

**Concluding Report Statement
of
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Introduction

Our Commission has completed an examination of a number of important tax issues that will have a major impact on not only the future of e-commerce but also the entire economy. It has been an honor and privilege to serve on this Commission. I want to thank Minority Leader Tom Daschle for my appointment to the Commission, and express my gratitude to all my fellow commissioners for their hard work and dedication.

As a representative of the business community and, in particular, the emerging “clicks and mortar” business model, I have steadfastly endorsed the proposition that the best way to achieve parity between the interests of government, business and consumers is by adhering to the basic principles upon which our tax system should operate - equity, simplicity, and clarity. I believe that parity will only be achieved by transforming the current sales and use tax system in order to provide both government and businesses with clear and simple rules as to when tax collection and filing obligations are required and greatly simplifying the significant administrative burden involved with collecting and remitting taxes while ensuring that state revenues are not adversely affected.

From my first day as a member of the commission, I hoped we would be able to achieve at least a two-thirds consensus towards a recommendation that embodies these principles. When, for a number of reasons, it became evident that a two-thirds consensus around any proposal before the Commission was not possible, I supported the Business Caucus Proposal because I believe it comes closest to creating a pathway to a “level playing field” for all businesses and offers a win-win solution for **all** parties. This can only be achieved by providing simple, clear and fair rules for all market participants in the short term by clarifying current nexus standards, while supporting state and local government efforts to create a simpler, more uniform sales and use tax system. A simpler system will ease or eliminate the burden of collection efforts, which in turn will ensure that adequate revenues exist to fund vital state and local government services without providing unintended competitive advantages for certain business models. On this point, I have been pleased, in particular, to work with a number of my fellow commissioners such as Governors Leavitt and Locke and, my friend, Mayor Ron Kirk.

In my view, the Business Caucus Proposal provides the best pathway to meaningful simplification of, and resulting equity for all participants in, the sales and use tax system. It embodies a clear consensus point on the Commission which I have consistently articulated throughout: agreement in **creating a simple and equitable system for state**

and local sales taxes that would impose equal obligations and costs on all sellers, local or remote, regardless of sales channel or technology utilized.

Level Playing Field

Many retailers today believe that the best way to continue to meet the rapidly changing needs of customers is by adopting a 360-degree business model that integrates the existing physical world with the newly emerging cyber world. As many commentators have noted new business models are emerging as traditional businesses transform themselves into e-businesses. “Bricks and mortar” businesses are rapidly becoming “clicks and mortar” or “bricks and clicks” businesses in order to compete with businesses that operate solely in cyberspace. Many choose to shop for merchandise over the Internet and then drop into a store to take a “test drive” and get answers to their questions from a real live person and then choose to complete their transaction over the Internet or over the phone. This business model empowers customers by allowing them the freedom to customize their buying experience. In many cases, a direct, build-to-order system is utilized regardless of whether a sales transaction occurs in a physical store, on a Web site, or over the telephone.

These changing business models have created a great deal of uncertainty and confusion with respect to sales and use tax collection obligations for interstate sales. While the US Supreme Court decision in *Quill* stated that a “physical presence” is necessary before a state can compel an out-of-state seller to collect sales and use taxes, unfortunately the Court did not provide any black and white rules or guidance as to what is a “physical presence.” As the physical and cyber worlds converge, the lack of any clear nexus standards has created a great deal of uncertainty for both business and tax administrators, which will likely lead to future disputes and costly litigation.

Most all of the Commissioners seem to agree that a “level playing field” is needed in order to achieve parity between the goals of government, business, and consumers and that uniformity and simplification are needed if the sales tax is to remain viable in the 21st century. However, these simplification efforts will take time and in the interim uncertainty and confusion over the “nexus question” will continue to plague both state tax administrators and businesses, which will divert time and resources from simplification efforts. Therefore, I believe that the nexus clarification standards outlined in the Business Caucus proposal are a vital and necessary first step towards a longer term solution to achieve a level playing field for all businesses while ensuring that the sales tax will remain a viable source of revenues for state and local governments in the 21st century.

Uniformity, Clarity and Simplicity

Most members of the Commission also recognize that parity can only be achieved through developing a simplified state and local sales tax system that reduces the cost of

compliance for all sellers and promotes voluntary collection of existing sales and use taxes. The Business Caucus proposal supports this goal.

While the need for simplification is clear to most of the Commission members, several members remain uncertain as to whether clarification is necessary to achieve the basic principles upon which our tax system has been built. I believe it is impossible to simplify the system without clarifying the ground rules.

Nexus is the starting point in analyzing any state taxation issue. It is critical to understand when a business has the obligation to collect sales and use taxes on out-of-state sales. No other issue has created more state tax disputes between businesses and state and local tax authorities, and no solution to the vexing problems associated with the taxation of e-commerce and remote sales can be considered complete without addressing the nexus question.

Simply put, simplification of the existing sales tax system without nexus clarification would only provide a partial solution to the problem. Indeed, I believe the nexus clarification provisions contained in the Business Caucus proposal are the single most important factor that will inevitably drive simplification by the states. Until or unless states are threatened with a potential loss of revenue -- whether through nexus clarification or emerging new economy business models -- there will be little incentive for simplification.

Given the Commission's inability to reach a two-thirds consensus, the Business Caucus Proposal, which passed by majority vote of this commission, offers the best compromise for government, business and consumers. The proposal achieves the goals of interested parties by limiting the affect on state and local revenue, providing certainty for all parties, and reducing burdens on taxpayers.

As I stressed in my statement at the outset of the Commission's hearings, one thing that has been proven in our country's history is that if a tax system is not fair, it does not work. My efforts on this Commission have been to help achieve consensus on a reasonable and workable solution to this issue that does not hinder growth and economic benefit of the Internet. I firmly believe, as does the majority on this Commission, that the Business Caucus Proposal allows e-commerce to flourish while providing a level playing field for all.