INTRODUCTION

The sales tax streamlining movement may well be the most significant development in state sales taxation since the genesis of the state sales tax in the 1930s as “a desperation measure” to make up for plummeting income and property tax revenues.¹ Though states have increasingly relied on the sales tax as a major (if not the most important) source of revenue, the structural flaws in the tax—present since its inception—are increasingly highlighted by an ever expanding global, service–oriented, and digital economy. Preeminent among these flaws has been the complexity of compliance with a multiplicity of non–uniform state and local sales tax regimes. This shortcoming has prompted the U.S. Supreme Court to hold on two separate occasions that the tax is an unconstitutional burden on interstate commerce as applied to sellers without an in–state physical presence (hereinafter sometimes referred to as “remote sellers”).²

Though the de facto exemption for remote sellers was a major thorn in the side of state tax authorities (and non–remote retailers) for at least the past 40 years, states showed little if any willingness to adopt more uniform rules until the Internet exploded onto the scene. While investors were seized by a frenzy of optimism over the potential for electronic commerce and Internet retailing, state tax authorities and brick and mortar retailers saw a surge in remote selling as an imminent and possibly mortal threat. History teaches us that crises, however dangerous, are moments of great opportunity.³ The streamlining movement bears witness to this truism, as we explain in greater detail.

² National Bellas Hess, Inc. v. Department of Revenue, 386 U.S. 753 (1967) (holding that both the Due Process Clause and Commerce Clause require that a remote seller be physically present in order for a state to impose a use tax collection obligation); Quill Corp. v. North Dakota, 504 U.S. 298 (1992) (affirming the Bellas Hess Commerce Clause holding but finding that there is no due process bar to imposing a use tax collection obligation on remote sellers that purposefully avail themselves of benefits provided by the state).
³ It is also said that at the time of the Cuban missile crisis, President John F. Kennedy said the Chinese character for crisis constitutes a combination of the characters for danger and opportunity. See, e.g., LaShawn A. v. Kelly, 887 F. Supp. 297, 317 (D.D.C. 1995). Whether or not this proposition is true
This paper has four major objectives. The first is to describe and discuss the antecedents to the streamlining movement. The second is to describe and discuss the Streamlined Sales Tax Project (SSTP) and the agreement that the SSTP produced (the Streamlined Sales and Use Tax Agreement or SSUTA). The third is to examine how political and economic forces have shaped, and continue to shape, the streamlining movement. The fourth is to explore briefly whether streamlining, or the lessons learned from streamlining, might serve as a platform or template for more fundamental sales tax reform. It should be cautioned that the SSTP is still a work in progress. Nevertheless, because of the enormous potential significance of the SSTP, we welcome the opportunity to undertake a general—if somewhat tentative—exploration of the political economy of streamlining.

ANTECEDENTS TO THE STREAMLINING MOVEMENT: GROPING FOR CONSENSUS

The origins of the SSTP lie in the intense and widespread interest in state taxation of electronic commerce that preoccupied the state tax field during the late 1990s.\(^4\) The advent of electronic commerce raised a number of questions as to whether and how state and local taxes, particularly sales and use taxes, should be applied to such commerce. Among those concerns was that the complexity within and inconsistency among state and local sales tax regimes limited the ability of these regimes to accommodate the world of electronic commerce. Consequently, the need for simplification of the state and local sales and use tax system was apparent if it was to be a viable mechanism for raising revenue from electronic commerce.

The National Tax Association’s Communications and Electronic Commerce Tax Project

In early 1997, the National Tax Association (NTA)\(^5\) formally convened the National Tax Association’s Communications and Electronic Commerce Tax Project (the NTA Project or the Project). The NTA Project brought together representatives of the business community, state and local governments, and academia who shared an interest in identifying possible solutions to the state and local tax issues raised by electronic commerce.\(^6\) It was widely believed that if agreement could be reached, it would involve a combination of simplification and an expanded duty to collect use tax.

After more than two years of work, however, the NTA Project was unable to reach a comprehensive agreement that satisfied the concerns of both government and business representatives on the set of issues it explored. Nevertheless, in a broad and informal sense, consensus began to form around several key matters that carried over to the subsequent work of the SSTP. Specifically:

- **Sales and Use Tax Rates.** There was broad recognition of the desirability of limiting state and local sales and use tax rates to one tax rate per state. Because of the potential revenue impact of such a rule for local jurisdictions, there was likewise recognition that provision needed to

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\(^4\) See, e.g., Hellerstein (2000); Houghton and Hellerstein (2000). The ensuing discussion draws freely from the last cited article.

\(^5\) The NTA, with a broad-based membership from business, government, and academia, has a long and distinguished history as a forum for the discussion and evaluation of tax policy.

\(^6\) NTA (undated). For a fuller discussion of the report, see Hellerstein and Swain (2004), ¶ 2.02.
be made to ensure the protection and equitable distribution of revenues to local jurisdictions. Although the SSTP abandoned the goal of one rate per state, it did adopt significant rate simplification measures.

- **Tax base.** In deference to state sovereignty and political reality, the Project rejected proposals to require states to adopt a uniform tax base. Similarly, the SSTP made no attempt to impose a uniform tax base among the states.

- **Uniform “menu” defining goods and services.** Project members generally agreed that it would be desirable for the states to develop uniform product definitions while at the same time retaining the authority to determine whether or not such products should be taxed. This also would simplify the development of tax compliance software. The definitional menu concept became a central feature of SSUTA.

- **Uniform Sourcing Rules.** Project members were generally of the view that transactions should be sourced to the state of use or destination, and sourcing to a sub-state level should not be required. SSUTA follows this general approach to transaction sourcing, although local sourcing is required.

- **Simplification of State and Local Sales and Use Tax Administration.** Anticipating the approach of the SSTP, the Project recognized that simplification of current sales and use tax administration was critical. Although it did not adopt formal recommendations, the Project examined the following types of simplifications: uniform vendor registration forms; uniform sales and use tax returns; uniform state laws for bad-debt deductions; use of direct-pay permits; uniform exemption certificates and other exemption administration simplifications; and simplified audit, assessment, and appeal procedures for multistate sellers.

Two key issues blocked the formation of a more comprehensive and definitive consensus on the sales and use taxation of electronic commerce. First, business and government were divided on the issue of expanding the duty to collect sales and use taxes beyond the existing physical presence test. Many business participants were unwilling to endorse the idea of expanding nexus because of the lack of details concerning sales tax simplification and a potential “spillover” effect on other taxes, e.g., the concern that an agreement for a more relaxed nexus standard in the sales and use tax context would be invoked by states in asserting income tax nexus.7

Second, no consensus was achieved on the best means for implementing sales tax reforms. The Project considered two basic approaches—federal legislation and cooperative state action, as well as a hybrid of these two approaches. Those supporting a federal legislative approach to implementation believed that federal legislation was the only effective way to ensure uniformity in the adoption of any proposals to modify existing state and local tax systems. Those supporting a cooperative state approach to implementation believed that it would be more sensitive to state concerns than federal legislation. A hybrid approach would have blended both state and federal action. Under this approach, interested states would develop a multistate tax compact creating a harmonized tax system, and Congress would remove most potential constitutional objections to the rules embodied in such a compact by approving it. States not enacting the harmonized system through the compact would remain subject to pre-

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7 See generally Houghton and Cornia (2000).
existing constitutional limitations on their taxing authority. Although as a technical matter the SSTP and SSUTA reflect the cooperative or voluntary model of tax simplification described above, as a matter of political reality the hybrid approach may more accurately describe the broad initiative being undertaken by the SSTP leadership and their allies in Congress.

The Advisory Commission on Electronic Commerce

In 1998, Congress joined the debate over state taxation of electronic commerce with its adoption of the Internet Tax Freedom Act (ITFA). Besides imposing limited substantive restraints on the states’ power to impose taxes on Internet access or to impose “multiple” or “discriminatory taxes” on electronic commerce, ITFA established the Advisory Commission on Electronic Commerce (ACEC or the Commission). Congress charged the Commission with conducting a thorough study of federal, state, local, and international taxation of transactions using the Internet and other comparable activities. Among the state tax issues that Congress directed the Commission to study were an examination of (1) model state legislation that would both provide uniform definitions of taxable/exempt products and ensure that Internet-related transactions would be treated in a tax-neutral manner; (2) the effects of the taxation (or absence of taxation) of all interstate sales; and (3) ways to simplify federal, state, and local taxes on telecommunications services.9

Like the NTA Project, the ACEC never reached consensus on the key issues it examined because of the deep political and philosophical divisions among its members.10 Therefore, it never made any recommendations because its authorizing legislation required that any Commission recommendation command a two-thirds supermajority.11 Accordingly, the Commission’s most important legacy was the spate of proposals it stimulated. Indeed, one of these proposals—Utah Governor and Commission member Michael Leavitt’s proposal for a “streamlined sales tax system”12—established the framework for the formation of the SSTP. Speaking for at least the eight ACEC commissioners representing state and local governments, Governor Leavitt, who was also serving as chairman of the National Governors’ Association, endorsed a proposal under which “states and localities agreed to undertake an extensive and comprehensive plan to simplify antiquated state sales and use tax systems in exchange for the clear right to collect those taxes.”13

9 ITFA § 1102(g)(2).
10 The Commission was composed of nineteen members, including three representatives from the federal government; eight representatives from state and local governments; and eight representatives of the electronic commerce industry, telecommunications carriers, local retail businesses, and consumer groups. From the outset, the discussions among the Commission members reflected profound differences in outlook that one observer described as an “ideological circus.” Judis (1999).
11 ITFA § 1103.
12 Leavitt (2000). The proposal was firmly grounded in the work of the NTA Project.
13 Leavitt (2000), p. 71. According to Governor Leavitt’s proposal, the requirements for a “simplified” sales and use tax system included, but were not limited to: centralized, one-stop registration system; uniform tax base definitions; uniform, simple sourcing rules; uniform exemption administration rules (including a database of all exempt entities and removal of “good faith” acceptance rule); appropriate protection of consumer privacy; methodology for certifying software used in the sales tax administration process for tax rate and taxability determinations; uniform bad debt rules; simplified, consistent tax returns and remittance forms; consistent electronic filing and remittance methods; state administration of all state; and local sales taxes; uniform audit procedures; reasonable compensation for remote sellers; de minimis threshold below which small business remote sellers would not be required to collect use tax.
Governor Leavitt’s proposal also recommended that Congress enact legislation authorizing the states to develop and enter into an Interstate Sales and Use Tax Compact “[t]o implement this streamlined sales tax system.” The proposed legislation contemplated that states joining the Compact would be required to adopt a simplified sales tax system embodying the criteria identified above. States so doing would then be authorized to require remote sellers exceeding the sales volume threshold to collect use tax on all taxable sales into a state.

**Antecedents to Streamlining: Summary and Conclusion**

The key contributions and lessons of these precursors to the SSTP can be summarized as follows: First, an external economic event—the emergence of electronic commerce—was the major stimulus behind state, business, and Congressional interest in sales tax simplification and reform. Second, expansion of the scope of reform beyond nexus liberalization was a key ingredient for inducing the broader business community to become an active and constructive participant in the reform process. Third, having business and government participate on equal footing in the proposal development stage proved ineffective. Their interests were too deeply divided. In particular, business interests generally were unwilling to sign off on sales and use tax nexus expansion unless simplification were more than an abstract proposal. Furthermore, business interests conditioned support for sales and use tax nexus expansion on state endorsement of business activity nexus contraction, something states were and remain unwilling to concede. Fourth, although comprehensive consensus proposals were never adopted, the NTA Project and ACEC produced most if not all of the substantive reform ideas embraced by the SSTP. Fifth, although not a novel idea, the NTA Project and ACEC reinforced the notion that an effective solution to the sales tax issues raised by electronic commerce must come from either a cooperative effort among the states or from Congress (or both).

**THE STREAMLINED SALES TAX PROJECT**

Governor Leavitt was acting neither alone nor in a vacuum when he advanced his proposal for a streamlined sales tax system. Indeed, as chairman of the National Governors’ Association, Governor Leavitt was very much a spokesperson for the states that were committed to the ideas he was proposing and indeed were already engaged in implementing them through the organization of the Streamlined Sales Tax Project (SSTP).

**Guiding Principles: Applying the Lessons of the Past**

The SSTP’s approach to sales tax simplification and reform has been shaped largely by the lessons learned from its precursors. First, the SSTP is state initiated and controlled. Only the states are formal, voting members. Second, in a concession to political reality, the SSTP for the most part has limited its focus to administrative simplification. Uniform base definitions have been developed, but only for the purpose of creating a menu of taxable and non-taxable items from which states can select. Third, in another concession to political reality, the SSTP has made no direct effort to expand state sales tax collection jurisdiction to remote sellers. Simplification has been pursued as a valuable reform in its own right, and collection of tax by remote sellers is required only if they choose to participate in the simplified tax regime on a voluntary basis. That said, states are clearly hoping

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that Congress or the courts will find that the SSUTA simplifications will be sufficient to remove the factual predicate for the physical presence test in member states, thus clearing the way for its ultimate repeal.

**Overview of the Streamlining Process**

The SSTP was officially organized in March 2000 by participating states and the District of Columbia, shortly before the ACEC issued its final report. A state could become a “participating state” eligible to vote at SSTP meetings by officially indicating its intent to support the SSTP’s mission and by designating a representative to vote on the state’s behalf. The initial task of the SSTP was to draft a fundamental “constitutional” document—the Streamlined Sales and Use Tax Agreement (SSUTA or the Agreement)—setting forth the substantive, administrative, and governance rules to which states that are parties must adhere. The SSTP immediately undertook that task, which took the better part of two years. The SSTP conducted (and continues to conduct) its work through a co–chaired steering committee and a number of working groups. SSTP participants are generally state revenue department administrators, but they also include representatives of state legislatures and local governments. Business representatives actively participate in the SSTP through attendance and testimony at open meetings, comments on proposals, and informal offers of expertise.

In November 2001, as SSUTA was being drafted, the states that had enacted legislation authorizing participation in the streamlining effort organized the Streamlined Sales Tax Implementing States (SSTIS). In substance, the SSTIS is the body that represents the participating states. In contrast to the SSTP, which may be viewed as the technical arm of the streamlining initiative, the SSTIS may be viewed as its political arm. It was contemplated that once the Agreement goes into effect, the SSTIS would be dissolved and a new governing body would be formed in accord with the Agreement’s governance rules.

The SSTIS adopted SSUTA in November 2002. Despite the importance of the Agreement, it is critical to keep in mind that SSUTA is in significant part no more than a blueprint whose basic requirements need to be implemented by more detailed legislation. At this writing, some states have adopted legislation conforming to all or part of the Agreement, and others are considering such legislation. The SSTP leadership has identified October 2005 as the target date for SSUTA to become operational.

Since the approval of SSUTA, the SSTP has continued to meet on a regular basis as various working groups consider a wide variety of issues relating to the implementation of the Agreement and the resolution of questions that the Agreement left unanswered. SSUTA contemplates that once the Agreement is up and running, the SSTP will be replaced by a similarly structured State and Local Advisory Council. SSUTA also creates a Business Advisory Council which is expected to advise the board on similar matters.

**Overview of the Streamlined Sales and Use Tax Agreement (SSUTA)**

The fundamental purpose of SSUTA is “to simplify and modernize sales and use tax administration in the member states in order to substantially reduce the burden of tax compliance.” To accomplish this

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15 See SSTP (undated).
16 See, e.g., Tax Management (2004).
17 SSUTA §§ 810–811.
18 SSUTA § 102. For a fuller discussion of SSUTA, see Hellerstein and Swain (2004), ¶ 2.02.
purpose, SSUTA “focuses on improving sales and use tax administration for all sellers and for all types of commerce”\textsuperscript{19} in the following areas: 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; and simplification of tax remittances.

It is critical to recognize what SSUTA does and what it does not do. First, despite its sweeping provisions for reform, standing by itself SSUTA is nothing more than the agreement of representatives of states that have committed themselves to “to simplify and modernize sales and use tax administration and to recommend the same to the states for implementation.”\textsuperscript{20} Unless and until individual state legislatures act to conform their statutes to SSUTA requirements, the Agreement, viewed as a freestanding document, is little more than an expression of intent.

Second, notwithstanding SSUTA’s lack of independent force, it is also fair to say that the Agreement already has had a significant impact on some states’ tax regimes. In conforming, in whole or in part, to the requirements of SSUTA, a number of states have made important changes in their sales and use tax provisions. The legal status of many of these changes (e.g., to definitions, sourcing rules, administrative requirements) does not depend on the effective date of SSUTA. Such changes are (or will become) part of a state’s sales and use tax law whether or not SSUTA ever takes effect. Accordingly, even if SSUTA never enters into force as an interstate agreement,\textsuperscript{21} these changes are important in their own right, and they will become increasingly important as more states modify their sales and use tax statutes to conform to SSUTA.

Third, when, as, and if a sufficient number of states with a sufficient proportion of the population enact legislation conforming to SSUTA so that the Agreement becomes effective, it is important recognize that the streamlined tax regime created by SSUTA is \textit{voluntary}, although taxpayers subject to the taxing authority of a state under traditional nexus rules will, of course, have an obligation to comply with that state’s tax laws. No seller is required to register under the Agreement and collect sales or use taxes in states in which it is not constitutionally required to do so under current law. No seller is required to use a Certified Service Provider\textsuperscript{22} or a Certified Automated System\textsuperscript{23} in conjunction with the collection of sales or use taxes. By the same token, sellers failing to register under SSUTA will not be eligible for its considerable advantages, including relief from certain liabilities,\textsuperscript{24} amnesty for certain uncollected or unpaid taxes,\textsuperscript{25} and enhanced compensation for tax collection obligations.\textsuperscript{26}

Finally, whatever SSUTA does or does not accomplish directly or indirectly before or after its effective date, it is clear that Congress possesses ample power to

\textsuperscript{19} SSUTA § 102.
\textsuperscript{20} SSTIS (undated).
\textsuperscript{21} According to its terms, SSUTA takes effect only when at least ten states, comprising at least 20 percent of the total population of all states imposing a sales tax, have petitioned for membership and been found in compliance with the Agreement. SSUTA § 701.
\textsuperscript{22} SSUTA § 203.
\textsuperscript{23} SSUTA § 202.
\textsuperscript{24} SSUTA § 306.
\textsuperscript{25} SSUTA § 402.
\textsuperscript{26} SSUTA §§ 601–603.
make SSUTA mandatory, though subject to whatever modifications to SSUTA that Congress may deem appropriate before requiring sellers to participate in such a system.

The Current Streamlining Landscape

At this writing, SSUTA is projected to go into effect on October 1, 2005, with an initial Governing Board of 18 states. Although SSUTA is in principle designed to stand on its own, most participants agree that it ideally should be reinforced by federal legislation formally granting states that have conformed to SSUTA the authority to impose a use tax collection obligation on remote sellers. Such legislation was introduced in the 108th Session of Congress and is expected to be introduced again in the current session. The earlier bills excluded from their scope sellers with less than $5 million of remote sales in the prior year; established certain minimum simplification standards; and provided for federal judicial review under specified circumstances.

THE POLITICAL ECONOMY OF STREAMLINING: INTERESTS, IDEAS AND TIMING

Interests

Though not a startling conclusion, the progress, contours, and detours of streamlining can be explained largely by traditional interest group politics, which we examine below.

The Initial Coalition

A broad consensus has formed among tax authorities and taxpayers that administrative simplification of sales taxes is a desirable goal, and such simplification is the guiding principle of streamlining. True, motives may be mixed. States see streamlining as a means to collect tax from remote sellers, although, undoubtedly, states are also motivated by the promise of reduced administrative burdens and notions of good government. The greater business community sees the obvious value in reduced compliance burdens, including avoidance of the costs of tax collection errors, sweetened by the prospect of amnesty for specified preexisting tax liability. Even traditional mail–order companies recognize, in principle, the value of sales tax simplification, though they are much more reluctant to acknowledge that streamlining has introduced enough simplification to warrant nexus expansion. Still, some remote sellers have participated actively and constructively in the SSTP, apparently making the judgment that their interests lie with shaping and enhancing the streamlining outcome rather than single–mindedly hanging on to the crumbling edifice of Quill.

When Reform Hurts: Local Governments and Others

That politics as usual looms large in the streamlining process is illustrated too when streamlining moves beyond mere administrative reform and threatens a

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27 The following states are full members, having enacted all of the provisions necessary to be in substantial compliance with each of the Agreement’s requirements: Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, North Carolina, Oklahoma, South Dakota, and West Virginia. As a result of having adopted delayed effective dates, New Jersey, North Dakota, Ohio, Tennessee, and Utah are associate members. These states will automatically become full members upon the effective dates of their conforming legislation. Arkansas and Wyoming are also associate members, having achieved substantial compliance with the Agreement taken as a whole, but not with each provision. They will be given until January 1, 2008 to achieve the level of compliance necessary for full membership. See SSUTA §§ 701–05.


particular interest. As already noted, for example, some remote sellers are reluctant to embrace streamlining because of the substantive impact on their industry.

SSUTA’s destination sourcing rules, though at first blush merely simplifying reforms reflecting sound sales tax policy, have provoked so strong an outcry that the streamlining movement is threatened, at least in some states. Two major interest groups are affected. The first are small and local businesses that make intrastate deliveries of products and services. Traditionally, many states have allowed these businesses to source sales to their business location (origin) rather than to the customer’s location (destination). Under SSUTA’s destination sourcing rules, however, deliveries (pizza, for example) must be sourced to the address of each delivery customer. The second interest group affected by destination sourcing is comprised of cities whose share of sales tax revenues will be negatively affected by a shift from origin–based to destination–based sourcing.

Political pressure in Kansas, Ohio, Tennessee, and Utah, for example, has provoked various responses including introduction and adoption of legislation repealing or delaying the implementation of the destination sourcing rules and SSUTA compliance legislation generally. Similar pressures caused the Washington and Texas legislatures to adopt SSUTA “compliance” legislation while retaining origin sourcing. As a result, Washington and Texas generally are considered to be not in compliance with SSUTA. The sourcing issue (among others) is an impediment to consideration of SSUTA compliance legislation in states such as California, Illinois and Arizona.

The concerns of many local jurisdictions extend beyond sourcing, SSUTA requires state and local tax base uniformity, a single local rate, and state–level administration. While this is the norm in many states already, these requirements have blocked serious consideration of SSUTA compliance legislation in jurisdictions such as Arizona and Colorado, where many cities vigilantly guard their independent tax bases and administrative authority.

In short, state participation in streamlining remains subject to the political dynamics within each state. This impediment will probably not thwart streamlining in a critical mass of states, but it may retard the spread of streamlining on a state–by–state basis. If streamlining proves, however, to enhance sales tax revenues in streamlined states, then the political calculus may change. The more measurable promise of enhanced revenue could bring reluctant states into the streamlining fold.

The States

The dominant theme of relations among the states during the streamlining process has been the remarkable degree of individual sacrifice to the greater good. The adoption of uniform definitions where there were none before has inevitably created revenue winners and losers.

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31 Namely, that consumption should be taxed where consumption occurs.
32 See generally Collins and Iafrate (2005).
33 Courtwright (2005). Dagostino (2005b). See Fox (2005) (reporting on redistribution of local sales tax revenues in Tennessee based on change to destination sourcing); Harrie (2005); Ortega (2005) (Ohio’s tax commissioner would have to work with other states implementing the Streamlined Sales and Use Tax Agreement to encourage the adoption of an amendment allowing certain vendors to source sales at their places of business).
34 There is hope in some quarters that business concerns about destination sourcing can be addressed by the adoption of certified compliance software and (perhaps) narrow sourcing exceptions for certain types of businesses or transactions. Local government concerns about revenue shifting will have to be addressed on a state–by–state basis by each individual legislature.
35 The scope of many member state exemptions of, say, food products, either expanded or contracted after the adoption of a uniform definition of food because the pre–existing definitions in many states varied from each other.
Of course, such self-sacrifice may reflect enlightened self-interest. If not for the carrot/stick of revenue gain/loss attributable to remote sellers, streamlining (at least as a cooperative enterprise and not a congressionally imposed regime) would probably have remained a pipe dream. The politically shrewd state may well let go of its revenue from Twixt bars—now no longer candy—as a means to add L.L. Bean to its use tax collection rolls. Maryland has taken a different approach to this trade-off, and will try to have its figurative Twixt bar and eat it too. Specifically, Maryland backed off from being a streamlining pioneer once it determined that adopting the uniform SSUTA rounding rule would cost it $25 million annually. Instead, Maryland will wait until congressional authorization of nexus expansion before embracing SSUTA and trading off rounding losses for remote seller gains. Narrow pursuit of self-interest is not dead.

The Private Sector

The broader business community—particularly the retailing and telecommunications sectors—has been a valuable and constructive contributor to streamlining on both the technical and political levels. This is not to say, however, that traditional interest group politics do not explain much of this contribution. Most businesses have no dog in the nexus fight and are benefited by SSUTA’s promise of reduced tax compliance burden.

Taken at their word, businesses are nonetheless concerned that the abandonment of the physical presence test for sales and use taxes may spill over into the business activity tax (BAT) nexus arena. Whether physical presence is also required for BAT taxes is still hotly contested. Accordingly, from the very beginning of the discussions of relaxed sales tax nexus rules in conjunction with the NTA Project, the business community has insisted on legislation limiting the scope of BAT nexus as a condition for sales and use tax nexus expansion, and legislation that would limit BAT nexus has been introduced in Congress. Fortunately for the streamlining process, state and business interests have agreed to disagree on this issue while continuing with the nuts and bolts of building a streamlined sales tax. Once the states request that Congress bless streamlining and authorize nexus expansion, however, the BAT nexus issue will come to the fore and test the strength of the streamlining coalition.

Other interest groups are surfacing as the prospect of federal streamlining legislation becomes increasingly imminent. Many in the remote selling industry are insisting on a high de minimis sales volume threshold. The most recent proposal is for a threshold of $5 million in annual remote sales. Here, the interests of small and large sellers collide. For example, remote sellers like Amazon.com would like to make sure that businesses operating under the seller-collective business model—notably eBay.com—are not excluded from sales and use tax reporting obligations by federal streamlining leg-
islation. States have shown willingness to compromise on the de minimis issue in order to maintain a broad coalition and win congressional support, despite the fact that it is difficult to justify a high sales volume nexus threshold in light of the vendor compensation and third-party tax reporting services contemplated by SSUTA.

Additionally, the telecommunication industry has weighed in requesting that streamlining legislation include a target date for mandatory streamlining of non-sales and use tax excise taxes. Again, it is the local governments that feel most threatened, and the National Association of Counties, the National League of Cities, and the U.S. Conference of Mayors have suggested a compromise “sense of the Congress” provision in streamlining legislation that would bless and encourage a telecommunications tax simplification process while allowing sales and use tax streamlining to proceed unhindered. Whether a compromise can, or need be, worked out remains to be seen.

Finally, Internet service providers and related interests are seeking to link streamlining legislation with legislation making the ITFA moratorium permanent. Indeed, proposed legislation so doing has already been introduced into the 109th Congress, assuring that this problem will not go away.

Congress

Of course, we cannot introduce congressional politics into the discussion without discussing Congress. As Charles McLure has noted, Congress’s track record in matters of state taxation is not encouraging. Most typically, Congress fails to act at all. When Congress has acted, the response is often a hasty fix of a taxpayer concern that is adopted over the objection of state tax authorities. For example, P.L. 86–272 (an income tax safe harbor for sellers of tangible personal property) and the Internet Tax Freedom Act (exempting Internet service providers) have little to recommend themselves from a long-run tax policy perspective. Both were marketed as temporary fixes to an immediate problem; both authorized broad-based studies of the problem to serve as the basis for more considered legislation based on an appropriate weighing of all of the policy concerns involved; yet P.L. 86–272 has remained on the books since 1959, and ITFA, which was originally enacted as a three-year “moratorium” on Internet taxation in 1998, was extended for two more years in 2001, retroactively extended (as modified) through 2007 in 2004, and, as indicated above, it will soon be permanent if some Congressmen have their way.

To its credit, however, Congress adopted a sensible resolution of vexing cellular phone tax sourcing issues by enacting the

42 See Shafroth (2005) (interviewing Robert Comfort, Amazon.com’s vice president of tax and tax policy and Richard Prem, Amazon.com’s director of global indirect taxes, who explicate position that $5 million threshold is too high).


45 McLure (2005).


Mobile Telecommunications Sourcing Act in 2000. What distinguished this legislation from many other congressional forays into state taxation was that it was jointly supported by both the telecommunications industry and the states. The hope, of course, is that a sensible streamlining bill can be crafted that enjoys similar joint support. Such support is threatened, however, by the attempts to link streamlining to BAT nexus contraction, telecommunications tax simplification, and ITFA extension.

Even if an acceptable state/local/private sector coalition can be held together, federal legislation is not assured. Undoubtedly, the nexus–expansion feature of streamlining will be (indeed, has been) labeled a tax increase by the remote selling industry and hard–line anti–tax groups. Further, beyond the abstract label, the “tax increase” will be highly visible to constituents who make remote purchases. Indeed, remote sellers may be quick to remind consumers that their representatives in Congress, not remote sellers, are the ones responsible for the “new tax.” Consumers have not, to date, been visible in the streamlining process. They are soon to be heard, however, as Congress will certainly consider their potential outcry as it deliberates on streamlining legislation.

Ideas

Tax experts and practitioners have long acknowledged the shortcomings of sales tax complexity and administration. Though not powerful enough by itself, the consensus around the streamlining “idea” must be added to the list of factors that has contributed to the success of streamlining (however tentative). In their study of the Tax Reform Act of 1986, Conlan, et al. (1990), remind us of the underrated power of ideas. They quote John Maynard Keynes, who observed: “The ideas of economists and political philosophers, both when they are right and when they are wrong, are more powerful than is commonly understood … I am sure that the power of vested interests is vastly exaggerated compared with the gradual encroachment of ideas.” Certainly there is an element is truth in this comment as applied to streamlining. Its tentative success has surprised many, yet these same observers concede that streamlining (or something like it) is the right thing to do. Perhaps it should not surprise us that every now and then the right idea takes hold.

Participants in the SSTP, which has met on a near bi–monthly basis since late 2000, have commented that the “spirit of streamlining” is bigger than the sum of the interests of the various participants. State taxing authorities and business participants alike often appear to identify with the values of the SSTP as much as with the constituencies that they represent. Streamlining is viewed as a worthy goal it is own right, and those involved feel they are involved in something of historical importance: fighting the good fight.

The power of ideas will be tested in Congress. Congress usually sees little political benefit to involving itself in state tax matters, particularly when asked to expand or reinforce state taxing powers.

50 Consumers are generally ignorant of or indifferent to their already existing use tax obligation.
51 Conlan (1990), p. 240.
52 Keynes (1936), 383–84.
53 Except, perhaps, at the behest of industry. See, e.g., McCarran–Ferguson Act, 15 U.S.C § 1011 (1994) (removing insurance industry from scope of negative Commerce Clause in conjunction with congressional overruling of United States v. South–Eastern Underwriters Ass’n, 322 U.S. 533 (1944), which held that the business of insurance was subject to federal regulation under the Commerce Clause). See generally Hellerstein and Hellerstein (1998), p. 6.08.
Congress incurs the political cost of the tax increase perception without the concomitant benefit of increased federal revenues. Thus, when states ask Congress for help, they must often appeal to its nobler sense of purpose; its constitutional responsibility for regulating commerce; its desire, however latent, to do the right thing. If the government/business streamlining coalition holds, it will be relatively easy for Congress to do the right thing. If the coalition does not hold, then Congress could do as much harm as good (for example, codifying anachronistic income tax nexus rules). Or it might do nothing. If Congress does nothing, then the next forum for testing the power of the streamlining idea may be the Supreme Court.

**Timing**

The world is littered with good ideas that do not take hold. Timing and circumstance are crucial, and this is true of streamlining. Without the confluence of electronic commerce, state budgetary shortfalls, and the impetus of the *Quill* decision coupled with Congressional inaction, streamlining probably would not have seen the light of day. And it still has a long way to go.

**THE FUTURE OF SALES TAX REFORM**

If streamlining takes hold in a meaningful way, it will deserve recognition as a fundamental sales tax reform because it can be credited with (1) introducing unprecedented administrative simplifications and (2) precipitating (one anticipates) the repeal of the de facto exemption for remote sales. Little sales tax base reform, however, will be accomplished. Much household consumption will remain untaxed (distorting consumer and producer choices) while business purchases will continue to be taxed (causing distortive tax pyramiding). The question presents itself: has streamlining or its lessons cleared a pathway to more comprehensive reform?

There is cause for pessimism. Administrative reform creates few losers, and so building the streamlining coalition has presented far fewer challenges than would tax base reformation. Indeed, the streamlining process either slows or stalls whenever it deviates from pure administrative reform—e.g., switching from origin to destination sourcing of in-state sales. Still, streamlining has at least created the institutional mechanism for consideration and coordination of fundamental, nationwide sales tax reform. Such a reform movement would have to be supported, however, by a political will that is not presently discernable.

It is easy to expect everything from tax reform, get a little less, and think one has gotten nothing. Notwithstanding its limitations, streamlining does constitute fundamental and remarkable reform. We are unaware that anyone predicted with confidence that states could successfully simplify and coordinate their sales tax administration to the degree promised by streamlining. Thus acknowledging the limitations of human foresight, we cannot close the door on the prospect of more fundamental reform. That being said, the economic benefits of a true consumption tax remain largely theoretical and obscure in the minds of most politicians and policymakers.

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