

# SENATE BILL REPORT

## SSJM 8009

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As Passed Senate, December 14, 2011

**Brief Description:** Requesting respectfully the adoption of federal legislation granting states remote collection authority for remote sales.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Regala and Nelson).

**Brief History:**

**Committee Activity:** Ways & Means: 5/04/11, 5/05/11 [DP, DNP]; 12/12/11, 12/13/11 [DPS, DNP, w/oRec].

**First Special Session:** Passed Senate: 5/09/11, 32-12.

**Second Special Session:** Passed Senate: 12/14/11, 41-6.

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Joint Memorial No. 8009 be substituted therefor, and the substitute joint memorial do pass.

Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Zarelli, Ranking Minority Member; Baumgartner, Brown, Conway, Fraser, Harper, Hatfield, Hewitt, Keiser, Kohl-Welles, Padden, Pflug, Pridemore, Regala, Schoesler and Tom.

**Minority Report:** Do not pass.

Signed by Senator Holmquist Newbry.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Honeyford.

**Staff:** Dean Carlson (786-7305)

**Background:** Washington and 45 other states impose retail sales and use taxes. These taxes are imposed on the retail sale or use of most items of tangible personal property and some services. The rates, definitions, and administrative provisions relating to sales and use taxes vary greatly among the 7500 state and local taxing jurisdictions. This variety is one reason cited in *Quill v. North Dakota*, 112 S.Ct. 1904 (1992), where the United States Supreme Court held that the federal commerce clause prohibits a state from requiring mail-order, and by extension internet, firms to collect sales tax unless they have a physical presence in the state.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

An effort was started in early 2000, by the Federation of Tax Administrators, the Multistate Tax Commission, the National Conference of State Legislatures, and the National Governors Association, to simplify and modernize sales and use tax collection and administration nation-wide. The effort is known as the Streamlined Sales Tax Project (SSTP). The purpose of the project was to nation-wide simplify sales tax collection in order to address the issues raised in the *Quill* case.

In the 2002 Legislative Session, the Legislature adopted the Simplified Sales and Use Tax Administration Act, which authorized the Department of Revenue (DOR) to be a voting member in the SSTP. Many other states have also authorized such participation, and representatives have met to develop an agreement to govern the implementation of the SSTP. This agreement, called the Streamlined Sales and Use Tax Agreement (SSUTA), was adopted by 34 states and Washington, D.C. in November 2002.

During the 2003 Legislative Session, the Legislature enacted legislation at the request of the DOR to implement the uniform definitions and administrative provisions of the SSUTA. However, the legislation did not implement several provisions that are necessary for the state to conform fully to the SSUTA, including a provision that would require the state to change its local sales and use tax sourcing rules.

In 2007 the Legislature adopted the remaining provisions (including changing our sourcing from origin based to destination based) needed to fully conform to the SSUTA which allowed Washington to be a full member state. To date, 24 states are in full compliance with the SSUTA.

This year three pieces of legislation have been introduced at the federal level. The three bills are known as the Main Street fairness act, the Marketplace Fairness Act, and the Marketplace Equity Act.

**Summary of Substitute Bill:** The memorial asks Washington's congressional delegation to join as cosponsors of the Main Street Fairness Act, the Marketplace Fairness Act, and the Marketplace Equity Act, and to support one of the act's passage. It also asks President Obama to sign the legislation into law, upon passage by congress.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Staff Summary of Public Testimony:**

Testimony on Original Bill From 2011 Regular Session.

PRO: Washington is a leader in the streamlined sales tax arena. It is now time for congress to act. For consistency it is important for congress to act rather than state by state. This is very important for our brick and mortar business. We see constant eroding from brick and mortar businesses as people keep shopping online. Online purchases get close to a 10 percent sales advantage as they don't have to collect sales taxes. Federal legislation is

needed to help local businesses compete against remote sellers. We are working hard to get bipartisan support, and this bill will help send a message to congress.

Testimony on Proposed Substitute From 2011 2nd Special Session.

PRO: Our state is currently compliant with the streamlined sales and use tax agreement. The state should receive its fair share of tax dollars. We are currently operating at a disadvantage as we collect sales tax in all 50 states, where other businesses don't have to. This is an urgent matter for budget reasons and this will help the retail stores stay competitive. The economic health of the retail sector is important to the economy. Our online competitors have many advantages and one is that they don't have to collect sales tax. The current system hurts small businesses and costs the state jobs.

**Persons Testifying:**

Persons Testifying on Original Bill From 2011 Regular Session.

PRO: Mark Johnson, Washington Retail Association; Steve Gano, Walmart; Drew Shirk, Greg Potegal, DOR.

Persons Testifying on Proposed Substitute From 2011 2nd Special Session.

PRO: Amber Carter, Association of Washington Business; Steve Gano, Walmart; Mark Berejka, REI; Mark Johnson, Washington Retail Association.