

National Conference of Commissioners on Uniform State Laws

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ADVISORY COMMISSION ON ELECTRONIC COMMERCE

SEPARATE STATEMENT

OF

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March 30, 2000

The Advisory Commission On Electronic Commerce ("Commission") provided a useful forum to analyze, discuss and debate the myriad of issues surrounding how sales tax policy should apply to remote sales, particularly those transacted through the Internet. It is extremely disappointing, however, that the Commission wasted its opportunity to recommend to Congress ways to create a level playing field between traditional merchants and ecommerce merchants for application of sales taxes in the new economy. As a result, the Commission lost the chance to preserve the revenues needed by state and local governments to provide basic services to the people of America. Instead, the anti-tax and self-serving business members of the Commission recommended a plan that would shift that obligation to the traditional tax-paying retail business community, their employees and citizens of the respective states.

The work of the Commission did much to educate and sensitize government, business, and the general public to the problems brought about by the evolution of electronic commerce. For instance, the Commission clearly brought the importance of sales tax simplification to the doorsteps of the forty-six states employing a sales tax. Similarly, it presented opportunities to change the way government and business view taxation in the new economy.

It appeared the vast majority of those serving on the Commission have quite similar views on a number of important issues: 1) Internet commerce should not become the target for new taxes; 2) the digital divide is a real problem and needs to be addressed because the benefits of the Internet should be available to all people, regardless of economic status; 3) current tax policy on telecommunications is cumbersome and needs to be improved, including possible phase-out of the federal excise tax on telecommunication services; 4) privacy rights of consumers need to be protected in any approach to taxation of remote sales; 5) taxation of digitized products present unique problems, however, taxation of their tangible counterparts has not created any such problem; and, 6) federal preemption of state and local taxes probably amounts to unconstitutional control of entirely intrastate activity.

While the Commission served these important purposes and provided the opportunity for essential consensus on a number of key issues brought before it, the manner in which its business was conducted, particularly at its final meeting in Dallas, was unfair, disappointing, and legally wrong. Action by the Chair and members of the "business caucus" to alter the Commission's Operating Rules to allow a simple majority vote to place items in the final Report to Congress was reprehensible and wrong. The clear and simple truth is that anything of substance that the Commission might state in its final Report to Congress would, by its very nature, constitute a "finding" or be a "recommendation" and by Federal Law, require a two-thirds majority of the Commission. This action is deceitful and presents the wrong impression as to the level of consensus reached by the Commission.

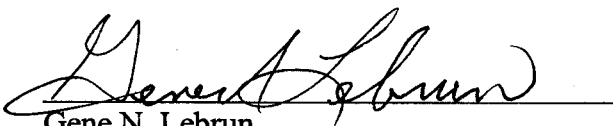
Similarly disappointing and unfortunate was the unwillingness of the Chair and the members of the "business caucus" to recognize the importance of a level playing field for sales taxation, and their willingness to create a "permanent preference" for the specific companies they represent and other companies using the Internet to sell their goods and services. The long-term consequences of adoption of such permanent preferences are unfair and far-reaching and not in the best interest of this country.

The inability of the Commission to come to agreement and send responsible recommendations to Congress, when the government and business caucuses were so close to agreement on major issues just prior to and at the Dallas meeting, is tragic and unfortunate. The Chair's personal intransigent "tax-free zone for Internet transactions" position sabotaged all efforts for such an agreement. As a result, a unique opportunity to send clear guidance and responsible recommendations to the Congress has been lost.

The purpose of the Commission was to make Findings and Recommendations to Congress on the complex and difficult issues surrounding the taxation of the Internet and sales conducted through the Internet and other remote media. The debate in Congress, and throughout the country, prior to the passage of the Internet Tax Freedom Act and the establishment of the Commission, clearly demonstrated that there were very strongly held differences of opinions on whether the Internet should be a "tax-free zone" or if there should be a "level playing field" whereby if the transaction is taxable, it should be treated the same regardless of the channel through which the sale is conducted. The Commission was statutorily composed of people who represented a cross section of those different viewpoints. Those viewpoints did not need the Commission as a forum to further their respective agendas since Congress and the news media were already available for such debate. Rather, the purpose of the Commission was to give those varying viewpoints a chance to come together, investigate in some depth the facts surrounding the issues, and seek an acceptable solution and make such a recommendation to Congress. The two-thirds super-majority needed for Findings and Recommendations made a lot of sense. To reach that super majority there would have to be some give-and-take among the varied interests represented on the Commission.

Unfortunately, the clearly erroneous ruling by the Chair to not require the statutory mandated two-thirds vote for a Commission Report, gave the anti-tax and self serving business members of the Commission the license to ignore any need to work toward a fair compromise, and encouraged them to use the Commission as a public forum to promote their own agendas.

The result was the failure of the Commission to fulfill its statutory duty to Congress and the American people. What could have been a unique occasion in the history of federal/state tax-policy making, charting a new relationship that would serve the new ecommerce into the twenty-first century, has been forfeited to the self-indulgences of a few special interests.



Gene N. Lebrun
Commissioner