

THE FEDERAL TAX AUTHORITY™

PREPARED STATEMENT SUBMITTED FOR THE RECORD OF THE
PUBLIC HEARING REGARDING PROPOSED
SMALL BUSINESS EXCEPTION IN THE
MAIN STREET FAIRNESS ACT (H.R. 5660)

EXECUTIVE COMMITTEE TO THE STREAMLINED SALES TAX GOVERNING BOARD
SEPTEMBER 14, 2010

TESTIMONY BY
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I. PREAMBLE

Before I get started, I would like to thank President Johnson and the other distinguished members of the Streamlined Sales Tax Governing Board and the Executive Committee for providing this public hearing to allow members of the business community to voice our perspectives and opinions on the proposed Small Business Exception (or "SBE") suggested in § 7(a)(17) of proposed House Resolution 5660, commonly known as the Main Street Fairness Act.

As I am sure many in attendance here today will agree, the Main Street Fairness Act's authorization of the Streamlined Sales and Use Tax Agreement (SSUTA) is important for numerous reasons. Given the very specific nature of this hearing, and out of respect for this forum and the time constraints of the numerous attendees, I will spare the committee my complete range of arguments in support of the pending legislation. Although I make my remarks today in support of setting the SBE threshold at \$100,000, this is only because we have not been offered the opportunity to argue away the SBE altogether.

II. BACKGROUND

For the record, my name is R. David L. Campbell. I am the chief executive officer and co-founder of the Federal Tax Authority, or FedTax.net, founded in 2008. We are a Washington State Limited Liability Company with operations in Seattle, Camano Island, and Issaquah, Washington, as well as Stamford, Connecticut; Berkeley, California; and Minneapolis, Minnesota. Our management team includes highly experienced professionals who have been directly involved in building some of the most recognizable brands in e-commerce, including MasterCard, Google, WebMD, Microsoft, and Expedia. FedTax.net has been designated as a Certified Service Provider by the Streamlined Sales Tax Governing Board specifically for our TaxCloud service, which I will discuss further in a moment.

III. PURPOSE OF H.R. 5660

The Main Street Fairness Act is intended to "promote simplification and fairness in the administration and collection of sales and use taxes." Specifically, the resolution states that, as a matter of economic policy, similar sales transactions should be taxed equally based upon the location of the purchaser, without regard to the forum of the transaction or the location of the seller.

IV. HISTORY OF THE SMALL BUSINESS EXCEPTION

The Small Business Exception is intended to ensure that those sellers required to collect have the capacity to comply with this obligation, as well as to ensure that neither the seller nor the states expend inordinate resources to collect a relatively small amount of tax. In previous versions of this legislation, introduced in 109th and 110th sessions of Congress, the SBE threshold exempted all businesses with less than \$5 million in gross remote taxable sales from the obligation to collect. To some—well, to a few—that SBE threshold was too low. However, to many others, it was too high. We are in the latter camp.

In the current legislation, the task of defining a new SBE threshold has been assigned to the SSUTA Governing Board. We would urge the Governing Board to accept the conclusions of its own Small Seller and Vendor Compensation Task Force, which stated that "sales tax collection is an obligation of doing business and . . . fundamental fairness requires that, to the extent practical, all sellers should have a collection obligation." ⁱ The task force went on to say that "over time, the threshold should gravitate in the direction of being a threshold that excludes only occasional sales and sellers from the collection requirement."

V. COMMON SENSE ARGUMENTS FOR SETTING THE SBE AT \$100K

The question we are faced with now is how to define "small business" for the purposes of the SBE in this particular bill. I would argue that in this bill, a "small business" should be defined as one with no more than \$100,000 in annual sales.

In order to explain why we oppose setting the SBE threshold above \$100,000, it is necessary to briefly discuss the sales tax collection and remittance service our company provides, TaxCloud.

Sales Tax Collection Services Make Compliance Easy

TaxCloud handles every aspect of sales tax collection and remittance for our clients. Most merchants are able to set up TaxCloud in less than 20 minutes. TaxCloud can be integrated into virtually any accounting or e-commerce shopping cart system, and it is completely free to merchants. It calculates, in real time, the applicable sales tax rate for any transaction. It determines whether an item is tax-exempt and automatically integrates changes and updates to tax codes, rates, and jurisdictions.

Finally, TaxCloud keeps track of all collected sales taxes to be remitted by merchants, generates and files all state-by-state sales tax returns, and remits tax payments to all applicable jurisdictions. Because we are a SSUTA Certified Service Provider (CSP), we take full responsibility for any state audit requests on behalf of our TaxCloud clients. And, as a CSP we are compensated by SSUTA-participating states, so we can provide TaxCloud to merchants for free. In short, we're offering a service that handles all sales tax management obligations for merchants at absolutely no cost to them.

The very existence of TaxCloud refutes the primary argument of those who say that in this legislation, "small business" should be defined as a merchant that has more than \$100,000 in annual sales. They say that collecting sales tax on out-of-state purchases would be burdensome for small businesses, that it is too costly and time-consuming.

It is difficult to see the merits of this argument when a free service is available that handles every aspect of sales tax management at absolutely no cost to merchants. With no complicated tax rules to figure out, no returns to prepare, no fees to pay or costly software to install, it's difficult to understand what burdens the collection of sales tax would impose on small businesses. TaxCloud costs nothing and takes very little time to monitor and operate. A business of any size, even a sole proprietorship, would have no trouble collecting sales tax with TaxCloud or a similar sales tax management service.

Shopping Cart Solutions and Sales Tax Collection

All but the very largest online merchants use third-party shopping cart solutions—both software and hosted services—to manage the customer checkout process. There are more than 500 shopping cart solutions on the market today. The three most widely used shopping carts are the complete e-commerce platforms operated by eBay, Amazon, and Yahoo!Stores, which together service millions of sellers.

These solutions exist in a highly competitive marketplace, which evolves much faster than the legislative process. Historically, when faced with security industry or payment card industry mandates, speed of implementation and time to deployment have rewarded these vendors with more customers, so, they tend to be proactive and even aggressive in implementing necessary changes.

By using a third-party shopping cart solution, even the smallest seller is able to quickly and easily access the technology necessary to sell online to customers located throughout the U.S. (and, in many cases, outside the U.S.). With TaxCloud or another sales tax service integrated into shopping carts, it's easy for thousands of small businesses to collect sales tax, without changing how they do business.

VI. COMMON SENSE ARGUMENT AGAINST THE SBE IN H.R. 5660

While the question currently before us is how to define “small business” for the purposes of the SBE in H.R. 5660, I would argue that we need to consider whether an SBE is appropriate in this particular bill. There are common sense reasons that an SBE does not work for this particular market, online retailers.

Hosted and Shopping Cart Software Solutions

Most, if not all, "pure play" internet retailers—those who exist only online—with fewer than 20 employees rely upon hosted solutions or use standard, widely available commercial and open-source shopping cart software solutions.

However, the vendors that develop and manage these systems do not distinguish or stratify their clients based upon "annual remote sales," which is how the SBE identifies small businesses. The term may make sense in the corridors of Congress, but it means very little to the shopping carts, e-commerce platforms, and point-of-sale systems through which most of the retailers who will be affected by this legislation conduct their business.

We have every reason to believe that when these vendors implement ways for their merchant customers to collect interstate sales tax, they will not distinguish between those who fall above and below the suggested SBE threshold. Rather, they will simply provide a sales tax collection system for all merchants. Perhaps they might notify merchants that they should ask their accountant if they are eligible for the SBE exception under the terms of the legislation, but make no mistake, the vendors will not attempt to explain tax liability for their merchant customers. Rather, they will simply ensure that merchants required to collect sales tax have the capability to do so.

Put another way, those retailers who would qualify for the SBE will most likely be using tools that will not necessarily identify them as exempt from the obligation to collect. It is for this reason that we expect most merchants, upon the effective date of this legislation, will simply begin collecting interstate sales tax using those tools—regardless of whether they fall under the SBE threshold.

VII. FISCAL AND POLITICAL REASONS FOR A LOW SBE

By some estimates, if the SBE threshold is set at \$100,000, approximately one-quarter of all online sales activity will fall "under the radar" and the states will be denied the same portion of potential revenue. ⁱⁱ Naturally, elevating the SBE threshold above \$100,000 would amplify this loss of revenue.

Even setting the SBE at this level may be seen by opponents of the legislation as a tacit admission that interstate sales collection is too burdensome for small businesses. Opponents could make the argument that SSUTA has not sufficiently simplified interstate sales tax collection if small businesses need to be exempt.

CONCLUSION

While I have offered several compelling arguments for setting the SBE threshold at \$100,000—arguments supported by fiscal and political considerations as well as sheer common sense—I would like to ask the committee to consider whether an SBE is even appropriate in H.R. 5660. I would argue that it is not, because the very businesses that would be affected by the SBE already rely upon e-commerce platforms that will easily enable them to collect interstate sales tax --- and may, in fact, not allow them to avoid collecting such tax, once this law passes.

Technology makes it easy for any business, of any size, to collect sales tax. We feel strongly, therefore, that the SBE is unnecessary in this particular legislation, but since it must be included, the SBE threshold should not exceed \$100,000.

ⁱ December 2008 Interim Report of the Small Seller and Vendor Compensation Task Force available online at http://www.streamlinedsalestax.org/uploads/downloads/Small%20Seller%20Task%20Force/Small_Seller_Study_Task_Force_Report_v4_0.pdf

ⁱⁱ Statement of Paul Misener, Vice President, Global Public Policy for Amazon.com submitted to the Committee on the Judiciary, U.S. House of Representatives, December 6, 2007