

106 N. Bronough St. • Tallahassee, FL 32301 • (850) 222-5052 • FAX (850) 222-7476

This report was initially released electronically at www.FloridaTaxWatch.org

How to Make Streamlined Sales Tax Legislation Revenue Neutral

As the 2009 General Session draws to a close, the Florida Legislature is again poised to fail to bring Florida into full compliance with the Streamlined Sales and Use Tax Agreement (SSUTA). Legislation to achieve this compliance is needed to modernize and simplify our sales and use tax system, end the competitive disadvantage placed on Florida “bricks and mortar” businesses, and take an essential step towards collecting millions, if not billions, of dollars owed to the state.

Currently, when a Floridian makes a purchase from a seller located outside of Florida, the remote seller does not have to collect the sales and use tax at the time of the transaction, although it is still legally owed. The difficulty of collecting sales and use taxes legally owed on remotely conducted transactions is because the United States Supreme Court has ruled that those vendors without a physical presence in a state cannot be legally *required* to collect and remit sales tax to the state. So while such retailers do not have to collect sales and use tax on internet, mail order, and phone sales, Florida residents are still liable for the tax on these purchases. Few Floridians even know that they are required to pay the sales tax owed on remotely conducted transactions directly to the Department of Revenue, and even fewer actually make such payments.

Florida will not collect all the revenue it is missing from remote sales until the federal government requires vendors to collect it. However, full compliance with the SSUTA is a way to begin collecting some of the money through voluntary collections and remittance agreements with remote sellers, and to simultaneously urge Congress to require all remotes sellers to collect and remit legally owed transactions taxes.

In 2002, Florida joined the Streamlined Sales Tax Project (SSTP), a multi-state effort to examine the problems of sales and use tax collection from remote sales. Florida was one of forty-two other states to ratify the SSUTA, a proposal to simplify and modernize tax laws and create a voluntary sales tax collection and remittance program. Twenty-two states have since modified their sales and use tax codes to be in full compliance with the agreement and participate in the voluntary remittance program.

The Florida Legislature has yet to take this final step, despite wide support. Florida TaxWatch, the business community, education and social service advocates, the National Conference of State Legislatures, the National Governors Association, the Florida Taxation and Budget Reform Commission (TBRC), and others have supported Florida’s full compliance. In fact, the TBRC unanimously passed a statutory recommendation to the Florida Legislature and crafted a

proposed constitutional amendment to require such full compliance. The TBRC withdrew the proposed amendment, largely based on assurances from legislative leaders that the SSUTA would be statutorily addressed during the 2009 Session.

Florida TaxWatch has reported extensively on this issue. For more background information see the report [Florida Must Become a Full Member of the Streamlined Sales Tax Project](#).

Estimated Fiscal Impact Has Been Key Roadblock to Adoption

Streamlined sales tax legislation (HB 329 and SB 1134) was introduced this session. Workshops were held early in the session but neither bill progressed to a vote in any committee. The main resistance to the legislation has been the negative fiscal impact to the state – a roadblock of serious consequence in the current fiscal climate. While states joining the compact retain general autonomy over what is taxed and what is exempt, they are required to change state laws to adopt such provisions as uniform definitions. Florida also could no longer use the *bracket method* to calculate taxes due, but would have to adopt the more modern and taxpayer-friendly *rounding method*. The last official estimate (made in 2005) forecasts a recurring \$41.5 million revenue loss to the state – due mostly to adopting rounding in tax calculations (see Table below).

However, the legislation is actually almost revenue neutral when state and local revenues are both considered. The official 2005 estimate also forecasts a \$41.1 million positive impact to local governments — mostly due to the removal of the \$5,000 discretionary sales surtax cap for retail sales of tangible personal property, except for the sale of motor vehicles, aircraft, boats, modular homes, manufactured homes, or mobile homes.

Estimated Revenue Impact of SSUTA Legislation by Category
(million \$)

	State		Local		Total	
	First Year*	Annual Recurring	First Year	Annual Recurring	First Year	Annual Recurring
Issues						
Rounding	-16.5	-39.5	-3.4	-8.3	-19.9	-47.8
Farm Equipment	-3.1	-7.5	-0.7	-1.6	-3.8	-9.1
Fruit Drinks	-1	-2.4	-0.2	-0.5	-1.2	-2.9
Frozen Dairy	-3.6	-8.5	-0.7	-1.7	-4.3	-10.2
Medical Exemptions	-1.2	-2.9	-0.2	-0.6	-1.4	-3.5
Delivery Charges	5.5	13.4	1.2	2.8	6.7	16.2
Candy/Food	2.5	5.9	0.5	1.3	3	7.2
Local Option			20.7	49.7	20.7	49.7
Total	-17.4	-41.5	17.2	41.1	-0.2	-0.4

*"First Year" impact is less than "Annual Recurring" impact because the legislation would only be effective for half of the fiscal year (because it would be implemented on January 1 of the following fiscal year).

Source: Senate Staff Analysis and Economic Impact Statement on Senate Bill 56, Commerce and Consumer Services Committee, March 7, 2005.

Reduce Sales Tax Revenue Sharing to Make Legislation Revenue Neutral for Both State and Local Governments

To make the legislation revenue neutral to both state and local governments, the Legislature could adjust the distribution formula for the Local Government Half-cent Sales Tax Clearing Trust Fund in order to decrease the revenue from the state sales tax that is shared with local governments. The state currently shares nearly \$2 billion of the state's 6% sales and use tax with local governments. Reducing those shared revenues by \$41.1 million would make the SSUTA legislation revenue neutral for local governments and reduce the state's negative revenue impact to \$400,000. Or, local revenue sharing could be reduced by \$41.5 million to make the legislation revenue neutral for the state, but that would cost local governments \$400,000 in revenue.

It should be noted that since estimated sales tax revenue for Florida in FY 2009-10 are 24% below what they were in FY 2005-06, an updated impact analysis of the SSUTA legislation would likely result in smaller amounts, meaning less money would have to be taken from the local revenues.

To accomplish this revenue offset, Chapter 212.20(6), *Florida Statutes*, would have to be amended. Language could be added to paragraph (d)3 as follows (words underlined are additions):

3. After the distribution under subparagraphs 1. and 2., 8.814 percent of the amount remitted by a sales tax dealer located within a participating county pursuant to s. 218.61 shall be transferred into the Local Government Half-cent Sales Tax Clearing Trust Fund. Beginning July 1, 2003, the amount to be transferred pursuant to this subparagraph to the Local Government Half-cent Sales Tax Clearing Trust Fund shall be reduced by 0.1 percent, and the department shall distribute this amount to the Public Employees Relations Commission Trust Fund less \$5,000 each month, which shall be added to the amount calculated in subparagraph 4. and distributed accordingly. Beginning July 1, 2009, the amount to be transferred pursuant to this subparagraph to the Local Government Half-cent Sales Tax Clearing Trust Fund shall be reduced by \$41,100,000 for each fiscal year and that amount shall remain with the General Revenue Fund.

Since the first-year cash impact was estimated at only -\$17.4 million for the state (+\$17.2 million for locals), the revenue share reduction could be phased-in as follows: \$17.2 million in FY 09-10 and \$41.1 million in subsequent years. A new analysis by the state's Impact Conference must be completed to bring the estimated fiscal impact up to date.

Streamlined Sales Tax Legislation Would Be Money-Maker for State and Local Governments

Making the bill revenue neutral to both state and local governments from the state estimators' perspective would mean that enacting the proposed legislation would be a positive for both levels of government. There are already more than 1,100 retailers voluntarily collecting and remitting sales tax revenue to SSUTA member states. They collected \$106 million in 2007 and incomplete data from 2008 show collections of \$143 million. Since the detailed information on the voluntary vendors is confidential, a reliable estimate of Florida's collections is difficult. However, Florida would be the largest full-member state and would comprise almost one-sixth of the 23 member states' total population. It is likely a significant amount of revenue would be remitted to Florida through voluntary compliance. Moreover, state and local governments have the potential for even more significant revenue gains in the future, especially if the federal government requires remote retailers to collect and remit the sales and use tax. Using a reduction in revenue sharing to make sure the legislation does not cost the state money is justified since the legislation would still be revenue neutral for local governments as a whole and local governments will share (more than 10%) in every added state sales tax dollar the Streamlined Sales Tax legislation ultimately brings to Florida.

This Florida TaxWatch *Briefing* was written by Kurt Wenner, Director of Tax Research.

David A. Smith, Chairman; Dominic M. Calabro, President, Publisher, and Editor

Florida TaxWatch Research Institute, Inc.

www.FloridaTaxWatch.org

© Copyright Florida TaxWatch, April 2009

About Florida TaxWatch

Florida TaxWatch is a nonpartisan, nonprofit research institute that over its 30-year history has become widely recognized as the watchdog of citizens' hard-earned tax dollars. Its purpose is to provide the citizens of Florida and public officials with high quality, independent research and education on government revenues, expenditures, taxation, public policies and programs. The three-pronged mission of Florida TaxWatch is to improve taxpayer value, government accountability, and citizen understanding and constructive participation in their government.

The Florida TaxWatch Board of Trustees is responsible for the general direction and oversight of the research institute and safeguarding the independence of the organization's work. In his capacity as chief executive officer, the president is responsible for formulating and coordinating policies, projects, publications, and selecting professional staff. As an independent research institute and taxpayer watchdog, Florida TaxWatch does not accept money from Florida state and local governments. The research findings and recommendations of Florida TaxWatch do not necessarily reflect the view of its members, staff, distinguished Board of Trustees, or Executive Committee, and are not influenced by the positions of the individuals or organizations who directly or indirectly support the research.