



## The Streamlined Sales and Use Tax Project: What It Means to AP

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### Introduction

Fifty states. More than 7,500 tax jurisdictions. Time and money spent tracking all these jurisdictions' sales taxes, use taxes, exemptions, rates, and monthly changes to each?

Limitless, say tax and AP professionals around the United States, including Amazon.com's Rich Prem.

"I tell people that it took 80 years to make the tax system this complex," says Prem, Amazon's director of global indirect sales taxes. "A tax system ... should be easy to understand."

That premise – and keen interest among the states in taxing Internet and remote sales – is at the heart of the Streamlined Sales Tax Project (SSTP) begun in March 2000, says Diane Hardt, co-chairperson of the SSTP Steering Committee.

"Part of the project is to improve compliance with

### So What Happens Oct. 1, 2005?

If you're keeping up with your TAPN news headlines, you know that Oct. 1 is a significant day for the Streamlined Sales Tax Project (SSTP). However, you may not be clear on what that significance is – and most importantly, whether it requires your AP department to do anything.

You can relax says Diane Hardt, co-chair of the SSTP steering project.

"It's not an earth-shattering event," explained Hardt, who is administrator of

sales and use tax law among multi-state retailers," says Hardt, the Wisconsin Department of Revenue's tax administrator for income, sales and excise taxes. "The other is to overcome the U.S. Supreme Court decision of 1992 that was *Quill vs. N. Dakota*."

In its *Quill* ruling, the Court concluded that U.S. sales tax systems are too complex to require a seller with customers in multiple states to collect the tax in states where it does not have nexus – i.e., a physical presence – such as a headquarters, branch, outlet or distribution center, or even an employee. As a result, *Quill* essentially put a moratorium on billing or collecting sales tax on Internet and remote sales. In addition, during December 2004 President Bush signed into law a three-year moratorium on Internet *access* taxes.

But the Internet sales pie has many states' mouths watering. The National Governors' Association estimates that potential sales tax not collected on these transactions totals between \$15.5 billion to \$16.1 billion.

The *Quill* ruling left the door open for Congress to change that state of affairs – but only if the U.S. tax system is simplified and made more uniform first, Hardt said.

"So that's what we've been trying to do," she said. "The project has come up with a series of uniform definitions and administrative procedures and worked with technology companies to make new software available, making it easier for sellers to collect the taxes."

Vertex, Inc., the leading provider of tax technology products and process management services for more than 10,000 customers worldwide, sees the simplifications as very positive for the business community.

income, sales and excise taxes with the Wisconsin Department of Revenue. "October 1 is the first day of an interstate agreement that will be executed for those 18 or 19 states [that have adopted SSTP provisions and been certified]. However, it is still a voluntary system. "Unless the seller has a physical presence in a state, the seller is not required to collect taxes until Congress acts."

Even if Congress does eventually pass legislation that streamlines U.S. sales and use tax regulations, it may or may not make nationwide tax collection mandatory. One precedent for voluntary sales tax collection is the international fuel tax agreement, begun informally among three states in 1983 and federally formalized in 1996, which addresses taxation of fuel that crosses state lines, Hardt notes.

"Congress said, 'You don't have to get into it, but you're not going to collect the taxes unless you do.' And eventually every state did get into it," Hardt said.

Hardt expects that some sellers will begin collecting taxes voluntarily during the first 12 months of the SSTP agreement that begins Oct. 1. An amnesty period is offered in the agreement and the laws of the 18 or 19 states that have adopted it.

The amnesty option can help ease the minds of sellers who fear that one more states will determine that the seller has physical presence, or nexus, within their borders. Having nexus in a state of course means that a seller is required to collect tax on sales there. Sellers may gain amnesty by beginning voluntary sales tax in the SSTP states where they have customers, Hardt says.

Companies wanting amnesty could include dot coms that are separate, legal business entities from their companion brick-and-mortar stores. If a dot com allows returns to be made at its companion – but legally separate – brick-and-mortar stores, some states might view the dot com as having nexus, or physical presence, in the jurisdictions where the brick-and-mortar stores are located, Hardt explained.

"If the dot com has not been collecting taxes in those states, they are at risk of the states pursuing them and litigating with them," she said. "These businesses may

"Ultimately this is a decision of the voters in the states," said Dick Eppleman, Vertex's director, government markets. "We conform our products and services to whatever the states require. Uniform definitions, uniform sourcing rules, and uniform tax bases for local and state jurisdictions we see as having a positive effect on removing some costs from the compliance process for businesses. Additionally, removal of ambiguity from the rules makes it easier to meet the compliance requirements."

Read on for more detail on what SSTP has accomplished; what remains to be done; how it affects AP; also find useful TAPN resources.

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### Who is participating in SSTP?

The SSTP initiative was initiated in 2000 by the National Governors' Association, the National Conference of State Legislatures, the Federation of Tax Administrators, and the Multi-state Tax Commission. About 12 or 13 states were initially active.

Today, 44 of the 45 states that collect sales tax, as well as the District of Columbia, are involved. A total of 18 of the participant states have been certified by SSTP. That means not only have these states adopted SSTP's definitions and uniformities into their laws – their processes and procedures for collecting sales tax have been reviewed and approved by fellow SSTP states. Representatives of these states make up the SSTP Governing Board, which determines the organization's actions and directions. Certified states are Arkansas, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Utah, West Virginia and Wyoming. Nevada most likely will be certified Oct. 1, bringing the total to 19.

The lone sales-taxing state missing from the SSTP roster is Colorado, whose governor, Bill Owens, has been a vocal critic of SSTP. Owens' objections include fears that the project could result in a "national sales tax cartel." He has expressed concern over the potential loss of local control over taxing policy and decisions, as well.

Also a part of the SSTP group are brick-and-mortar businesses and online companies, such as Amazon.com. These companies, which will be formally known as SSTP's Business

come forward within that 12-month amnesty period and start collecting [in return for] assurance that they don't owe any taxes for previous years.

"We've already had some businesses come forward and start collecting." Hardt said. "I know in Wisconsin we've signed up about 30 businesses in the last two years. Sometimes it was a brick-and-mortar store. They want this to happen. They want to level the playing field." [more on amnesty](#)

Also on Oct. 1:

- Software and service providers that can assist companies with SSTP compliance also will be certified on Oct. 1. Companies may contract with certified service providers to handle all of their sales tax obligations at no charge – the states pay the providers. Or, companies may purchase a certified automated system and use it themselves to calculate, collect and remit sales tax. [more on software and service](#) and [keeping your current system](#)
- Nevada is expected to be certified Oct. 1 as the 19th SSTP state.

Advisory Council starting Oct. 1, have offered input on consistent definitions and insight into how sales taxes and their collection can help or hinder business practice. Amazon sees its role as educational, says Prem.

"We have given examples about how the current system is really problematic for us," he said. "We felt the way to go was to work with the policy folks and the state and federal people to say, 'Here's where it's a problem for us!'"

Especially active industries include regional and national telecommunications companies and leasing companies. While they don't have e-commerce concerns, telecommunications firms would benefit from a simplified and uniform tax system across the states. One participating telecom company files 40,000 tax returns a year to meet all state, county and city requirements in the areas it serves, Hardt said.

Real estate and leasing companies also are interested in the standardization and simplification aspects of SSTP. State rules about taxing leases vary widely – some tax the entire lease right up front; others collect it over time. Sourcing also is an issue for leasing companies. For example, if a person leases a car in Georgia and then moves to California for a few years, does Georgia or California receive the tax, and how much is collected?

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### **What has SSTP accomplished?**

As of September 2005, SSTP has:

- **Agreed upon uniform definitions.** "For example, is Twix a candy, or a chocolate-covered cookie? [This makes a difference because] 15 to 20 states tax candy and exempt food," said Amazon's Prem. "At the end of the day, if it has flour, it is not candy. Therefore, [Twix is a food and] licorice is a food, as well, not a candy, because it uses flour."
- **Agreed upon uniform, simplified procedures.** "We will have state administration of all state and local taxes, and only one tax return will be filed per state per month," Hardt said. "So all the local jurisdictions have to get on some schedule on a state tax return...plus they are also required to have the same tax within a state, so you can't have the county taxing some items and the state taxing other items." This could present a challenge for home-rule states. [more on control issues](#)
- **Addressed the origin vs. destination question.** SSTP decided on a destination-based sourcing rule for collecting and remitting sales tax. That means that the taxes and

rates of the jurisdiction where the product is taken possession of are those charged, and those jurisdictions receive the collected funds. "If an online company is selling you something and you live in New York, and they are sending it to New York, they [would] collect New York tax," Hardt said. This could present a challenge for the 11 states that use origin-based sourcing, i.e., the tax is collected based on and remitted to the jurisdiction where a product is made. [more on origin vs. destination](#)

- **Decided upon a one-year amnesty period.** A company that has any fears of having presence, or nexus, in a state – which can include a brick-and-mortar store, office, warehouse, or an employee, for example – may voluntarily begin collecting sales tax between Oct. 1, 2005 and Oct. 1, 2006 and thus will not be required to collect or pay any back sales tax.

Amnesty may be important for businesses whose online entities interact significantly with their brick-and-mortar stores – even if the online businesses are legally and corporately separate from the brick-and-mortar operation, and don't mix their finances or assets.

A California appeals court ruled May 31 that Borders.com owed that state \$167,000 in unpaid sales taxes for April 1998 through September 1999. Although Borders.com is an online entity, the fact that:

- online customers were allowed to return books to brick-and-mortar Borders stores, and
- brick-and-mortar Borders stores advertised Borders.com on their sales slips

blurred that separation, and made Borders.com liable for collecting sales tax. In addition, the two companies used similar logos and shared some members of their boards of directors during the period in question.

- **Planned a [one-stop registration site](#) for companies that voluntarily collect.** By Oct. 1, 2005 or shortly thereafter, companies that want to begin voluntary sales tax collection in the 18 or 19 certified SSTP states may sign up at a centralized online registration system. "It's a one-stop shop," Hardt said. "You can go there and enter your information and it will be shared with all 18 or 19 states. You don't have to fill out registration papers in all the states." Look for more information at TAPN soon about where to access one-stop registration online.
- **Spurred development and certification of software and service providers for sales tax collection.**  
Two services will make collecting sales tax easier for merchants. Sellers may

- license a software (a certified automated system, or CAS) that has been SSTP certified. The SSTP agreement says that the states will provide a technology allowance for the first two years.
- outsource their sales tax collecting and remitting responsibilities to third parties certified by SSTP. The certified service provider (CSP) service will be free to merchants; CSPs will always compensate the CSPs for the sales tax administration functions they will be providing to sellers, Hardt, said.

Specific CAS and CSP providers will be named Oct 1 or shortly afterward.

"All 18 [currently certified] states need to thoroughly test out these systems to make sure they've got the right zip codes with the tax rates," Hardt said. Each state that later joins the initial group of 18 certified states will conduct its own verifications in the future. [more on software and service](#) or [keeping your current system](#)

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#### **What other advantages does SSTP offer – beyond standardization, simplification, and the potential ability for states to tax remote and Internet purchases?**

Several other advantages could accrue to state governments and retailers that opt to participate in SSTP. Many of these will directly benefit AP professionals:

- **More reliable sales tax software.** This will increase the chances that AP professionals are being billed and are paying the correct amount of sales tax on each purchase.
- **Good-bye exemption certificates?** AP professionals eventually will spend less of their time obtaining resale certificates for their businesses, Amazon's Prem predicts. "Right now people in AP spend huge amounts of time chasing down the right tax and exemption certificates," he explained. "That's a big one in terms of progress toward simplifying things."
- **Less time and expense auditing compliance.** The amount of time and expense saved on auditing will depend on the number of jurisdictions from which a company purchases. On the accounts receivable side, it will depend on the number of jurisdictions to which a company sells, said Charles Collins, Taxware's vice president of governmental affairs. Taxware is one of the seven companies being considered for SSTP certification of its products and services.

"For companies that do business in multiple states and sell multiple products, you may have one or two people dedicated to audit defense right now," he said. Certified software that is more accurate and is updated monthly, and/or a certified service provider who handles the entire sales tax process, could change that.

- **Reduction of tax gap.** "We always talk about this tax gap out there, the difference between what is reported and what should be reported," Hardt said. "State revenue departments are constantly looking at how they can reduce that gap. How can we get compliance with current law so we don't have to raise taxes? If you simplify it and make it more uniform, maybe [you'll get] better voluntary compliance out there."
- **Reduction in class-action lawsuits re: fair taxation.** Class-action lawsuits regarding sales tax collection are becoming more common these days, Amazon's Prem said. In part, they stem from the complexity of the U.S. sales and use tax system. Prem cited a lawsuit brought against the State of South Carolina and numerous retailers and settled in 2001 – for \$7.5 million.

South Carolina had passed a law that people over 85 would receive a 1 percent reduction in sales tax on any purchase in the state, Prem said. Some retailers had not been providing that reduction.

"Of course, that leads to the question of how the heck does a company comply with that?" Prem noted.

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### **What issues/challenges facing SSTP adoption remain, and how will they be addressed?**

Three challenges face the states that have not yet adopted SSTP rules and regulations:

- **Destination-based vs. origin-based sourcing.** The SSTP mandates destination-based sourcing for states that want to conform to its requirements. That means taxes in SSTP states will be based on the jurisdiction where the buyer takes possession of tangible property purchased. The 11 states that use origin-based sourcing – basing their intra-state sales tax on and paying it to the jurisdiction where the seller is located – may face additional challenges conforming to SSTP requirements, said Vertex's Eppleman.

"Local jurisdictions may see it as an infringement of their sovereignty, he explained." Additionally, the lack of historical data could make it difficult to forecast

their revenues as they transition to destination-based sourcing."

Changing from origin- to destination-based taxation can create serious revenue shifts within a state. For example, Dell Inc., based in Round Rock, Texas, sells computer servers, desktops and notebooks, printers, data storage devices and more worldwide. Because Texas has origin-based sales tax rules, Round Rock – the city of origin for Dell products – receives the state sales tax from Dell sales to other Texas communities. If Texas changed to a destination-based sourcing rule, sales taxes from Dell sales within Texas – but outside of Round Rock – would go to the communities where purchasers take possession of Dell products, severely impacting Round Rock's budget, Hardt explained.

"Those states that are origin-based have to work through that issue and figure out how they are going to deal with that," she said. "That's been the most difficult issue we've come across so far."

Why did SSTP choose a destination-based approach?

"You had to have that if you were going to address sales from e-commerce and mail order," Hardt said. "Clearly we were trying to get at e-commerce and mail order where the sales tax is not being collected. We had to have one uniform rule."

Hardt expects that some origin-based states may wait to see whether Congress passes legislation assuring them that they will collect tax on e-commerce and mail order purchases made by residents of their states before revamping their systems.

- **National/state vs. local control.** SSTP regulations not only require conformation to nationwide sales tax rules – they also require local governments to coordinate with state officials on taxation issues. Local governments must have their taxes listed on state returns instead of issuing their own tax returns, and all jurisdictions must agree on what will and will not be taxable, and how. The nation's four home rule states – those that have given local jurisdictions extra freedom to manage their own affairs – must address the wide variation in sales taxation practices and rates within their borders before they can become SSTP members.

Colorado, the one sales-taxing state that has not joined the SSTP project, is a home rule state. The other three, Louisiana, Alabama and Arizona, are part of the SSTP project, Hardt noted.

"Probably those kinds of states, until they can see the actual revenue from e-commerce and mail order, we probably won't move them," she said. "Those are probably the toughest states to change."

- **What about small businesses?** The owners of small online or remote order

businesses that sell to customers nationwide – florists, for example – may be feeling faint about now. How will they afford the cost incurred in commencing tax collection in 45 states? Hardt expects that any legislation passed by Congress will include a small business exemption, based on gross receipts, to address this issue. The bill presented to Congress in 2003, but not passed, absolved businesses with less than \$5 million in gross receipts from the taxing requirement.

"For businesses that are under that threshold, they would continue to follow the old physical presence [nexus] rules, and only have to collect in those states where they have a physical presence," Hardt said. "So the federal legislation is aimed at getting the largest retailers to start collecting."

Amazon's Prem questions whether a system that must exempt small businesses should be the final SSTP goal.

"If we really simplify the system, shouldn't it be simple enough that every business can comply?" he asked.

Another aspect of the fairness question is the "level playing field" that some brick-and-mortar businesses, already required to collect and remit sales tax, say SSTP would create by requiring online businesses also to collect and remit tax. Some online businesses dispute that view, citing the cost of collecting sales tax, Prem said. Some further argue that shipping costs level the playing field between online and brick-and-mortar shops.

"Even if you set the shipping costs aside," says Prem, "Shouldn't the states at least pay us what it costs us to process these taxes on customers' credit cards? What are they willing to pay us to collect their sales tax?"

A study to determine the cost of collecting sales tax is in progress, Prem said.

Vertex's Eppleman notes that requiring a brick-and-mortar seller to collect sales tax in a jurisdiction where it has physical presence generally has not been seen as an undue burden.

"These businesses enjoy the of local government services," he said.

This is not the case with online merchants.

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[What softwares and services are available to ease compliance?](#)

Along with simplifications and uniformity, software and computing services are essential to SSTP. In fact, SSTP probably would not be possible without today's technology. SSTP states are evaluating the software products and outsourcing abilities of seven companies for possible certification, which will be announced on or shortly after Oct. 1 at the [SSTP home page](#).

Each CAS will include SSTP's uniform definitions and rate jurisdiction databases that incorporate a tax rate for every nine-digit zip code. These features significantly reduce the chance of tax errors, says Charles Collins, Taxware's vice president of governmental affairs. Collins, who previously was director of the North Carolina Department of Revenue's sales tax division and co-chair of the SSTP group, has 32 years of work experience on the government side of finance.

"There are two to three areas of error possibilities – you want to be sure you have an accurate tax calculation engine and mapping," he said.

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### [Am I required to buy new software or hire a certified service provider if I want to begin voluntarily collecting tax?](#)

No. The two additional options are:

- **Have your own company's proprietary software certified by the Governing Board of the SSTP.** This option is available to individual sellers or groups of affiliated merchants who use the same software to calculate the tax due in each of their jurisdictions. To be eligible to continue using that software and have it certified, these sellers must also have customers in at least five member states and total yearly revenues of \$500 million or more. They also must agree to a tax performance standard worked out with the member states.
- **Continue using your company's uncertified software.** In this case, a seller registers with the member states and the seller is responsible for calculating, filing and remitting the collected tax with each state.

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