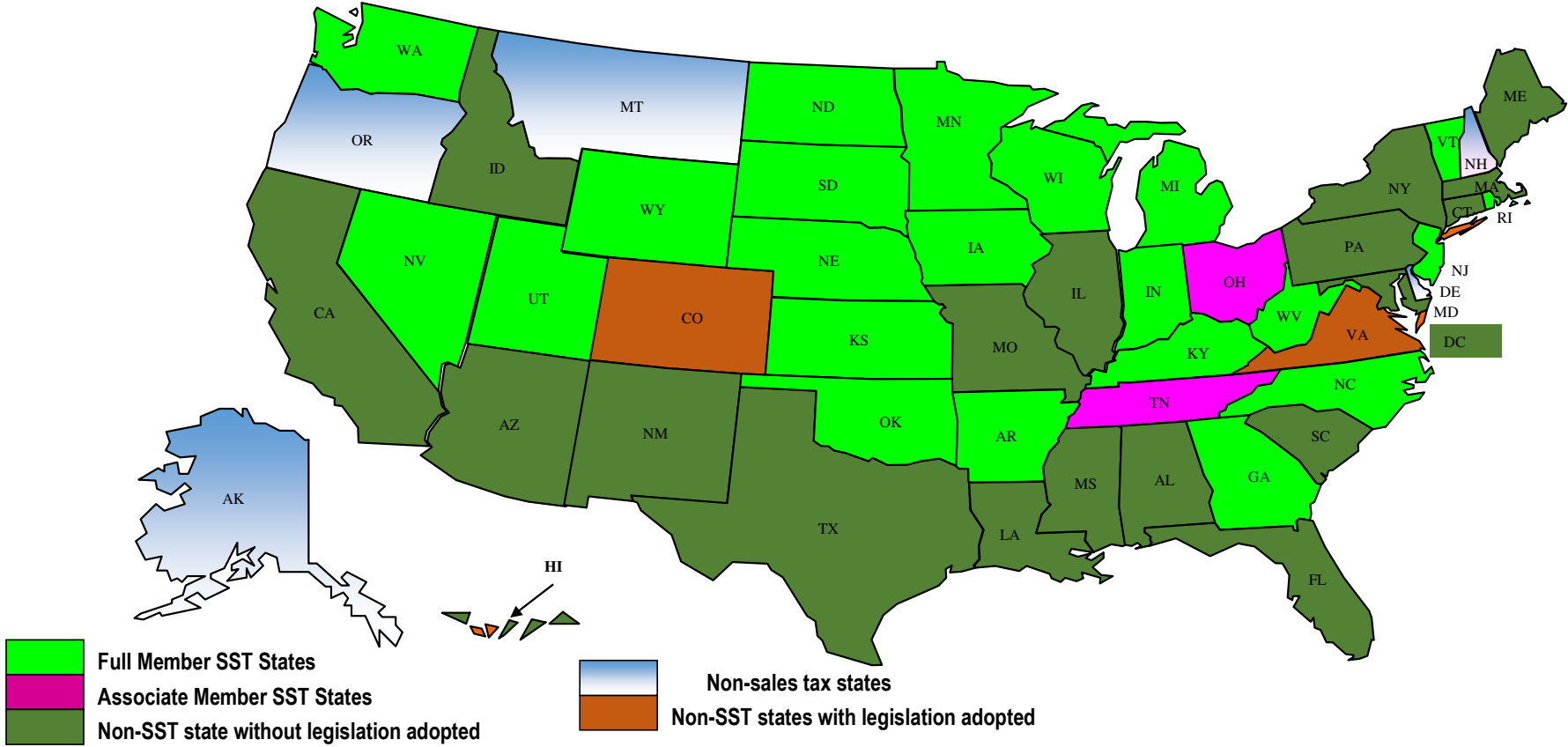
13. Provide Vendor Compensation – Limited
14. Protect Consumer Privacy
15. Adequate Governance Procedures
16. Uniform Small Seller Exception
17. Uniform Rules for Sales Tax Holidays
18. Uniform Rules for Credits/Refunds Related to Returned Items and Discounts/Coupons

Remote Seller Collection Authority

Where We Are



Marketplace Fairness Act State Status 10-01-13



Marketplace Fairness Act (MFA)

- Objective: allow states to impose sales tax collection responsibility on remote sellers
- Legislation (S. 743; S. 336; HR 684) introduced
- Senate passed legislation on 5/6/13 by vote of 69 to 27
- Provides two alternatives for states that affirmatively choose to exercise such authority:
 - (1) SSUTA member states (so long as SSUTA contains minimum simplification requirements and the state publishes its intent to collect tax with 180 days notice), or
 - (2) Non-SSUTA states that enact legislation and meet the minimum simplification requirements (begins no earlier than 6 months after enactment starting on the first day of a calendar quarter)

Marketplace Fairness Act (MFA)

- Small seller exception –
 - Gross annual receipts from US remote sales in the preceding calendar year do not exceed \$1 million
 - Sourcing – Member states must comply with the agreement’s destination-based sourcing provisions, while non-member states must source according to delivery destination.
- Several variables at work –
 - States enact their own remote seller legislation
 - Conflicts with streamlined sales tax – will states drop out?
 - What will be added to the bill in the House Judiciary Committee?

Marketplace Fairness Act (MFA)

- Arizona is not a Streamlined Sales Tax full member state
- For non-member states, enacting legislation must:
 - Specify the (1) taxes and (2) products that are excluded from the Act
 - Provide that there will be (1) a single entity responsible for state/local tax administration, (2) a single audit for remote sellers, and (3) a single sales/use tax return for use by remote sellers
 - Provide “free” compliance software
 - In general, source interstate sales to the delivery destination
 - Provide a uniform sales and use tax base among State and local taxing jurisdictions within the state.
 - Provide 90 day notice for any rate change affecting remote sellers.

Marketplace Fairness Act (MFA)

- To comply with the MFA, Arizona would need to do the following:
 - Specify the taxable items that are excluded from the Act.
 - Provide a uniform sales and use tax base among State and local taxing jurisdictions within the state.
 - Can be done by requiring uniformity or excluding non-uniform products from remote seller collection authority.
 - Provide 90 day notice for any rate change affecting remote sellers.

Local AZ Taxes with Different Rates

- To comply with the MFA, Arizona would need to address the following local taxes that differ from the normal local rate:
 - Advertising
 - Mining
 - Non-residential rental
 - Utility services
 - Telecom services
 - Lodging
 - Restaurant & bars
 - Food for home consumption

HB 2111

- Approved by the Governor June 25, 2013
- Makes changes to:
 - Require Online Portal
 - Prime Contracting Classification
 - Single Audit and Protest Procedures
 - Address Sourcing

Online Portal

- Requires a single online portal for Taxpayers to pay state, county and municipality Transaction Privilege Tax (“TPT”) and affiliated taxes by 1/1/2015.
- Requires the Arizona Department of Revenue to administer the online portal, and that the portal will be paid for by cities and towns without an intergovernmental agreement with the DOR as of 1/1/2013.
- Provides a single point for licensing, filing a single tax return, and paying TPT for all state, county and municipal jurisdictions.
- Captures data with sufficient specificity to meet the needs of taxing jurisdictions.
- Allows for identification of the correct taxing jurisdiction and tax rate.

Audits and Protests

- Cities and towns that levy a local TPT must enter into agreements with the DOR to provide for unified and coordinated auditing and collection programs.
 - Eliminates multiple audits or subsequent audits by cities and towns.
- All audits must be conducted in accordance with DOR manual and performed by DOR certified auditor.
- All audits to include all AZ taxing jurisdictions.

Audits and Protests (con't)

- Audits of multi-city taxpayers to be conducted by the DOR.
- Cities and towns have the option to audit single-city taxpayers.
- DOR to issues a single notice to a taxpayer of all audit assessments.
- All audit protests and appeals go to DOR.
- DOR must notify affected cities and towns before entering into any compromise, closing or settlement agreement.

Sourcing

- Retail Sales of tangible personal property to in-state purchaser sourced to:
 - Seller's business location if the seller receives the order at a business location in the state.
 - Purchaser's location in this state if the seller receives the order at a business location outside the state.
 - Statute does not appear to address sales to customers with unknown customer locations.
- Commercial Leases are sourced to:
 - Lessor's business location if the lessor has a business location in the state.
 - Lessee's address if the lessor does not have a business location in the state.
 - The gross receipts are taxable when the property is shipped, delivered or otherwise brought into the state for use in the state.
- This does not comply with the MFA

Actions in Anticipation of MFA

- **Rep. Goodlatte**, R-6th, Chairman of the House Judiciary Committee, released seven “principles” on September 18, 2013
 - (1) Tax relief (nondiscriminatory taxes), (2) Tech neutrality, (3) No regulation w/out representation, (4) Simplicity, (5) Tax competition (keep rates down), (6) States’ rights, and (7) Privacy rights.
- **SSUTA Governing Board and MTC** (apparently working separately) drafting model language implementing the notice and simplification provisions required by the bill before a state can exercise authority.
- **Colorado** enacted legislation simplifying collection of state taxes (historically home-rule state).
- **Ohio’s** budget bill (HB 59) directs any new money obtained from federal legislation requiring “remote sellers” to collect Ohio’s use tax to the income tax reduction fund and the Tax Comm. has petitioned the SSUTA Gov. Bd. for Ohio to become a full-member state of the SSUTA.
- **Virginia** has enacted legislation indicating it will automatically conform to the federal requirements – separation of powers concern (unconstitutional delegation of authority)?

Remote Seller Collection Authority

Where We Going?



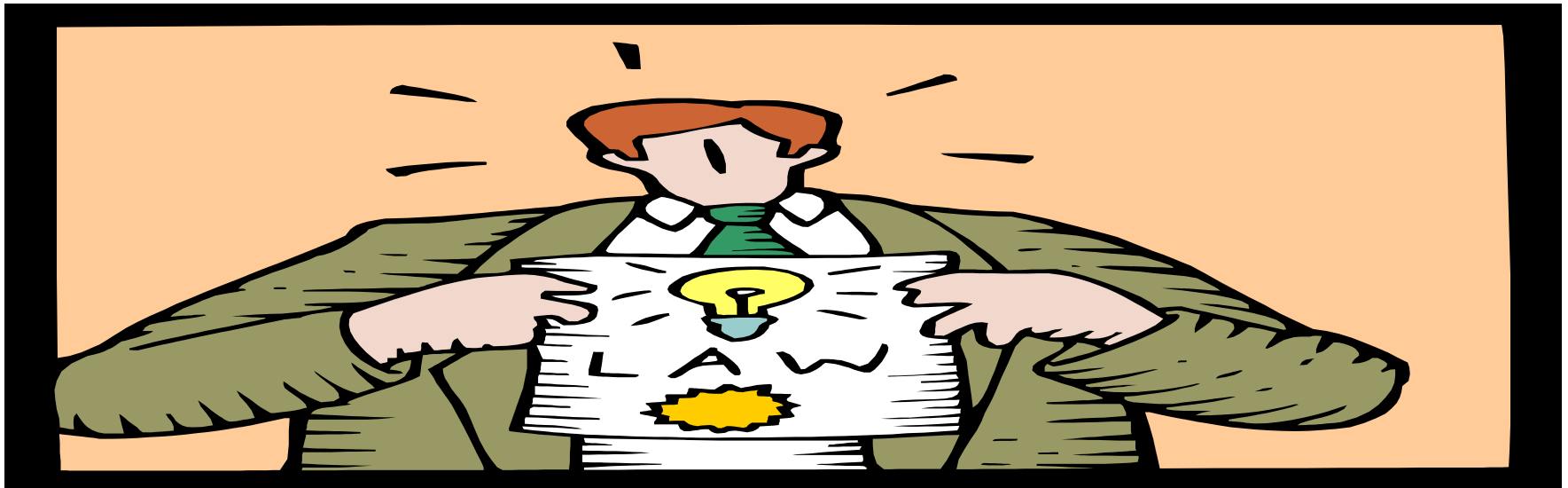
Marketplace Fairness Act (MFA) Issues

- Tax base for remote sellers different than for nexus sellers
- “Remote sale” not clearly defined
- Retains nexus debate over whether a person is a remote seller
- What “free” computer software do the states have to provide?
 - Taxability matrix, filing returns, etc.
- How do the states provide exempt sale information?
- Central registration/filing of tax returns available?
- Uniform administration and acceptance of multi-state exemption certificates?
- Is there enough time – 1/3 of Senate and 100% of the House is up for reelection 11/2014
- Are remote sellers stuck collecting even if a state is not compliant with the MFA? Does T.I.A. apply to block access to federal court?

Should the Remote Seller Collection Effort Return Back to Real Simplification?

- States Still Contemplating SSUTA Membership
 - Florida
 - Hawaii
 - Idaho
 - Maryland
 - Massachusetts
 - Missouri
 - Pennsylvania
 - Texas
- Arizona??

Other Federal Legislation



Digital Goods and Services Tax Fairness Act – S. 1364

- To “promote neutrality, simplicity, and fairness in the taxation of digital goods and digital services”
- Notable provisions include:
 - Provides uniform sourcing of digital goods and services to the “customer tax address”
 - Bars multiple taxation (including where a credit for taxes paid in other jurisdictions is not provided)
 - Bars discriminatory taxation (including where a resale or component part exemption is denied)

Permanent Internet Tax Freedom Act of 2013

- Would make permanent the existing ban on state or local taxes on internet access and on multiple or discriminatory taxes on e-commerce, while allowing “grandfather clause” to lapse
- The most recent extension of ITFA is scheduled to expire on November 1, 2014
- Bar on discriminatory taxes on e-commerce will get more attention after DMA (IL SCt) decision

Business Activity Tax Simplification Act

- Business Activity Tax Simplification Act (“BATSA”) – H.R. 2992
 - Would modernize P.L. 86-272:
 - All business activity taxes (not just net income taxes).
 - All sellers (not just sellers of tangible personal property).
 - Other qualitative de minimis activities (not just solicitation).
 - Physical presence:
 - Economic nexus would be eliminated.
 - Tangible property or employees allowed in a jurisdiction for less than 14 days during the tax year (*de minimis*).

Mobile Workforce State Income Tax Simplification Act of 2013

- **H.R. 1129 & S. 1645**
- On March 13, Rep. Howard Coble (R-NC) and Rep. Hank Johnson (D-GA) reintroduced legislation identical to that which passed the full U.S. House in May, 2012
- On November 4, Sen Thune (R-SD) and Sen. Brown (D-OH) introduced legislation in the Senate.
- In general, this bill protects nonresident employees (and employers) from a state's income tax if a person works in the state less than 30 days.

Issues with Tax Reform Efforts to Expand Sales Tax Base



The Rush to Tax Business Services

- Louisiana – Governor Jindal has “parked” his services tax, but asked Legislature to come up with a plan to phase out income taxes
- Massachusetts – Proposals to tax data processing, cloud-based computer services, and custom software. Repealed by the legislature last week
- North Carolina – After much back and forth about what constituted real tax reform, some exemptions eliminated and some warranty and maintenance contracts are now taxable

The Rush to Tax Business Services (continued)

- Nebraska – Gov. Heineman’s broad-based services tax put on hold; study underway
- Ohio – House GOP scales down Governor Kasich’s broad-based service tax proposal
- Minnesota – Gov. Dayton proposed a \$3.3 billion broad-based services tax in exchange for 20% sales tax rate reduction. Final budget bill included far fewer business services, but subjected warehousing & storage services, machinery & equipment repair, telecom equipment to sales tax.

“What’s Wrong With Taxing Business Services?”

- COST/EY Study on Problems with Taxing Business Services: April 4, 2013
 - 70-80% of taxes on new services would likely be imposed on business inputs
 - 12 states presently derived 50% or more of their sales/use tax revenue from business inputs
 - Arbitrary and hidden differences in effective sales tax rates on different goods and services that distort consumer choices
 - Detrimental impacts on a state’s business tax competitiveness
 - Extremely difficult compliance, sourcing and definitional burdens for taxpayers and tax administrators alike

COST's Scorecards Review of Arizona



State Tax Administration

- Arizona scores an A- on COST's Scorecard on Tax Appeals & Procedural Requirements
 - Arizona Board of Tax Appeals provides an independent appeal tribunal; however it does not publish decisions on its website from 2008 onward (new transparency issue).
 - Payment of tax not required to appeal.
 - Protest period: 90 days from date of mailing for individual income tax protests; 45 days from receipt of notice to taxpayer for all other tax protests.
 - Private letter rulings, Hearing Officer and Board of Tax Appeals decisions are published by the Department.

Unclaimed Property

- Arizona scores a B+ of COST's Scorecard on State Unclaimed Property Statutes.
 - Business-to-business transactions and gift certificates are exempt.
 - Statutes provide for a period of limitations and independent review process.
- Contingent fee auditors are NOT banned by Arizona.

Property Tax Administration

- Arizona scored a C- on COST's Scorecard of State Property Tax Administrative Practice
 - Annual 16% rate for underpayments of property tax.
 - Taxpayer has 60 days to appeal, and taxpayers must pay to appeal.
 - 9 classes of property with varying assessment ratios
 - Unequal property tax burden due to statutory exemptions

Questions

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