Issue

To what taxes should the SSTP Act and Agreement apply?

Recommendation

Adopt the definitions of “sales tax” and “use tax” as provided in Section 2 of the Uniform Sales and Use Tax Administration Act as approved December 22, 2000, and amended January 24, 2001 (Act).

The Act defines “sales tax” and “use tax” as follows for purposes of the Streamlined Sales and Use Tax Agreement as approved December 22, 2000, and amended January 24, 2001 (Agreement):

   e. “Sales Tax” means the tax levied under (CITE SPECIFIC STATUTE).
   
   h. “Use Tax” means the tax levied under (CITE SPECIFIC STATUTE).

Each state will determine and insert statutory cites of the specific taxes to which the Streamlined Sales and Use Tax Agreement applies. Taxes that may fall within the ordinary or common meaning of “sales tax” or “use tax,” but which are imposed outside of the statutes cited in the Act, are not required to be administered under the simplification measures proposed by the Streamlined Sales Tax Project.

The Project strongly suggests that a state avoid creating new excise or other taxes outside of the statutes cited in the Act or Agreement in order to continue the tax treatment of a particular category of property or service. Enacting such a tax places an additional burden on sellers.
State Survey

States were surveyed to determine what types of taxes would be excluded from the requirements of the Streamlined Sales and Use Tax Agreement. In all cases, states will exclude excise taxes on cigarettes, tobacco, motor fuel, and liquor. They will also exclude taxes on insurance premiums. Other taxes to be excluded are identified by each state below.

<table>
<thead>
<tr>
<th>State</th>
<th>Taxes to Be Excluded</th>
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</thead>
</table>
| Alabama   | Contractor's gross receipts tax  
|           | Dry cleaning fee  
|           | Lodging tax  
|           | Nursing facility tax  
|           | Pharmaceutical provider tax  
|           | Mobile telecommunication service tax  
|           | Rental or leasing tax  
|           | Utility gross receipts tax and license                                                |
| Arkansas  | Tourism tax  
|           | Motor vehicle rental taxes and fees  
|           | Meal taxes outside of sales taxes  
|           | Motor vehicle taxes outside of sales taxes  
|           | Aviation tax  
|           | Wholesale vending tax                                                               |
| Connecticut | Room occupancy  
|           | Rental vehicle fee  
|           | Motor vehicle rental surcharge  
|           | Dry cleaning surcharge                                                              |
| Florida   | Communications services tax  
|           | Gross receipts tax  
|           | Tourist development tax  
|           | Tourist impact tax  
|           | Municipal public service tax                                                         |
| Georgia   | None                                                                                 |
| Illinois  | Utilities excise taxes and fees  
|           | Telecommunications excise tax and fees  
|           | Hotel operators tax  
|           | Vehicle rental tax  
|           | Motor vehicle use tax  
|           | Dry cleaning tax  
|           | Liquor tax  
|           | Tire fee  
<p>|           | Amusement device fee                                                                 |</p>
<table>
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<tr>
<th>State</th>
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</thead>
<tbody>
<tr>
<td>Indiana</td>
<td>Wheel tax&lt;br&gt;Local food, beverage and lodging taxes&lt;br&gt;Admissions tax&lt;br&gt;Capital Improvement Board tax&lt;br&gt;Auto rental and boat excise tax&lt;br&gt;Hazardous waste tax</td>
</tr>
<tr>
<td>Kansas</td>
<td>Motor vehicle rental excise tax&lt;br&gt;Transient guest tax&lt;br&gt;Dry cleaning surcharge &amp; fee&lt;br&gt;Clean drinking water fee&lt;br&gt;Water protection fee&lt;br&gt;Petroleum product environmental fee&lt;br&gt;New tire excise tax&lt;br&gt;Transportation district excise tax</td>
</tr>
<tr>
<td>Maryland</td>
<td>Admissions and amusement tax&lt;br&gt;Recycle tire fee&lt;br&gt;Motor vehicle and boat titling fee&lt;br&gt;Utility taxes&lt;br&gt;Local hotel/motel and parking taxes&lt;br&gt;Local illegal drug tax&lt;br&gt;Meals tax&lt;br&gt;Boat slip tax</td>
</tr>
<tr>
<td>Michigan</td>
<td>Airport parking tax&lt;br&gt;State convention facility development tax&lt;br&gt;Excise tax on licensed food service establishments, leased motor vehicles, and transient accommodations&lt;br&gt;Convention tourism marketing assessment&lt;br&gt;Accommodations tax&lt;br&gt;Regional and community tourism market assessments&lt;br&gt;City utility users tax</td>
</tr>
<tr>
<td>Minnesota</td>
<td>Solid waste management services taxes&lt;br&gt;Fur clothing excise tax</td>
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<tr>
<td>Nebraska</td>
<td>Lodging tax&lt;br&gt;Automobile rental company tax</td>
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<tr>
<td>Nevada</td>
<td>Room taxes&lt;br&gt;Tourism taxes&lt;br&gt;Telecommunications taxes</td>
</tr>
<tr>
<td>New Jersey</td>
<td>Admissions, meals, alcoholic beverages and room rentals for tourism.</td>
</tr>
<tr>
<td>State</td>
<td>Taxes to Be Excluded</td>
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<tr>
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</tr>
</tbody>
</table>
| North Carolina    | Lease or rental of motor vehicles use tax  
Scrap tire disposal tax  
White goods disposal tax  
Dry cleaning solvent tax  
Piped natural gas tax  
Mill machinery tax  
Local occupancy taxes  
Local prepared food taxes |
| North Dakota      | Local lodging tax  
Local restaurant tax  
Aircraft excise tax  
Motor vehicle excise tax  
Telecommunications taxes |
| Ohio              | Local hotel lodging taxes  
Resort area gross receipts tax |
| Pennsylvania      | Hotel tax  
Public transportation fund tax  
Vehicle rental tax  
Admissions and amusement taxes  
Parking taxes  
Utility taxes  
Business privilege and mercantile taxes |
| Rhode Island      | Hotel tax  
Motor vehicle rental surcharge  
Parking surcharge  
Hard to dispose tax  
Beverage container tax |
| South Dakota      | Local gross receipts tax on alcoholic beverages, lodging, eating establishments, and entertainment  
State gross receipts tax on hotels and lodging, campgrounds, motor vehicle rentals, visitor attractions, recreational equipment rental, spectator events, and visitor-intensive businesses  
Motor vehicle excise taxes |
<table>
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</table>
| Utah          | Transient room tax  
Resort communities tax  
Tourism, recreation, cultural, and convention facilities tax  
Motor vehicle rental tax  
Municipal energy sales and use tax  
Lubricating oil fee  
Waste tire recycling fee  
Emergency services telephone fee |
| Vermont       | Utilities tax  
Meals and room taxes outside the sales tax (imposed in different chapter; pre-dates sales taxes)  
Purchase and use tax on motor vehicles (imposed in different chapter)  
Telecommunications taxes  
Local entertainment, meals and lodging taxes |
| Washington    | Car rental taxes  
Natural or manufactured gas use tax  
Solid waste tax  
Room and hotel taxes  
Food and beverage taxes for stadium |
| Washington, DC | Utilities and telecommunications gross receipts tax |
| Wisconsin     | Local room taxes  
Local food and beverage tax  
Local rental car tax  
Resort area tourism tax  
Rental vehicle fee  
Dry cleaners fee |
| Wyoming       | Lodging excise taxes |

**Background**

“Sales tax” encompasses a large variety of levies, but is summarized in most court cases and writings as an excise tax on the privilege of selling at retail. The buyer generally pays the tax, measured by the selling price, to the seller, who becomes an agent for the collection of the tax. Common examples of tax levies that could be considered sales or use taxes but are generally imposed apart from a state’s general sales and use tax include room taxes; tourism taxes; excise taxes on utilities, tobacco products, liquor, and motor fuel; and telecommunications taxes; etc.

The following definitions and discussions from various sources illustrate the broad nature of the term “sales tax”:  

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• 68 Am Jur 2d, § 1, Sales and Use Tax

“While the term ‘sales tax’ encompasses a large variety of levies, the term often refers to the ‘retail sales tax’ where the tax is separately stated and collected on a transaction-by-transaction basis from the consumer; although the economic burden of the sales tax falls upon the consumer, the seller has the statutory duty to collect the tax for the taxing jurisdiction.”

“A municipal tax exacted of the consumer upon each transaction of sale affects the freedom of purchase within the city and thus falls under the generic heading of a sales tax.”

• 68 Am Jur 2d, § 4, Sales and Use Tax

“Sales taxes in particular jurisdictions have been referred to as, or declared to be:

- License taxes
- Privilege taxes
- Income or gross income taxes, and
- Excise taxes.”

• Words and Phrases, Sales Tax

“A ‘sale’ or ‘use’ tax is a tax on the privilege of engaging in a particular business or occupation which is levied against businessman engaged in that occupation and not against the consumer.”

“The ‘sales tax’ is an excise tax for privilege of selling tangible personal property at retail measured by gross receipts from such sales.”

“City ordinance purporting to impose license tax based on gross sales was sales tax . . .”

• Black’s Law Dictionary, Sales Tax

“A state or local-level tax on the retail sale of specified property or services.”