Fall 2001

Taxing E-Commerce: The Sales and Use Tax Question

Timothy A. Hart

Follow this and additional works at: http://digitalcommons.law.utulsa.edu/tlr

Part of the Law Commons

Recommended Citation

Available at: http://digitalcommons.law.utulsa.edu/tlr/vol37/iss1/10
NOTES & COMMENTS

TAXING E-COMMERCE: THE SALES AND USE TAX QUESTION

I. INTRODUCTION

While money may arguably be the "root of all kinds of evil," there is no question it is the root of all kinds of legislation. But for a loss of Sales and Use Tax ("SUT") dollars to states over the past few years, much legislation and various articles like this would never find their way to print. Over the past few years, electronic commerce ("e-commerce") has grown rapidly. In 1999, e-commerce was estimated at $5.3 billion (64 percent of total retail sales) and is expected to grow to over $300 billion by 2002 with potential for unlimited growth. That, in itself, is not the problem. The problem is that states and municipalities will lose billions in SUT revenue if the current system of imposition and collection of SUT is not changed. Whether the system should be changed and how the new system should be structured is the focus of this Comment.

In order to discuss any potential changes and solutions, however, an understanding of why the problem exists and a framework in which the solutions must fit merits discussion. Accordingly, this Comment analyzes the following issues: 1) What SUT is; 2) Why its collection is a problem; 3) How an old problem has been intensified; 4) What the Supreme Court has said about SUT collection in interstate commerce; 5) What Congress has done to correct the problem; 6) Whether SUT should be imposed on e-commerce transactions; and 7) A synthesis of recently proposed solutions, focusing on what will and will not work.

1. 1 Timothy 6:10 (New Intl.).
4. See Sanders, supra n. 2.
II. WHAT IS SALES AND USE TAX?

Sales tax is imposed on sales or leases of tangible personal property and some selected services.\(^5\) Usually, the tax is imposed on consumers. However, some states impose the tax directly on sellers.\(^6\) Ordinarily, if states impose sales tax, the tax is imposed on sales when buyers are physically located in the state where the purchase is made.\(^7\)

When the seller is not located within the state where the sale is made, use tax typically applies instead of sales tax.\(^8\) Use tax is imposed directly on the consumer by the state where the property or service is used.\(^9\) If the seller has nexus\(^10\) in the state, he is required to collect this tax on behalf of the state where the property or service is used.\(^11\) If the seller’s nexus is not established, the consumer must self-impose and forward the tax to his state.\(^12\)

While sales tax compliance is relatively high, use tax compliance, specifically among non-business consumers, is extremely low.\(^13\) Most individuals do well to maintain records just for annual income tax reporting.\(^14\) It is laughable to imagine average consumers keeping track of purchases on which they did not pay sales tax and then actually computing and paying use tax on those purchases.\(^15\)

III. DIFFICULTIES IN SALES AND USE TAX COLLECTION

Many difficulties exist in SUT collection. Nexus determination and calculation of SUT are the main challenges for sellers, while ignorance and enforceability are the biggest obstacles to consumer collection.\(^16\)

---

6. Id.
7. Id.
8. Id.
9. Id. at 1191-92.
10. See Blum v. Yaretsky, 457 U.S. 991, 1004 (1982). The Blum Court states:

The mere fact that a business is subject to state regulation does not by itself convert its action into that of the State for purposes of the Fourteenth Amendment. The complaining party must also show that there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself. The purpose of this requirement is to assure that constitutional standards are invoked only when it can be said that the State is responsible for the specific conduct of which the plaintiff complains.

Id. (quotations omitted).
11. Hardesty, Tax. supra n. 5, at 1192-93.
12. Id.
13. Id. at 1193.
14. Id.
15. See id.
16. See id. at 1194-96.
A. Nexus Determination

Nexus determination is unsettled. Specifically, does the physical location of web servers, trade show attendance, or software licensure constitute nexus within that state? States are split on these and other nexus determining questions. Until this issue is clarified, sellers will continue to grope their way through the dark uncertainty of whether they have nexus in a particular state.

In an attempt to bring more clarity to the nexus picture, Congress has proposed H.R. 2526, which speaks specifically to what does not create "a substantial physical presence"—one of the key factors of nexus determination. Of special importance are items (4) and (5) which, if passed, would make legislative law that the mere use of the Internet, an Internet service provider, or web-hosting service does not create a substantial physical presence in a given state.

B. Calculation of Sales and Use Tax

Not only must sellers grapple with questions of whether they have nexus in a particular state, they must then contend with the formidable task of imposing SUT in states where they have nexus—or at least where they think they do. There are "over 30,000 state and local tax authorities in the United States and an untold number of foreign tax authorities." Small vendors rarely have adequate resources to handle these complex taxation issues. Fortunately for the smaller companies, they are unlikely to be noticed by tax authorities. However, larger

17. Hardesty, Tax, supra n. 5, at 1195.
18. See id.
19. Id.
20. Id.
21. H.R. 2526, 107th Cong. (2001). Because the definitions proposed here speak to Business Activity Taxes ("BAT"), they would not necessarily be determinative in SUT nexus. Even so, if these standards become adopted they could eventually become the nexus standards for all interstate taxing questions, including SUT determination. For purposes of this bill, BAT:

means a tax imposed on, or measured by, net income, a business license tax, a business and occupation tax, a franchise tax, a single business tax or capital stock tax, or any similar tax or fee imposed by a State or subdivision thereof on a business for the right to do business within the State or subdivision or which is measured by the amount of such business or related activity.

Id. at § 101(e)(1).
22. Id. If upheld in court for SUT purposes, this would mean that an Internet-based company doing business across the United States would only have a nexus in the state in which it is actually, physically, located. See H.R. 2526, 107th Cong. (2001). In the other forty-nine states in which the company is not physically located, there would be no nexus, and therefore no basis for taxation. See Hardesty, Tax, supra n. 5, at 1193.
23. See Hardesty, Tax, supra n. 5, at 1193, 1195.
24. Id. at 1193.
25. Id.
26. Id.
companies, who are unable to escape scrutiny, must allocate substantial resources to comply with the thousands of regulations, as well as deal with the uncertainty of e-commerce rules.\textsuperscript{27}

C. Consumer Ignorance of Sales and Use Tax Requirements

In situations where sellers do not have nexus and consumers must self-impose use tax, the main obstacles to compliance are ignorance and enforceability.\textsuperscript{28} Most individuals seem to be aware of the concept of use tax.\textsuperscript{29} Nearly everyone is aware that in most states when they purchase an item for $1.99 they will actually pay more than that price. However, most do not realize that if that same item is purchased in a jurisdiction that does not impose sales tax and that good is then used in another state that does impose sales tax, they are usually required to manually calculate how much tax should be imposed and then send it to their local taxing agency.\textsuperscript{30} Notwithstanding the likely prevailing ignorance regarding this area of the law, making these facts known should not prove overly difficult in this age of information.

D. Enforceability of Sales and Use Tax Compliance on Consumers

The second (and vastly more complicated) problem of consumer compliance with self-imposed use tax is enforceability.\textsuperscript{31} Even if the public were made aware of SUT reporting requirements, actually enforcing these rules would be burdensome to the point of futility.\textsuperscript{32} Enforcement would likely take the form of audits of individuals' purchases to assess whether sales tax was paid on each purchase. It is difficult to imagine how this type of enforcement could be profitable.

For example, assume that in a given year a family of four purchases a total of $1,500 worth of goods from the Internet, catalogs, and states without sales tax for use in a state that does impose SUT's.\textsuperscript{33} Since no sales tax has yet been paid on the goods, this family is required to first keep track of all purchases on which they did not pay sales tax, and then calculate use tax on each purchase.\textsuperscript{34} Assuming a 7.5\% use tax rate, the total tax would be $112.50. The costs associated with hiring auditors, selecting individuals for audit, conducting the actual audit (in which the auditor would somehow need to determine when and where

\begin{itemize}
\item \textsuperscript{27} Id. at 1194.
\item \textsuperscript{28} See Megan E. Groves, Where There's a Will, There's a Way: State Sales and Use Taxation of Electronic Commerce, 74 Ind. L.J. 293, 310 (1998).
\item \textsuperscript{29} Id.
\item \textsuperscript{30} See Hardesty, Tax, supra n. 5, at 1192-93.
\item \textsuperscript{31} See Groves, supra n. 28, at 309.
\item \textsuperscript{32} Id. at 310.
\item \textsuperscript{33} Further assume that the Internet and catalog companies do not have nexus in that state, so therefore are not required to impose sales tax on their customers.
\item \textsuperscript{34} See Groves, supra n. 28, at 310.
\end{itemize}
various purchases were made), and collecting the purportedly due amounts (not to mention the cost of the occasional litigation regarding the matter) would well exceed $112.50. Admittedly, if the focus of the audits were on wealthier individuals, it would make the auditing process more financially sustainable. However, it is the average family, making modest purchases, escaping small amounts of sales and use tax, which has made e-commerce the financial monster that it is.

IV. AN OLD PROBLEM WITH A NEW TWIST

The problem of nexus determination for sales tax and the problems of education and enforceability for use tax are not new ones. Since the first mail-order catalog, SUT has gone largely uncollected for these remote catalog transactions. Even today, with catalog sales ranging in the billions, it is likely the SUT issue would not have created such a stir but for the power, freedom, and flexibility the Internet allows all sellers, the world over. No new rights to collect the taxes have been given, yet states are now in a panic to tap into e-commerce SUT revenue. The problem is not that “e-commerce” is going untaxed. The problem is that the ability to transact untaxed commerce is now exponentially easier than it has ever been in the history of the world. The Internet has exploited inherent weaknesses in the current system of SUT collection (nexus determination, calculation, education, and enforcement) and will continue to do so until the current structure is amended.

A. A Changed Business Strategy

The Internet offers extremely low barriers to entry and accessibility to national and international markets that have never existed before.

35. Id. at 310.
36. Id. at 314.
37. See Sanders, supra n. 2.
38. Even with its common usage, the exact definition of “e-commerce” remains somewhat of a mystery. E-commerce, as most understand, relates solely to transactions conducted over the Internet. However, the Advisory Commission on Electronic Commerce ("ACEC") indicates that e-commerce could just as easily “include all transactions using the same telecommunications infrastructure as the Internet such as catalog orders placed by telephone or facsimile.” ACEC, Report to Congress 7, § 1 <http://www.ecommercecommission.org/ report.html> (accessed Nov. 11, 2001). The Internet Tax Freedom Act ("ITFA") defines e-commerce as including “any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration, and includes the provision of Internet access.” ITFA, Pub. L. No. 105-277, § 1104(3), 112 Stat. 2681, 2681-719 (1998) (included as Title XI of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999).
40. See Hardesty, Tax, supra n. 5, at 1194-96.
41. See Groves, supra n. 48, at 314-15.
With physical catalogs, each mass shipment ranges from hundreds to millions of dollars, depending on the quality of the actual advertisement and the quantity of pieces distributed. For many businesses, this may be a costly and ineffective method of advertising.

B. Web Site Availability

Today, web site development companies offer services ranging from free, basic web sites, to multi-million dollar, professional sites, to sites that start free, then charge later. This flexibility allows every seller, no matter the size or location, to solicit business from every city, state, and country with Internet access. It is then up to these sellers and consumers to remit the SUT while dealing with its various computation and collection challenges.

V. SUPREME COURT ACTION

The current U.S. Supreme Court holding regarding interstate SUT was promulgated in Quill Corporation v. North Dakota, a 1992 decision. Quill outlines the due process clause and commerce clause limitations on collections of SUT. Specifically, North Dakota, in an effort to collect additional use tax, tried to require Quill Corporation, an out-of-state mail-order company with no nexus within North Dakota, to collect and remit use tax on goods its customers purchased and used in North Dakota.

A. Due Process Clause and Commerce Clause

The Court does well to draw a distinction between the two

43. See id.
48. See Groves, supra n. 28, at 315.
49. Quill Corp. v. N.D., 504 U.S. 298 (1992). It is important to mention that even though this is the most on-point case to date, it does not specifically deal with e-commerce. Because the mode of business was through catalog, it is disputed whether these principles actually apply to Internet transactions. However, until the Supreme Court says otherwise, this seems to be the law of the land. See David E. Hardesty, Taxation of E-Commerce: Recent Developments, 618 PLI/Pat 177, 190 (2000) [hereinafter Hardesty, Developments].
50. Quill Corp., 504 U.S. at 301.
51. Id.
constitutional limitations of the due process clause and commerce clause. Quoting *International Harvester Company v. Department of Treasury*, the Court explains why "the Due Process Clause and the Commerce Clause are analytically distinct."'

'Due process' and 'commerce clause' conceptions are not always sharply separable in dealing with these problems... To some extent they overlap. If there is a want of due process to sustain the tax, by that fact alone any burden the tax imposes on the commerce among the states becomes "undue." But, though overlapping, the two conceptions are not identical. There may be more than sufficient factual connections, with economic and legal effects, between the transaction and the taxing state to sustain the tax as against due process objections. Yet, it may fail because of its burdening effect upon the commerce. And, although the two notions cannot always be separated, clarity of consideration and of decision would be promoted if the two issues are approached, where they are presented, at least tentatively as if they were separate and distinct, not intermingled ones.

Regarding e-commerce, this means that an imposed tax may clear the due process clause limitation but fail to overcome commerce clause limitations. For example, the Court may eventually determine that a server housing the web site may authorize taxation of that commerce (clearing the due process clause limitation), but in so doing it would frustrate interstate commerce, thus invalidating it (because it failed to overcome the commerce clause limitations).

In discussing the commerce clause, the Court re-affirms a four-part test laid out in *Complete Auto Transit, Incorporated v. Brady* in stating:

We will sustain a tax against a Commerce Clause challenge so long as the tax (1) is applied to an activity with a substantial nexus with the taxing State, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to the services provided by the State.

The Court determined the tax imposed on Quill, an out-of-state vendor, violated the Commerce Clause because Quill lacked "sufficient nexus" with North Dakota, the taxing state.

This decision affirms the rule established in *National Bellas Hess, Incorporated v. Department of Revenue of the State of Illinois*, which

---

52. See id. at 305-06.
55. *Quill Corp.*, 504 U.S. at 306.
56. See Way, supra n. 3, at 121-22.
57. Id.
59. *Quill Corp.*, 504 U.S. at 311.
60. Way, supra n. 3, at 121 (quoting *Quill Corp.*, 504 U.S. at 302).
created "a safe harbor for vendors whose only connection with customers in the taxing State is by common carrier or the United States mail." 62 Whether the Court will actually extend this holding to e-commerce remains to be seen. 63

It should be noted that states' right to act under the Commerce Clause only exists while Congress has not taken the power for itself. 64 Congress has already taken steps towards this end, though, indicating its intent to play an active role in the development of modern e-commerce policy. 65

VI. CONGRESSIONAL ACTION

In response to intense pressure to take action regarding the Internet, SUT, e-commerce policies, and other serious Internet issues, President Clinton signed into law the Internet Tax Freedom Act (ITFA) 66 on October 21, 1998. The ITFA, in part, mandates the following moratorium:

No State or political subdivision thereof shall impose any of the following taxes during the period beginning October 1, 1998, and ending 3 years after the date of the enactment of this Act –

(1) taxes on Internet access, unless such tax was generally imposed and actually enforced prior to October 1, 1998; and

(2) multiple or discriminatory taxes on electronic commerce. 67

To study the various issues in-depth, ITFA created the Advisory Commission on Electronic Commerce ("ACEC"). 68 The ITFA charged the ACEC with the duty to "conduct a thorough study of Federal, State and local, and international taxation and tariff treatment of transactions using the Internet and Internet access and other comparable intrastate, interstate or international sales activities." 69

A. Advisory Commission on Electronic Commerce Action

In hopes of gaining a broad range of professional, expert opinions, the ITFA outlined that the commissioners of the ACEC must include representatives from federal, state, and local governments, as well as

---

62. Way, supra n. 3, at 121 (quoting Quill Corp., 504 U.S. at 318).
63. See id.
64. See U.S. Const. art. I, § 8.
65. See Way, supra n. 3, at 122.
67. ITFA, Pub. L. No. 105-277 at § 1101(a)(1)-(2). Much of IFTA was substantively extended on October 16, 2001 with the passage of H.R. 1552. Additionally, Congress has proposed H.R. 2526, which, among other things, attempts to clarify nexus determination. See H.R. 2526, 107th Cong. at § 101(a)(1)-(10).
68. See ITFA, Pub. L. No. 105-277 at § 1102(a).
69. Id. at § 1102(g)(1).
representatives from various e-commerce industries. With such an impressive gathering of individuals, hopes were high for solid findings and proposals birthed out of strong policy and industry considerations. Unfortunately, the final report completed April 12, 2000, was little more than a confirmation that the duties the ACEC was charged to investigate should indeed be looked into.  

The ITFA stated that the ACEC may include in their study:

- an examination of the effects of taxation, including the absence of taxation, on all interstate sales transactions, including transactions using the Internet, on retail businesses and on State and local governments, which examination may include a review of the efforts of State and local governments to collect sales and use taxes owed on in-State purchases from out-of-State sellers . . .  

B. The Advisory Commission on Electronic Commerce's Report to Congress

The Commission documented its findings in its Report to Congress. At its fourth and final meeting, the Commission voted on various proposals. Proposals receiving a two-thirds vote were deemed "findings and recommendations of the Commission." Proposals not

70. Id. at § 1102(a)-(b). The general guidelines require three representatives from the Federal Government, eight representatives from State and local governments, eight representatives from the electronic commerce industry, and sixteen other appointed individuals. Id.

71. See ACEC, Report to Congress, supra n. 38. Some of the more notable commissioners were:

- Mr. C. Michael Armstrong, Chairman of the Board, AT&T;
- The Honorable Michael O. Leavitt, Governor, State of Utah;
- The Honorable Gary Locke, Governor, State of Washington;
- Mr. Richard D. Parsons, President, Time Warner Inc.;
- Mr. Robert W. Pittman, President & Chief Operating Officer, America Online, Inc.;
- Mr. David S. Pottruck, President & co-Chief Executive Officer, Charles Schwab Corporation;
- Mr. John W. Sidgmore, Vice Chairman MCI Worldcom and Chairman UUNET Technologies.

72. See ACEC, Report to Congress, supra n. 38. An additional disheartening note is that the Commission was, in part, designed to allow individuals on both sides of the issue to work out their differences. See Hardesty, Developments, supra n. 49, at 186-87. However, because both super-majority and simple-majority options existed, the Commission was able to adopt "majority findings" that skirted many core issues and followed pre-Commission ideals. In short, because the Commission had the ability to adopt majority findings without having to work out ideological differences, when it came to making difficult decisions, the group chose the easy way out and did not decide. See id.

73. ITFA, Pub. L. No. 105-277 at § 1102(g)(2)(E).

74. See ACEC, Report to Congress, supra n. 38.

75. Id. at 1. "The Advisory Commission on Electronic Commerce met in four in-person meetings: Williamsburg, Virginia; New York City, New York; San Francisco, California, and Dallas, Texas." Id.

76. Id.

77. Id.
receiving a two-thirds vote were designated as "majority policy proposals." \(^{78}\) instead of formal "findings and recommendations." \(^{79}\) In total, three Formal Findings and Recommendations and six Majority Policy Proposals were included in their report. \(^{80}\)

C. Sales and Use Tax: A Majority Policy Proposal

The first Majority Policy Proposal dealt with SUT and outlined four main areas of concern on which Congress should take action. \(^{81}\) First, it proposed that "the current moratorium barring multiple and discriminatory taxation" be extended for another five years. \(^{82}\) Second, it proposed a clarification of factors that would establish nexus for taxation purposes. \(^{83}\) Third, it highlighted the National Conference of Commissioners on Uniform State Laws ("NCCUSL") as a key organization with which state and local governments should be encouraged to work for purposes of drafting uniform and simple SUT policies. \(^{84}\) Finally, it suggested the creation of an advisory commission to monitor the NCCUSL's efforts in creating a uniform SUT act. \(^{85}\)

Congress, to its credit, has taken these suggestions seriously and has drafted legislation to help implement these ideas, as seen in H.R.

---

78. Id.
79. Id.
80. ACEC, Report to Congress, supra n. 38, at 4. The three Formal Findings and Recommendations included in the Report to Congress covered the following: Digital Divide, Privacy Implications of Internet Taxation, and International Taxes and Tariffs. Id. One of the six Majority Policy Proposals covered SUT specifically, stating: Sales and Use Taxes:

* For a period of five years, extend the current moratorium barring multiple and discriminatory taxation of e-commerce and prohibit taxation of sales of digitized goods and products and their non-digitized counterparts.

* Clarify which factors would not, in and of themselves, establish a seller's physical presence in a state for purposes of determine whether a seller has sufficient nexus with that state to impose collection obligations.

* Encourage state and local governments to work with and through the National Conference of Commissioners on Uniform State Laws ("NCCUSL") in drafting a uniform sales and use tax act that would simplify state and local sales and use taxation policies so as to create and maintain parity of collection costs (net of vendor discounts) between remote sellers and comparable single-jurisdiction vendors that do not offer single-jurisdiction vendors that do not offer remote sales.

* Establish a new advisory commission responsible for oversight of the progress of NCCUSL's efforts to create a uniform sales and use tax act. Id. at 4-5; see generally id. at 19-20 (providing a more detailed explanation of the proposal). Other Majority Policy Proposals include: Business Activity Taxes; Internet Access Taxes; Taxation of Telecommunications Services and Providers; International Taxes and Tariffs; and The Need for Improved Knowledge of International Ramifications. Id.
81. Report to Congress, supra n. 38, at 5.
82. Id.
83. Id.
84. Id.
85. Id.
TAXING E-COMMERCE

2526, and which will likely be the topic of extensive legislation both now and for years to come. Legislation that is currently being proposed covers a permanent extension of the ITFA and nexus determination, SUT simplification and the SUT Compact, and international e-commerce issues.

D. Articles Submitted to the Advisory Commission on Electronic Commerce

A number of articles submitted to the ACEC for consideration specifically addressed the e-commerce SUT quandary, with a wide range of conclusions. The proposals included, among other suggestions, completely abolishing SUT, drastically revamping the system, implementing automation software, and gradually changing over time. Hopefully, as Congress proceeds to hammer out new e-commerce policies, it will take a long, hard look at the actual proposals submitted to the ACEC and not just ACEC's Report to Congress.

The type of proposal likely to prevail should address the concerns of all parties, be neutral in its administration, and increase efficiency in its collection and remittance. It will likely not be any one of the particular proposals submitted to the ACEC, but rather a synthesis of the best ideas from all the proposals.

The ACEC, in its offer to submit proposals, listed eighteen separate questions spanning nine distinct categories that were to be addressed for the proposal to even be considered. This Comment focuses solely on SUT issues and therefore covers many, but not all, of the individual questions presented to the ACEC.

VII. TO TAX OR NOT TO TAX

Before delving into specifics of what an SUT system should look like, the threshold question of whether any tax should be imposed on e-commerce must be examined. Fierce opinions, both for and against, cite

87. Id.
90. Thirty-six articles were submitted to the ACEC for its consideration in determining its proposals and recommendations in its Report to Congress. ACEC, Report to Congress, supra n. 38. The ACEC requested these proposals at its New York City, New York meeting. Id.
91. See Way, supra n. 3.
92. The invitation was posted at ACEC, Invitation for Proposals, 2-4 <http://www.law.gmu.edu/techcenter/programs/advisory_commission/invite.htm> (accessed Nov. 11, 2001). Records of the ACEC's proceedings have been recorded and are available for public inspection, given adequate notice, at the Commission's offices at 3401 North Fairfax Dr., Arlington, Virginia 22201-4498. Id. at 4. The nine categories discussed are: Simplification, Taxation, Burden on Seller, Discrimination, International, Technology, Privacy, Sovereignty/Local Government Autonomy, and Constitutional. Id.

Published by TU Law Digital Commons, 2001
various statistics upholding their respective positions. This section shall examine various topics on which the debate turns, discussing both the anti-SUT and pro-SUT ideas.

A. Those Against, Say “Nay”

Those opposed to imposing more stringent e-commerce SUT requirements point to many factors. One of the strongest arguments cites e-commerce's impact on the recent economic boom.

Evidence that the Internet is driving America's economic boom can be found everywhere and was most recently documented in a study conducted by the University of Texas’ Center for Research in Electronic Commerce. According to the study, the nation's Internet-based economy grew 68 percent [in 1998] to produce over $507 billion in business revenues. The Internet economy has created 2.3 million new jobs. The Internet and information technology sector now accounts for more than half the capital investment in our country. And of the tens of thousands of new businesses being created every year, research shows nearly one in three did not exist prior to 1996. One sector of the Internet economy – electronic commerce – accounted for nearly 1 million of the 2.3 million jobs created by the Internet.

Millions of new jobs, not to mention entirely new industries, have been created these past few years. And in the face of all this, many decree that while this boom may be good for some, it is draining needed tax revenue from state and local governments. It would seem that with the recent slowing of the economy, this argument would be countered somewhat. However, now that we are in the middle of a mild recession, it seems that the idea of taxing e-commerce is now even more unfavorable. While no strict conclusions can be drawn, during an economic downturn it is generally believed that limiting or reducing taxes helps an economy recover. Conversely, increasing taxes during a

95. See id. at 2.
96. See Sanders, supra n. 2.
98. Id.
recession generally prevents the recession from turning around. Therefore, support for more strictly enforcing tax requirements on e-commerce would be marginal until the economy is back on its feet. However, the argument at that point would be that an imposition at that time would only plunge us back into a recession.

B. Those in Favor, say "Aye"

Those in favor of imposing SUT on e-commerce transactions refer to weighty statistics in support of their efforts to impose more stringent SUT compliance. The General Accounting Office ("GAO") reported "states and localities will lose between $300 million and $3.8 billion in tax revenue in 2000 because of purchases over the Internet." Looking forward, Forrester Research indicated that approximately $184 billion would flow from Internet e-commerce by 2004, equaling around seven percent of all U.S. retail sales. Also, according to a University of Tennessee study, "states are expected to lose a total of $20.1 billion by 2003 if businesses are not required to collect taxes on e-commerce. California stands to lose the most—a whopping $2.3 billion." It is these numbers to which many proponents of stricter SUT enforcement are pointing. They fear that as on-line sales trends continue to increase, the current tax revenue surpluses will vanish and be replaced by daunting deficits. This is especially worrisome to large states like Texas and Florida that do not impose an individual income tax.

The reason this is so troubling is that the other areas from which SUT dollars can be recouped are few, with the main area being a state-imposed individual income tax. The challenge is that to impose an

100. Id.
101. Id.
102. Id.
103. Id.
105. Sanders, supra n. 2.
106. Id.
108. See Sanders, supra n. 2.
109. There are currently seven states that do not impose individual income tax: Alaska, Florida, Nevada, South Dakota, Texas, Washington, and Wyoming. Which States Have No Personal Income Tax? <http://www.govspot.com/known/incometax.html> (accessed Sept. 4, 2001). Florida is particularly at risk with a loss of SUT revenue. See Hardesty, Developments, supra n. 49, at 204. It is estimated that Florida lost roughly $60 to $250 million in 2000 and will lose approximately $160 to $640 million of SUT revenues by 2003, when just considering e-commerce transactions. See id. These amounts double when considering all remote sales (which includes catalog sales). Id.
110. See Sanders, supra n. 2.
individual income tax on its citizens, the citizens of those states would have to vote to do so (pursuant to their constitutions). Since most people favor decreased rather than increased taxes, the likelihood of that happening seems slim. Thus, states like Texas would be reduced to sales, use, and property taxes as the main revenue generators for public services. It is feared that as time goes on, decreasing SUT revenue would equate to a decrease in services to residents of states in this situation. While many admit that during our recent economic surge, no shortage of tax revenues existed for states, research indicates that, at some point, shortages will exist. Although data is not yet available, this anticipated shortage may be sooner rather than later if our present economic downturn persists and consumers continue to tighten their spending budgets.

C. The Question of Tax Dollars

With an overview of the general discussions on both sides of the debate, let us now focus on the specific arguments. The first topic is whether there really is a loss of tax dollars. While proponents for taxing e-commerce point to lost tax revenues as one of the chief reasons for imposing tax on e-commerce, until recently, it seemed that tax revenues actually seemed to be running over. This was mainly due to the booming economy, increased capital investment all across America, and rapid job creation. According to the National Governor’s Association, in 1998 states reported $11 billion in tax surpluses, despite tax cuts totaling $9.2 billion in 1997 and 1998. Moreover, by the end of 1998, states showed a balance of $36 billion.

These figures clearly show that in the current structure, if the economy is strong, tax revenues are more than sufficient for state needs. However, by the same token, unless the current system is modified, prior surpluses are likely to dissipate quickly as the economy slows down. The full extent of how this recent economic correction will affect state revenues remains to be seen. It is thought that deficits will begin to creep into state budgets and shortly thereafter, programs

112. See Sanders, supra n. 2.
113. See The Gallup Organization, supra n. 111.
114. See Sanders, supra n. 2.
115. Id.
116. Id.
117. See Rizzo, supra n. 104.
118. Gilmore, supra n. 94 at 2.
119. Id.
120. Id.
121. Id.
122. Id.
123. Id.
and services will begin to receive decreased funding.\(^{124}\)

D. The Effect of E-Commerce Sales and Use Tax on the Economy and the Stock Market

One reason cited for not taxing e-commerce more strictly is that stricter taxing would hinder economic and stock market growth.\(^{125}\) Specifically, studies have shown that if stricter SUT collection procedures were in place, the volume of Internet sales would decrease by thirty percent, seventy-five percent of on-line customers would buy less on-line, thirty-four percent of Americans would be less likely to purchase over the Internet, and Internet-based companies would incur high costs to collect such taxes.\(^{126}\) With the potential for such tremendous loss of money to the economy and accompanying decreased stock prices, many believed that the economic boom America was experiencing would be slowed—if not stopped.

Further, it was estimated that if stricter tax measures were imposed on e-commerce, state and local governments would only increase SUT revenue by one percent of the sales tax base over the next few years.\(^{127}\) In fact, by 2003, SUT collections on e-commerce transactions would only amount to 1.4 percent of total SUT collections nation-wide.\(^{128}\) The impact of this figure is further decreased by the theory that since many on-line purchases are made in lieu of catalog purchases, this 1.4 percent is merely a revenue-neutral shift.\(^{129}\) Until recently, it seemed unwise to tax e-commerce to only gain small tax increases while suffering such large purchase reductions.\(^{130}\) Ironically, even without stricter taxation on e-commerce, our utopian economy turned out to be less than perfect.\(^{131}\)

Today, with the economy slowing down\(^{132}\) and the stock market experiencing a significant correction,\(^{133}\) the argument of sheltering e-commerce from tax for the sake of the economy and the stock market has been greatly weakened. In place of this argument are questions concerning the reasons for the recent economic boom and bust.

\(^{124}\) Gilmore, supra n. 94, at 2.

\(^{125}\) Id. at 3.

\(^{126}\) Id.

\(^{127}\) Id. at 4.

\(^{128}\) Id.

\(^{129}\) Id.

\(^{130}\) Gilmore, supra n. 94, at 4.

\(^{131}\) See United Nations Economic Commission for Europe, supra n. 97.

\(^{132}\) Id.

Although there are a myriad of factors contributing to the recent economic downturn, one of the main reasons is that many e-commerce companies were not operating on sound business principles.134  

To explain, many to most e-commerce and Internet companies were operating at losses to gain market share.135 Venture capital,136 more often than not, flooded the market to fund ideas, not businesses.137 Because of this, millions of dollars were invested in businesses that often times never even developed an actual product.138 One factor that likely contributed to this phenomenon is that in the craze to secure venture capital, new e-businesses were usually not forced to develop sound business plans—a daring idea was usually good enough.139 One contributing factor to this course of action was that many of these upstart companies, among other things, did not have to factor SUT's into their business plans.140 It is not suggested that if these businesses had been forced to include SUT considerations into their business plans that the economy would still be roaring along. However, it is suggested that if SUT were a consideration in these new companies, they might have been encouraged to develop more financially sound business plans. Had that happened, perhaps the economy would have grown at a more sustainable pace, possibly resulting in a longer and more moderate growth rate. Moreover, when the economy finally did slow down, it may have done so more gradually.

E. E-Commerce without Sales and Use Tax as a Public Subsidy

Another argument for imposing tax on e-commerce transactions is that to not do so constitutes a "tax preference" or "public subsidy" for Internet commerce,"141 which is correct. However, where does the harm in this lie? Quite possibly, there is none. The American tax code is alive with tax preferences and public subsidies.142 Ranging from itemized deductions for charitable donations, to employing individuals on welfare, to research and development activities by businesses, our tax code smiles upon activities deemed socially beneficial or necessary.143 Most

134. Gilmore, supra n. 94, at 3.
135. Id.
138. See generally id.
139. See generally Gilmore, supra n. 94, at 3.
140. Id.; see Hardesty, Tax, supra n. 5, at 1193,1195.
142. Id.
143. Id.
certainly, as the Internet and e-commerce were spreading their wings and helping the global economy to soar, the social benefit seemed apparent. However, now that the Internet and e-commerce have made their mark on society, and by all appearances are here to stay, where is the continuing unique social benefit? Convincing arguments are not to be found. Absent these points of proof, it seems that the public subsidization of e-commerce has run its course.

F. Main Street and E-Commerce

Yet another argument in favor of e-commerce taxation is that Main Street shops are suffering in sales because of the boom in Internet commerce. This argument has validity because purchases on-line are generally cheaper than purchases from traditional locations if sales tax is not charged (even when accounting for the cost of shipping). Therefore, consumers may be more apt to purchase on-line so they can pay less for an item while receiving the additional benefits of shopping from the comfort of their own living room.

However, research indicates that this is not likely the case. Rather than a shift of consumers from Main Street to the Internet, research supports the idea that Internet purchasers are primarily former catalog purchasers, or completely new purchasers, as opposed to purchasers who would otherwise have purchased from a Main Street store.

In an effort to combat the "Main Street demise" theory, one article described a story of a rural Main Street diner in Virginia. This diner was the victim of a new interstate diverting traffic away from its once-bustling location, changing the road it is located on from a bustle of traffic to being virtually abandoned. However, instead of rolling over and dying, as some indicate is the fate of many Main Street merchants, this small Virginia diner used the Internet and its new economy to transform its business. It coined the name "VirginiaDiner.com" and transformed its locally famous Virginia peanuts into world-renowned Virginia peanuts, finding customers across America and across the world. This example is but one of many where the Internet has proven it is not an enemy of the Main Street merchant, but is actually a powerful ally.

144. Id.
145. See generally Gilmore, supra n. 94, at 4.
146. Id. at 3.
147. Id. at 4-5.
148. Id. at 1.
149. Id.
150. See id. at 1-2.
151. See Gilmore, supra n. 94, at 1.
152. See id.
Even in the face of heart warming stories such as above, these successes do not address the key SUT issues. Specifically, how does the success of the Virginia Diner help offset states' lost SUT dollars? It does not. Neither does it address the economic advantage that Internet-only businesses with customers in all fifty states have over businesses with physical locations in all fifty states. Until these key issues are resolved, the innocent glamour of peanut-shop success stories is severely tainted.

G. The Effect of E-Commerce Sales and Use Tax on Alienating Businesses

The final argument against taxing e-commerce is that if stricter SUT collection requirements were imposed, companies would be tempted to relocate to a foreign country that does not impose such requirements. The lost jobs and money in the economy would far outweigh the small amount of SUT revenue state and local governments would have otherwise collected. This is perhaps the best argument offered by anti-SUT propagandists. However, by carefully crafting our SUT policies, the negative impact of this argument is likewise abated. Our SUT policies can (and very definitely should) be drafted in such a way that any company, whether domestic or local, that meets the nexus requirements, is forced to comply with the SUT remitting laws. This would remove the incentive for domestic companies to relocate internationally solely to avoid sales and use tax compliance.

H. Why no Strict Sales and Use Tax System is in Place

The determining reason for a relatively SUT-free Internet at this time is, quite simply, that the ITFA mandates it. Two practical reasons for this situation were the booming economy and the politically unpopular reception with which American consumers would greet more stringent SUT rules. Now that the economy has slowed down considerably, the strength of these feelings may decrease in the future.

153. The advantage the Internet-only business has is that it would only be responsible for SUT's in states with which it has nexus, which would likely only be the state in which the proprietor(s) lives and conducts business. Way, supra n. 3, at 121 (quoting Quill Corp., 504 U.S. at 318). In contrast, a business with physical locations in every state is responsible for SUT's in every state. Id. Even if the "Main Street" businesses are not specifically harmed through lost customers, their profit margin is necessarily smaller because they are responsible for SUT's. Gilmore, supra n. 94, at 5.
154. Gilmore, supra n. 94, at 5.
155. Id.
156. See id.
158. See Cox, supra n. 93; The Gallup Organization, supra n. 111.
159. See United Nations Economic Commission for Europe, supra n. 97.
Currently, the pending ITFA-extension legislation and an enormous anti-SUT activist group are poised to permanently keep the Internet and e-commerce as tax-free as possible for as long as possible. The states must present a unified front if they are to stand a chance at reforming American SUT laws.

VIII. PROPOSED SOLUTIONS

After careful analysis, if imposing stricter SUT standards on e-commerce transactions is necessary, the system should conform to some general principles. Following is a discussion of the core components on which any e-commerce SUT system should be built.

A. Simplification

The single most frequent course of action that has been mentioned concerning e-commerce SUT reform and implementation has been simplification of the system. Numerous articles submitted to the ACEC focused on this aspect, offering various solutions. To help explain how the system has changed over time and why it has become complex, it is instructive to look at the existing complexities of the system as described by Charles E. McLure, Jr., of Stanford University:

The existing state sales and use taxes are a product of their time—a time when local merchants sold primarily tangible products and almost exclusively to local customers. They are not suited to the 21st century, when services and intangible products will be much more important than tangible products and remote sales of tangible products and digitized content, especially via electronic commerce, will be increasingly important. The most obvious problem is complexity.

163. See ACEC, Report to Congress, supra n. 38 (providing a complete list of proposals submitted by the public regarding possible taxation of electronic commerce transactions).
164. Id.
166. Id. Mr. McLure continues with additional details:

- Each of [forty-six] states (including D.C.) chooses its own tax base, with no requirement that the base—or even what might be in the base—be uniform across the nation.
- Each state decides what should be exempt when bought by business.
- Each state sets its own administrative requirements and procedures, including registration, filing of tax returns, payment, audit, and appeals.
- Roughly 7,000 local jurisdictions also levy sales and use taxes.
- Most local jurisdictions levying sales taxes choose their own tax rates.
- Local jurisdictions in some states do not follow the state definition of the tax base.
With such complexity, it is plain to see why simplicity is often discussed. However, simplicity does not have to be a complete impediment to the implementation of an SUT e-commerce system. The main argument for simplification is that there are too many taxing jurisdictions of which to keep track. While this is certainly a valid argument if attempting to keep track of these things by hand, it is a far more manageable process when automated. Although it will admittedly take hundreds of hours to initially input all data from all 7,000+ jurisdictions, it would then only be a matter of keeping the system updated for changes in SUT rates. Over time, simplification is the desired goal.

However, at the present time it seems that if broader SUT collection is deemed prudent, it would be best to input the jurisdictional SUT data and then as states become more unified in their approaches, to make adjustments as the changes take place. The converse approach is to wait until a large number of fiercely independent states achieve consensus on SUT rates before proceeding. Yet, the wait could be long. Nevertheless, to the extent that simplification is a positive goal, it will be included in the considerations of how to form a workable SUT system.

B. Neutrality

The next goal the new SUT system must achieve is neutrality. A

- Boundaries of local jurisdictions do not correspond to postal ZIP codes.
- Local governments change their tax rates from time-to-time, making it difficult for taxpayers to know the current rate.

Id.

167. Id.
168. See Korbin, supra n. 39.
169. See generally id.
171. See generally id.
172. The difficulty fifty sovereign states face to achieve any sort of consensus concerning e-commerce has been recognized by Congress. See Sen. 512, 107th Cong. § 5 (2001). Further, the technology exists to create an SUT system encompassing all 7,500 taxing jurisdictions, however it will be expensive and burdensome to maintain. See Leavitt, supra n. 170. Congress also proposes a plan that authorizes states to enter into an Interstate Sales and Use Tax Compact. Sen. 512, 107th Cong. at § 5. The Compact essentially allows states to determine simplified SUT rates and grants them permission to collect those taxes. Id. at § 6. The plan only requires a minimum of twenty states to become signatories of the Compact for it to be presented to Congress for its disapproval. Id. at § 5(c). If Congress does not express its disapproval, it is deemed to be approved. Id. at § 5(c)(2). This is an excellent idea because it is extremely unlikely that all fifty states will ever agree on these sticky SUT issues (or any important issue for that matter). By allowing a significant block of states to agree on some fundamental ideas and proceed from there seems to be a sound starting point. Further, it should not be assumed that all fifty states will ever agree on SUT simplification principles and that to wait to move forward until it is achieved would be the height of futility.
neutral tax system means that it “treat[s] economically similar income equally, regardless of whether earned through electronic means or through more conventional channels of commerce.” 173 If SUT neutrality were achieved, “tax rules would not affect economic choices about the structure of markets and commercial activities.” 174 What this means for a company is that a neutral SUT system would, for instance, give businesses the freedom to make decisions on whether to market through the Internet, catalogs, or a physical store on factors other than sales and use tax. 175 Thus, in a sense, the SUT factor is neutralized and made even in all venues of conducting business. This is important because when tax issues are neutralized, individuals and businesses tend to make economically sound decisions, not merely decisions that reduce tax consequences. 176

C. Efficiency

An efficient tax system is one that limits administrative and compliance costs for tax authorities and taxpayers. 177 In order to achieve efficiency, two fundamental determinations must be made. 178 First, it must be determined who will be the recipient of the tax revenues collected. 179 Once that is determined, then the governmental entities that are able to most efficiently administer the collection must be identified and selected. 180 An efficient system will make collection, administration, and compliance costs as minimal as possible, while still “getting the job done.” 181 An example of a reasonably efficient system is the IRS e-file program in which individual taxpayers are able to electronically file their tax returns. 182 This particular system increases the accuracy with which returns are filed, saves time for both taxpayers and the IRS, and in turn saves money. With the success the IRS has experienced thus far, it seems wise to follow a similar pattern for SUT calculation, remittance, and administration, at least in automating the process.

174. Id.
175. Id.
176. Id.
177. Id.
178. Id.
179. Way, supra n. 3, at 126.
180. Id.
181. Id.
1. Uniform Tax Base

One of the first proposals to help bring about a simple, neutral, and efficient SUT system is a nation-wide, uniform tax base.\(^{183}\) Because every state\(^{184}\) that imposes SUT has their own tax base, there is no consistency between any of the taxing jurisdictions.\(^{185}\) For instance, some states may tax item “A” while others may exempt item “A” from taxation while item “A2” is not.\(^{186}\)

One specific proposal is to tax all consumer spending.\(^{187}\) Whether it is for digitized or tangible goods, services, or anything else that might be purchased on-line, it would simplify the process to tax all of it. Additionally, this sort of simplification would prevent any erosion of the state and local base, and level the playing field as between those who buy on-line and those who buy from local merchants.\(^{188}\) A second, and complementary proposal, is to exempt business purchases.\(^{189}\) Currently, inconsistencies exist among the jurisdictions regarding business purchases, similar to those in the private sector.\(^{190}\)

2. Uniform Tax Rate

In an effort to achieve a simpler and more efficient system, one article submitted to the ACEC suggested the implementation of a flat five percent tax on all e-commerce transactions.\(^{191}\) The proposal pointed to this being “a straightforward, efficient way to administer an e-commerce tax.”\(^{192}\) It discussed further that this would be the ultimate in simplicity as it would be a standard rate for every state, easy to implement, would not unjustly burden e-commerce transactions, and would promote uniformity.\(^{193}\)

However, the article failed to offer specific reasons why it picked five percent.\(^{194}\) It offered no rational explanation other than that five percent is a nice, round number.\(^{195}\) If and when SUT is more strictly imposed on

\(^{183}\) See Gilmore, supra n. 94, at 2.

\(^{184}\) The four states that do not impose sales or use tax are Delaware, Montana, New Hampshire, and Oregon. See Table of State Government On-Line Sales Tax Information <http://www.bakershore.com/bsatable.htm> (accessed Nov. 11, 2001).

\(^{185}\) McLure, supra n. 165, at 2.

\(^{186}\) Id.

\(^{187}\) Id.

\(^{188}\) Id. at 3.

\(^{189}\) Id.

\(^{190}\) See id. at 3.


\(^{192}\) Id.

\(^{193}\) Id.

\(^{194}\) Id.

\(^{195}\) Id.
e-commerce transactions, software and technological advances will be sufficient (as indeed they are right now) to handle the various tax rates of every taxing jurisdiction in America. There is no need to tax e-commerce at an arbitrary rate. When SUT is adopted, it can, and should be taxed at the same rates as all other purchases in that jurisdiction.

D. Software Implementation

Whether or not the system is ever truly “simplified,” automated software will be at the heart of the SUT calculation, collection, and administration process. While still a large task, it would be a relatively simple process to program all the tax rates for the various taxing jurisdictions. The true difficulty would come in accounting for the multiple definitions of what constitutes a taxable good or service, the various tax compliance requirements, and overlapping SUT exemptions. This is the most pressing need for simplification, even though the system can still be implemented without this taking place.

Once the decision is made to press forward with more SUT-accountable e-commerce, the implementation of software would make the process of compliance a relatively simple one. The full-scale implementation of software into the SUT collection and remittance procedures would dramatically change the process. Software could be used to determine the appropriate state and municipal taxing rates and prepare the required tax compliance reports in a variety of ways to automate the SUT collection and remittance reports. Actual compliance would dramatically increase while compliance costs would dramatically decrease.

Already, there are at least fourteen companies that offer software solutions to these complex SUT problems. These systems are capable of looking up tax rates, integrating those rates into automated accounting systems, and automatically completing and remitting sales and use tax returns. Many, if not all, of these systems are adaptable by the company offering the products to meet specific state and local taxing requirements. The costs for these systems range from “as little as a few hundred dollars” to a few thousand dollars.

197. Id.
199. See id.
201. Polatseck, supra n. 196).
202. Id. at 2.
203. Id.
204. Id. at 1.
E. Agencies and Bureaus

Along with software, the actual process of SUT calculation, remittance, collection and administration will likely take the form of some sort of clearinghouse or third party. A few proposals were submitted to the ACEC in this regard, most of them being from entities currently providing this service to large companies and who would benefit from a nation-wide implementation of a system of this sort. Even through these heavily biased proposals, much logic is evident in these types of systems being implemented. This is a look at what these types of systems have to offer.

1. Zip Code Tax Agency

The first idea is to form a federal agency to govern SUT on e-commerce: the Zip Code Tax Agency (ZCTA). The ZCTA would function very much like the private bureaus listed above except it would be a federal agency, complete with federal government inefficiencies. It is proposed that Congress would authorize states to collect seller-withheld SUT based on the purchaser's zip code. These sellers would be forced to comply with federal registration procedures and submit to procedural limitations on their abilities to impose SUT. The ZCTA would register these sellers and provide them with tax rates for every zip code across America.

Administratively, the ZCTA would first create a complete list of all products within which a given item might fall. It would then list all zip codes and the applicable sales tax percent for each specific item. For example, if “apparels” were taxed at six percent in zip code 74171 but eight percent in zip code 74175, this chart would indicate that difference. This chart would then be integrated into software that would greatly assist in the preparation of tax compliance returns.

The idea of the ZCTA is a good one and will likely be a core part of any final software solution: create compliance software based on nation-
wide zip codes.\textsuperscript{216} However, this shares a similar, significant downside with the aforementioned five percent tax\textsuperscript{217}—the intrusion of the federal government into the equation. It is generally proposed that the states would receive every penny of the SUT collected.\textsuperscript{218} However, this would not be the economic reality.\textsuperscript{219} If the federal government is involved in any way, it will have to fund the process somehow. The funds would either come out of the SUT it is assisting in collecting, or from some other source.\textsuperscript{220} The net effect is that if the federal government is involved, fewer dollars would go to the states than if the states handled the compliance themselves.

2. Clearinghouse and Trusted Third Parties

A better idea to involve a third party is one type of bureau called the “Trusted Third Parties” (TTPs).\textsuperscript{221} Other names for this type of system are “Sales/Use Tax Settlement System” (SUTSS),\textsuperscript{222} “World Internet Tax System” (WITS),\textsuperscript{223} “Sales Tax Clearinghouse” (STC),\textsuperscript{224} and “Certified Sales Tax Service Provider” (CSTSP).\textsuperscript{225} The use of a TTP would shift SUT administration from individual sellers to separate entities who would handle all the administrative tasks.\textsuperscript{226} This would consolidate all the SUT tasks into a few branches, increasing efficiency and decreasing costs of the process.\textsuperscript{227}

Specifically, a TTP would be contracted by a state to handle part or all of that state's SUT administration.\textsuperscript{228} The TTP would have the responsibility of obtaining sufficient information on sales transactions from the seller, providing the seller appropriate software with which to determine the taxability of any given transaction, the applicable state

\begin{footnotesize}
\begin{itemize}
\item[216.] See Hardesty, Tax, supra n. 5, at 1203-05.
\item[217.] McLure, supra n. 165.
\item[218.] Id.
\item[219.] Id.; see McGuire, supra n. 207.
\item[220.] Id.
\item[221.] Leavitt, supra n. 170.
\item[226.] Leavitt, supra n. 170, at 2.
\item[227.] Id.
\item[228.] Id. at 3.
\end{itemize}
\end{footnotesize}
and local tax rates, and the total tax due. The TTP would be responsible for calculating all this while the customer is waiting for the transaction to be completed, so the customer will know the final total before the transaction is finalized. Regarding credit card companies, TTPs would need to enter into arrangements to allow taxes due state and local governments to be transmitted to the TTP so they may forward them to the appropriate municipality. Further, the TTP would be responsible for providing all tax compliance information to state and local governments, along with the tax remittance, by the applicable deadlines.

a. Bureau Benefits

There are both benefits and detriments to utilizing TTPs. The main benefit of this tax-collection method is the drastic reduction of SUT compliance cost and inconvenience. From the viewpoints of sellers and customers alike, the SUT collection and remittance process would seem virtually automatic. Sellers would only have to occasionally monitor the reports completed and submitted on their behalf and pay nominal, if any, maintenance costs for this service. Likewise, the purchaser would only notice that a sales tax is being calculated on its purchase and it would appear as if the seller was actually calculating it.

b. Bureau Detriments

The main downside to this method of SUT collection is the creation of more bureaucracy, increasing possible inefficiency and wrongdoing. It is an unfortunate, but seemingly accurate truth, that when more hands have an opportunity to handle money, the opportunities for misconduct increase. If a trusted third party turns out to not actually be very trustworthy, this entire process could be threatened, creating more harm than good. Solid accounting and auditing control structures would need to be established to help ensure misappropriations are minimized.

The only other cost by the seller would be to integrate its

229. Id.
230. Id.
231. Id.
232. Leavitt, supra n. 170, at 3.
233. Id. at 4.
234. Id.
235. Id.
236. Whether it is technically a “sales” or “use” tax would be irrelevant to the taxpayer; it would still look like a sales tax. Leavitt, supra n. 170 at 4.
237. Id.
238. See generally id.
239. See generally id.
accounting systems with the TTP's so that all required information necessary to compute the tax liability may be processed.\textsuperscript{240} Also, a small, per transaction fee would be imposed to cover the TTP's costs.\textsuperscript{241} If this type of processing structure is implemented, the state would likely bear the burden of paying the TTP's costs to encourage all sellers in the state to comply with the process.\textsuperscript{242}

IX. CONCLUSION

The technology exists and the infrastructure is currently in place to impose and administer SUT on e-commerce transactions if, and when, we deem it necessary to do so. Yes, a great deal of simplification is needed to make the process smoother. Notwithstanding simplification needs, though, nothing is holding America from imposing stricter SUT compliance requirements except for America herself.

The climate in which an e-commerce SUT bill passes will likely either be an economic recession or a non-politically charged year. In a recession, this type of action might jar the economy into movement. However, whoever carries the proverbial torch for this cause will not likely receive a hero's welcome. Therefore, it will almost surely not be an elected official who needs to "score some points" with his constituency. It may one day, even soon, become a necessity to implement some or all of the strategies proposed in the articles submitted to the Advisory Commission on Electronic Commerce. Whoever leads America into this frontier must have strong inner-fortitude to withstand the intense pressures that will surely accompany the implementation of a process with so many divergent opinions.

Truly, for all the discussion of e-commerce and the relatively recent explosion of Internet sites and activities, it is still a fledgling, although certainly viable, means of commerce. Congress, although charged to propose specific answers and forge determinative policies in this new era, will continue to bide its time. The ramifications of implementing the wrong policies and applying the brakes to our economy are simply too great. Much thought must be given to the direction in which we are headed before any final decisions are made.

\textit{Timothy A. Hart}

\textsuperscript{240} Leavitt, \textit{ supra} n. 173, at 4.
\textsuperscript{241} Id.
\textsuperscript{242} See id.