Legislative Analysis

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STREAMLINED SALES AND USE TAX PROJECT

House Bill 5502 as enrolled
Public Act 172 of 2004
Sponsor: Rep. Lorence Wenke

House Bills 5503 as enrolled
Public Act 173 of 2004
Sponsor: Rep. Dianne Byrum

House Bill 5504 as enrolled
Public Act 174 of 2004
Sponsor: Rep. Paul Condino

House Bill 5505 as enrolled
Public Act 175 of 2004
Sponsor: Rep. James Koetje

House Committee: Tax Policy
Senate Committee: Finance
Second Analysis (8-24-04)

BRIEF SUMMARY: Together, the bills would authorize the state's participation in the Streamlined Sales Tax Project, a multi-state effort to simplify and modernize sales and use tax collection and administration as a means of reducing the burden of collecting those taxes on sellers, thereby increasing compliance with the taxes. House Bill 5504 would create the Streamlined Sales and Use Tax Administration Act, and House Bill 5505 would create the Streamlined Sales and Use Tax Revenue Equalization Act. House Bill 5502 and House Bill 5503 would amend the Use Tax Act and the General Sales Tax Act, respectively, to make complementary changes in those acts for the state to be in compliance with the agreement. The bills are tie-barred to one another. House Bill 5504 would be effective July 1, 2004; the others would take effect on September 1, 2004.

FISCAL IMPACT: These bills would have a minimal fiscal impact, which consists of two components. The changes to the sales and use tax bases, dealing primarily with the adoption of uniform definitions, would reduce revenue by an estimated $18.3 million ($17.0 million in sales tax and $1.3 million in use tax) in FY 2004-05. In addition, to the extent that these bills encourage or increase voluntary compliance, state revenue would increase less any collection allowances. The uncollected revenue on remote sales is estimated to be between $250 million and $300 million in FY 2004-05. Remote sales include mail order and electronic commerce (sales orders placed via the Internet). Currently 33% of state use tax revenue is earmarked to the School Aid Fund (SAF), while the remaining 67% is General Fund/General Purpose (GF/GP) revenue. Approximately, 73% of state sales tax revenue is earmarked to the SAF, 10% to constitutional revenue sharing, and the remaining 2% is GF/GP revenue.

THE APPARENT PROBLEM:

In 1937 Michigan enacted the Use Tax Act (Public Act 94) as a companion to the General Sales Tax Act. Where the sales tax is a tax on retail sales of personal property (unless exempt) made inside the state, the use tax is levied, generally speaking, on remote sales (such as those made though the Internet or mail order catalogues) and on out-of-state purchases of products that are then brought back into the state for storage, use, and consumption. The use tax is a necessary supplement to the sales tax, as many taxpayers could otherwise avoid the sales tax by making purchases in other states. (The need for this was greater when the act was originally enacted, as there were fewer states with a sales tax). The use tax does not apply to transactions that are subject to the sales tax, and the taxpayer receives a credit for taxes paid to other states, so that a Michigan resident who purchases a product in another state and pays an equivalent amount of sales tax in that other state is not liable for the use tax in Michigan.

While the sales and use taxes are in some ways very similar - and easily confused – they differ significantly in their administration and rate of compliance. The statutory incidence of the sales tax is on retailers, as the tax is technically a tax on the privilege of doing business in the state. Although retailers can shift the incidence of the tax to consumers, by adding the tax to the purchase price of products, they are legally obligated to file a sales tax return and remit the appropriate amount of tax to the state.

The statutory and actual incidence of the use tax, by contrast, falls on consumers. For the most part, the tax is self-reported by the taxpayer, and the state is limited in its ability to enforce the tax. The state does enforce collection of the use tax in cases where purchases subject to the tax are required to be registered, such as automobiles, boats, and airplanes, but as a practical matter, compliance with the use tax in other cases has been considered voluntary. (Although nonpayment of the use tax is, technically speaking, tax evasion.) In 1999, the state income tax form was amended to include a line for taxpayers to use in reporting any use tax due on products purchased in the tax year as a means of improving enforcement and collection.

Enforcement of the use tax has been a problem for Michigan and other states for some time. Many taxpayers are unaware of their use tax liability, while others simply ignore it altogether. Moreover, states have had limited success in court when trying to require remote sellers (those outside of the state) to collect and remit use taxes on purchases by state residents. The problem largely stems from two key United States Supreme Court cases, *National Bellas Hess, Inc. v. Department of Revenue of Illinois* 386 U.S. 753 (1967) and *Quill Corp. v. North Dakota* 504 U.S. 98 (1992). Generally speaking, the court, in *Bellas Hess*, ruled that an out-of-state business with no physical presence ("nexus") in a state could not be required to collect and remit use tax on goods purchased by residents of that state. Requiring collection, the court held, would violate the Commerce Clause of the U.S. Constitution (Article 1, Section 8, clause 3). The *Quill* decision, as it relates to the Commerce Clause, reaffirmed the court's ruling in *Bellas Hess.* (See Background Information for greater detail on these cases.)

The problem of noncompliance with the use tax has grown in importance with the advent of the Internet and the expansion of "e-commerce". Even earlier, the North Dakota Supreme Court, in ruling that North Dakota could require Quill and other remote sellers to collect and remit use taxes (a ruling overturned by the U.S. Supreme Court), noted that "[t]he economic, social and commercial landscape upon which *Bellas Hess* was premised [in 1967] no longer exists…In the quarter-century which has passed in the interim, 'mail order' has grown from a relative inconsequential market niche into a goliath now more accurately delineated as 'direct marketing." The court further noted, "[w]hile in 1967 it may have generally been necessary to rely upon in-state sales personnel and inventory to successfully market a product, technology has changed the rules of the game. Today a direct marketer can communicate with his customers across the country through toll-free incoming telephone lines, national WATS telephone service, fax machines, telex, or direct computer communication just as effectively, and more efficiently, than if he were calling personally on each customer. Clearly the direct marketing of the 1990's bears little resemblance to the mail order of the 1960's." Similarly, one could reasonably argue that remote sales (direct marketing) in the 21st century "bears little resemblance" to the remote sales of the 1990's. Indeed, a July 2002 report on the sales and use taxes by the Office of Revenue and Tax Analysis (ORTA) within the Michigan Department of Treasury notes, "[a]s computer technology becomes more prevalent in everyday life, shopping through the Internet is growing at an astronomical rate."

The fiscal consequences of remote sales are significant for states that impose sales and use taxes. While Michigan has attempted to improve collection of use taxes owed by individual consumers (particularly through the inclusion of a line on the income tax return to report any use tax due), such efforts have fallen short. In its July 2002 report, ORTA noted that in FY 2000, 80,152 taxpayers submitted $3.1 million of use tax through their income tax return. This amounted approximately 1.5 percent of the estimated use tax liability that goes uncollected from remote sales.

Attempts to estimate the amount of revenue lost have proven to be difficult and have yielded wide-ranging results. In a 2000 study on electronic commerce, the General Accounting Office (GAO) noted, "[i]mportant factors that determine the tax loss on Internet and remote sales are the volume of Internet and other remote sales, the portion of the sales subject to tax, the extent of compliance by sellers or purchasers, and the extent to which Internet sales displace other types of remote sales. However…little data exist on these factors and the accuracy of the information that exists is often unknown."

In its report, ORTA cited a study by the Center for Business and Economic Research at the University of Tennessee, which estimated sales and use tax losses at over $20 billion in 2003. However, that figure included business-to-business remote sales, which the department believes results in revenue losses are relatively small (though with the potential to greatly expand) when compared to business-to-consumer sales. In terms of business-to-consumer sales, ORTA noted that Michigan's revenue losses have been estimated at $210 million in FY 2001, and $349 million in FY 2005. As should be expected, the increasing losses are largely the product of the expansion of e-commerce.

A new effort to improve compliance and collections began in earnest in 2000 with the development of the Streamlined Sales Tax Project (SSTP), which involved 32 states, including Michigan, and six observer states, as well as input from businesses and local governments. The mission of the project was to develop and implement a simplified and uniform sales and use tax system that will encourage *voluntary* use tax compliance. This has proven to be a daunting task, as 34 of the 45 states with a sales tax allow local sales taxes, and 30 states have multiple rates. (The problem of multiple taxing jurisdictions within the states is particularly problematic.) Further, states often treat the same products differently and have different kinds of exemptions and definitions in their tax laws, all of which complicate the creation of a multi-state system.

In November 2002, 33 participating states, including Michigan, ratified an agreement specifying the changes in the sales and use taxes needed for each state to be in compliance with the agreement. The agreement requires states to adopt a state-level administrative process, implement a common tax base, and provide a transparent system to notify vendors of tax rate and tax base changes. The agreement also contains uniform provisions related to sourcing nontraditional sales and telecommunication fees and taxes, and simplified administrative procedures, includes the treatment of exemptions, the filing of returns, and the recovery of bad debts. However, in addition to agreement with the agreement, states must also adopt the necessary changes to their sales tax and use tax laws.

In October 2001, then-Governor Engler signed into law Public Act 122 of 2001 (House Bill 5080). That legislation, referred to as the Equitable Sales and Use Tax Administration Act, permitted Michigan to enter into the streamlined sales and use tax agreement. The state was a participant in the agreement. However, the act contained a sunset of December 31, 2002, and the state is no longer an active participant in the streamlined sales tax project. Legislation has been introduced that would again allow the state to become a participant, and that would make necessary changes to allow state tax law to be substantially in compliance with the agreement.

THE CONTENT OF THE BILLS:

House Bill 5504 - Streamlined Sales and Use Tax Administration Act

The bill would create the Streamlined Sales and Use Tax Administration Act under which the state treasurer could enter into the streamlined sales and use tax agreement with one or more other states to simplify the sale and use tax administration "in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce". Among other provisions, the bill would do the following:

-- Appoint four people (an appointee of the Senate, an appointee of the House, the state treasurer or a designee, and the governor or a designee) to the governing board of the agreement.

-- Allow the state treasurer and the state legislature (by resolution) to withdraw the state from the agreement.

-- Provide for the registration of sellers and certified service providers (i.e., agents contracted by a seller to collect and remit sales and use taxes on the sellers behalf).

-- Limit the liability of registered sellers for any uncollected or non-remitted sales or use tax on transactions with resident purchasers prior to the date of registration.

-- Designate four models sellers could use when collecting and remitting sales and use taxes, along with the collection allowances permitted.

-- Require the department to notify registered sellers of a change in rate or tax base.

-- Maintain state sovereignty with respect to provisions in the agreement.

House Bill 5505 - Streamlined Sales and Use Tax Revenue Equalization Act

The bill would create the Streamlined Sales and Use Tax Revenue Equalization Act, which would "impose taxes and create credits and refundable credits to modify and equalize the impact of changes made to the General Sales Tax Act and Use Tax Act necessary to bring those taxes into compliance with the streamlined sales and use tax agreement." The basic purpose of the act is to retain current exemptions in the sales and use tax that would be eliminated under House Bills 5502 and 5503. The taxes and credits relate to interstate motor carriers, certain motor vehicles, and aircraft. The bill would also provide a credit for assessments added to hotel and motel charges for convention and tourism marketing and development.

House Bill 5502 and 5503 - Use Tax Act and General Sales Tax Act Amendments

The bills make changes to the Use Tax Act and General Sales Tax Act, respectively, necessary for the state to be in compliance with the streamlined sales and use tax agreement. Provisions common to both bills include numerous definitional changes, particularly the definition of "prepared food intended for immediate consumption"; the elimination of certain exemptions; added provisions relating to bad debt reductions; added provisions related to the "sourcing" of sales; and changing the dates on which sales and use are calculated or returned (tax filing due dates would be moved to the 20^{th} of each month instead of the 15^{th} of each month).

For a more detailed description of the content of the bills, see the House Fiscal Agency's 15-page summary of the bills as introduced, dated 3-23-04. Changes made to the bills after introduction are largely technical. They include the addition of effective dates of July 1, 2004 for House Bill 5504 and September 1, 2004 for the remaining bills.

BACKGROUND INFORMATION:

National Bellas Hess v. Department of Revenue of Illinois - 386 U.S. 753 (1967)

National Bellas Hess (NBH) was a mail-order business incorporated in Delaware and principally located in Missouri. At the time, Illinois law required retailers maintaining a place of business in the state to collect and remit use taxes. National Bellas Hess did not maintain any place of business, representatives, or property in Illinois; rather, its only connection with the state was through the U.S. mail and common carrier when it sent out bi-annual catalogues and flyers to customers and potential customers located in the state. Nevertheless, it was required by the Illinois Department of Revenue (and upheld by the Illinois Supreme Court) to collect and remit use taxes to the state, as state law defined a retailer maintaining a place of business in the state to include any retailer, "[e]ngaging in soliciting orders from within this State from users by means of catalogues, or other advertising, whether such orders are received or accepted within or without this State."

National Bellas Hess argued that Illinois law violated the Due Process Clause of the 14th Amendment to the U.S. Constitution and the Interstate Commerce Clause of Article 1, Section 8 of the Constitution. Finding that for both clauses, the constitution requires "some definite link, some minimum connection, between a state and the person, property, or transaction it seeks to tax," [quoting *Miller Bros. Co. v. Maryland*, 437 U.S. 267, 273 (1978)] the U.S. Supreme Court ruled that no such connection (nexus) existed in this case. Though the court, on several prior occasions, had upheld the power of the states to impose liability on an out-of-state seller to collect use taxes, there was in those cases at least some sort of nexus between the seller and the state, and the opinion said "the Court has never held that a State may impose the duty of use tax collection and payment upon a seller whose only connection with customers in the State is by common carrier or the United States mail."

It further added, "it is difficult to conceive of commercial transactions more exclusively interstate in character than the mail order transactions here involved. And if the power of Illinois to impose use tax burdens upon National were upheld, the resulting impediments upon the free conduct of its interstate business would be neither imaginary nor remote. For if Illinois can impose such burdens, so can every other State, and so, indeed, can every municipality, every school district, and every other political subdivision throughout the Nation with power to impose sales and use taxes. The many variations in rates of tax, in allowable exemptions, and in administrative and record keeping requirements could entangle National's interstate business in a virtual welter of complicated obligations to local jurisdiction with no legitimate claim to impose 'a fair share of the cost of the local government.' The very purpose of the Commerce Clause was to ensure a national economy free from such unjustifiable local entanglements. Under the Constitution, this is a domain where Congress alone has the power of regulation and control."

Complete Auto Transit, Inc. v. Brady - 430 U.S. 274 (1977)

A decade after the U.S. Supreme Court's decision in *National Bellas Hess*, it convened to decide the constitutionality of a state sales tax. At issue in *Complete Auto*, was a Mississippi sales tax of five percent of gross proceeds for businesses transporting persons or property for compensation. The statute was challenged by Complete Auto Transit, Inc., a Michigan-based company that transported motor vehicles for General Motors into the state, on the grounds that it violated the Commerce Clause of the Constitution. In upholding the tax, the court held that a state tax satisfies the requirements of the Commerce Clause if it meets four criteria: (1) the tax is applied to an activity with substantial nexus with the taxing state, (2) the activity - both in and out of the state - is fairly apportioned, (3) the tax does not discriminate against interstate commerce, and (4) the tax is fairly related to services provided by the state.

Quill Corp. v. North Dakota - 504 U.S. 98 (1992)

The facts behind the *Quill* decision were quite similar to those 25 years earlier in *National Bellas Hess*. At the time, Quill, which sold office equipment and supplies, was incorporated in Delaware and had offices in Illinois, California, and Georgia; it had no employees working or residing in North Dakota; and it did not own tangible property in the state. It solicited customers through catalogues, flyers, advertisements, telephone calls, and delivered its merchandise to customers in North Dakota through mail or common carrier from out-of-state locations. North Dakota statute required every retailer maintaining a place of business in the state to collect and remit use taxes. Quill was required under state law to collect and remit use taxes because, under state law, "retailer" included "every person who engages in the regular and systematic solicitation of a consumer market in the state", and Quill fit that definition.

Quill challenged the constitutionality of the North Dakota law on the same grounds raised in *National Bellas Hess.* Whereas in *National Bellas Hess*, the court determined that the test to determine constitutionality under the Due Process Clause and the Commerce Clause were quite similar, it held in *Quill* that the constitutional requirements for the two clauses were quite different, even though the court has not always been precise in distinguishing between the two, and that the "clauses pose distinct limits on the taxing powers of the State." It held that a state could, in a manner consistent with the Due Process Clause, impose a tax on a particular taxpayer, even though such a tax could violate the Commerce Clause. The court recognized that its due process jurisprudence related to this matter in the years since *National Bellas Hess* had changed quite a bit. In this instance, the court backed off on its due process requirement of actual "physical presence," requiring, instead, "connections with a State [that] are substantial enough to legitimate the State's exercise of power." The court held that "there is no question that Quill has purposefully directed its activities at North Dakota residents, that the magnitude of those contacts are more than sufficient for due process purposes, and that the use tax is related to the benefits Quill receives from access to the State."

The court held that while the requirement to collect and remit use taxes did not violate the Due Process Clause, it did violate the Commerce Clause, even though its jurisprudence on it had changed somewhat in the years since *National Bellas Hess* (particularly with *Complete Auto*. Despite these changes, the court noted that *National Bellas Hess (*and its physical presence requirement) was still "good law"

The court added, "[t]his aspect of our decision is made easier by the fact that the underlying issue is not only one that Congress may be better qualified to resolve, but also one that Congress has the ultimate power to resolve. No matter how we evaluate the burdens that use taxes impose on interstate commerce, Congress remains free to disagree with our conclusions…Accordingly, Congress is now free to decide whether, when, and to what extent the States may burden interstate mail-order concerns with a duty to collect use taxes."

Scholastic Book Clubs v. Department of Treasury - 223 Mich App 576 (1997)

In this case, the Michigan Court of Appeals ruled that the Department of Treasury could not require Scholastic Books Clubs to collect and remit use taxes from Michigan purchasers. The company provides catalogs for books to teachers, who then distribute them to students and place orders on behalf of their students. The department had argued that teachers essentially acted as the company's sales force in Michigan. Relying on a similar case from Arkansas, the court of appeals ruled Michigan teachers were not sales agents for the company, but more akin to parents ordering books for their children, and no one could seriously argue that parents constituted a sales force for mail-order companies. As such, the court of appeals ruled that the company did not have a "nexus" in the state and, therefore, could not be compelled to collect and remit use taxes to the state.

State Use Tax Nexus Standards

The Department of Treasury's Revenue Administrative Bulletin (RAB) 1999-1 sets forth the state standards for determining nexus for collecting use taxes. It states that an out-of-state seller is subject the state's use tax collection requirements when it engages in any of the following activities.

1. It has one or more employees resident or temporarily present in Michigan engaging in any activity other than those described in paragraph 7 (see below). An employee temporarily present in Michigan for two days will create nexus.

2. It owns, rents, leases, maintains, or has the right to use and uses tangible personal or real property that is permanently or temporarily physically located in Michigan.

3. Its employees own, rent, lease, or maintain an office or other place of business in Michigan.

4. It has goods delivered to Michigan in vehicles the out-of-state seller owns, rents, leases, uses, or maintains, or has goods delivered by a related party acting as a representative of the out-of-state seller.

5. Its agents, representatives, independent contractors, brokers, or others acting on its behalf, own, rent, lease, use, or maintain an office or other place of business in Michigan, and this property is used in the representation of the out-of-state seller in Michigan.

6. Its agents, representatives, independent contractors, brokers, or others acting on behalf of the out-of-state seller, are regularly and systematically present in Michigan conducting activities to establish or maintain the market for the out-of-state seller whether or not these individuals or organizations reside in Michigan.

(a) Activities that establish or maintain the market for the out-of-state seller include, but are not limited to, the following:

i. Soliciting sales;
ii. Making repairs or providing maintenance or service to property sold to be sold;
iii. Collecting current or delinquent accounts, through assignment or otherwise, related to sales of tangible personal property or services;
iv. Delivering property sold to customers;
v. Installing or supervising installation at or after shipment or delivery;
vi. Conducting training for employees, agents, representatives, independent contractors, brokers, or others acting on the out-of-state seller's behalf, or for customers or potential customers;
vii. Providing customers any kind of technical assistance or service including, but not limited to, engineering assistance, design service, quality control, product inspections, or similar services;
viii. Investigating, handling, or otherwise assisting in resolving customer complaints;
ix. Providing consulting services; or
x. Soliciting, negotiating, or entering into franchising, licensing, or similar agreements.

(b) Regular and systematic presence exists if at least 2 days of presence occurs in Michigan on an annual (i.e., 12-month period) basis.

(c) Lawyers, accountants, investment bankers, and other similar professionals in Michigan, who perform their customary services for an out-of-state seller in their professional capacity, shall not be considered to be establishing or maintaining the market on behalf of the out-of-state seller.

7. If none of an out-of-state seller's contacts in Michigan fall under paragraph 6(a) and its only contacts with Michigan are limited to any of the contacts listed below, such contacts will be presumed not to create nexus [except as noted in 7(h)]. If an activity is listed in

(a) though (g) below and that activity also is described under paragraph 6(a), then paragraph 6(a) controls and the out-of-state seller is subject to Michigan's use tax collection responsibility.

(a) Meeting with in-state suppliers of goods or services;

(b) In-state meetings with government representatives in their official capacity;

(c) Attending occasional meetings (e.g. board meetings, retreats, seminars, and conferences sponsored by others, schools, or other training sponsored by others, etc.);

(d) Holding recruiting or hiring events;

(e) Advertising in the state through various media;

(f) Renting customer lists to or from an in-state entity;

(g) Attending a trade show at which no orders for goods are taken and no sales are made; or

(h) Participating in a trade show at which no orders for goods are taken and no sales are made for less than 10 days cumulatively on an annual basis

ARGUMENTS:

For:

House Bill 5504, like Public Act 122 last session, is necessary to allow the state to remain an active participant in the streamlined sales tax project, an effort among the states to create a uniform and simplified system of sales and use taxes (which is typically a good thing for businesses). House Bills 5502 and 5503 make necessary amendments to the Use Tax Act and General Sales Tax Act, respectively, for the state to be in compliance with the agreement. Finally, House Bill 5505 re-writes current exemptions in the sales and use tax acts that had to be eliminated in order to remain compliant.

For:

It is a matter of simple fairness to Main Street, brick-and-mortar retailers that Michigan develop a method of collecting taxes on remote sales. Retailers collecting the six percent sales tax in Michigan are at a competitive disadvantage compared to out-of-state businesses that do not have to collect the similar use tax. This disparate treatment violates the principle that a tax should be efficient, as the current situation favors one form of production over the other.

For:

The enactment of this legislation is necessary to preserve the viability of both the sales tax and the use tax as sources of revenue. Sales and use taxes account for approximately

20 percent of the total state revenue, 12 percent of the GF/GP purpose revenue, and 44 percent of the School Aid Fund (SAF) revenue. As state residents choose to purchase goods through remote sellers that have no obligation to collect and remit use taxes to the state, the state loses out, as compliance on the part of purchasers is rather lax and strict enforcement on the part of the Department of Treasury is practically impossible. In a sense, the sales and use taxes could be considered to be a "leaky bucket," - state tax revenue leaks out of the state's coffers as more purchasers are made out of state, creating a situation in which sales tax is not charged and use tax is not likely to be collected. The only alternatives to increasing (or at least maintaining) current sales and use tax collections are to increase the rate or the base (include more services) of the two taxes. Neither of these options is particularly palatable to most constituent groups. The alternative, then, is to find ways to improve compliance and to improve the collection of taxes already owed to the state. This package of bills moves the state in that direction. This not a scheme to impose a new tax on consumers, nor is it an Internet tax. Rather, it merely seeks to improve current law to encourage sellers to *voluntarily* collect and remit use taxes.

Against:

These bills essentially are an effort to collect the estimated $250 million to $300 million in use tax revenue on remote sales that remains uncollected. If the state is successful in collecting even a portion of that amount, the result is money taken out of the hands of taxpayers and put into the pockets of state government. In the long run, approving this package of bills could lead to a national tax model that could raise taxes in a number of ways. It could lead to the taxing of services (in the name of standardization) or it could lead to the elimination of existing exemptions (in the name of simplification). In any case, the basic point is that this proposal is fraught with danger for taxpayers.

Response:

If it turns out that this proposal greatly increases state revenue, the legislature can always cut taxes, either by reducing the income tax or by lowering the rate of the sales and use taxes.

Against:

The kind of agreement envisioned in the bill is a blow to state sovereignty. Article IX of the State Constitution says that, "The legislature shall impose taxes . . . sufficient to pay the expenses of state government", and that "The power of taxation shall never be surrendered, suspended, or contracted away". This legislation envisions sending a small group to vote on behalf of the state's interest at multi-state conferences aimed at "streamlining" (that is, rewriting) state sales tax laws, and further envisions contracting out tax collection functions to a third party. The state could lose control over its tax laws and tax system.

Response:

The very constitutional language cited above from Article 9 is in fact what protects the state from having its tax laws altered without approval of the state's elected representatives. Those representing the state at the meetings of the Streamlined Sales Tax Project can make recommendations to the legislature, but changes in the state's tax system can only be made by the legislature. House Bill 5504 contains numerous (and sometimes repetitive) provisions safeguarding state sovereignty, including portions of Section 11, which states in part, "[n]o provision of the agreement authorized by this act in whole or in part invalidates or amends any provision of the law of this state. Adoption of the agreement by this state does not amend or modify any law of this state."

Against:

Critics of the proposal say that a new multi-state tax collection system using third parties (i.e., certified service providers) raises privacy concerns. With the creation of new large repositories of information about consumers and consumer transactions, the opportunities for the increased invasion of personal privacy and identity theft expand. Some people are concerned about the growth in electronic surveillance associated with the use of personal computers to shop.

Response:

House Bill 5504 contains provisions regarding the safeguard of privacy of individuals. The system is supposed to be designed to protect the anonymity of consumers. One of the work groups of the project is devoted to privacy issues.

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