



Testimony of the National Retail Federation

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**Before the
Virginia General Assembly
Joint Subcommittee to Study the Impact of Collecting Remote
Sales Taxes on the Economy of the Commonwealth**

**Richmond, VA
August 16, 2004**

Good afternoon Delegate Hugo and members of the Subcommittee. My name is Maureen Riehl. I am the Vice President, Government and Industry Relations Counsel for the National Retail Federation (NRF), in Washington, D.C. I am here on behalf of NRF and the Virginia Retail Merchants Association (VRMA) to encourage this study subcommittee to recommend that the Commonwealth of Virginia join with the 21 other states that have passed conforming legislation to bring them into compliance with the Streamlined Sales Tax Act ratified by the states in November 2002, to both simplify sales and use tax collection in the Commonwealth, and to later make Virginia eligible for collection of use tax from remote sales.

The **National Retail Federation** is the world's largest retail trade association, with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalog, Internet and independent stores as well as the industry's key trading partners of retail goods and services. NRF represents an industry with more than 1.4 million U.S. retail establishments, more than 23 million employees - about one in five American workers - and 2003 sales of \$3.8 trillion. As the industry umbrella group, NRF also represents more than 100 state, national and international retail associations. www.nrf.com.

History: The Retail Perspective.

According to the decisions in two relevant United States Supreme Court decisions, *Bellas Hess* and *Quill*, the high court ruled that state and local sales tax systems were complicated and placed an undue burden on interstate commerce. Because of this burden, remote, out-of-state sellers have been excused from collection of sales or use tax on sales made to remote buyers except in instances where the seller has nexus with the state of the buyer. The advent of the Internet and growth of e-commerce retail sales established a situation where traditional “Main Street” sellers, with no e-commerce or remote sales activity, were both losing sales to competitors on the Internet, while also suffering a non-negotiable price disadvantage of an average of 6% (the average state sales tax rate) for selling the same goods. Considering that most retailer profit margins are on the scale of 3-4%, a non-negotiable price disadvantage of 6% on top of the cost of the goods being sold is clearly a significant discrimination against main street sellers. “Non-negotiable price” (i.e. the sales tax rate mandated for collection by retail on taxable items at storefront) is a relevant distinction, as the shipping, handling and related delivery costs to a remote seller with no nexus in a state are ALL negotiable fees for completing a transaction with a remote buyer. In the event that there is any doubt of how disruptive and uncompetitive this collection imbalance is, merely ask a Virginia furniture merchant about how much more aggressive North Carolina furniture dealers can be when they are marketing sales-tax free merchandise via the Internet compared to the roadside billboards and newspaper advertisements used in the past.

NRF agrees that main street sellers benefit from enhanced services from state and local government, and thus should be obligated to help support those services through the collection of sales tax. It is also true that services provided for by state and local government such as roads, fire and police are used every day by out-of-state sellers to facilitate the delivery and en-route protection of merchandise to in-state buyers.

Sales tax is a consumption tax. Customers that live in a state with sales and use taxes are individually responsible for payment of that tax to their home state. By mandate, the in-state merchant collects the sales tax for the customer; typically, the out-of-state merchant without nexus to the buyer's state does not and has no legal obligation to collect use tax for that same customer. NRF believes that the appropriate place to collect a consumption tax – owed by customers – is at the point-of-sale. NRF's interest is in ensuring that the burden of collection for retailers be eliminated altogether, or minimized, and that the obligation to collect must apply equitably across all channels of sale. Likewise, for remote sellers that currently have no legal obligation to collect tax for their remote buyers, the remote seller's costs of collection should be paid for by the states.

The Streamlined Sales Tax Agreement (SSTA) ratified by 31 states in November of 2002 was a culmination of over four years of intense review and negotiation among business groups – such as NRF and several of its members – state tax experts, and state and local elected officials focused on simplifying state sales and use tax laws. Each of the simplifications detailed in the 76-page

SSTA benefit retailers in some fashion. In the 21 states that have adopted a majority of the SSTA since June 2004 (Arkansas; Iowa; Indiana; Kansas; Kentucky; Michigan; Minnesota; Nebraska; Nevada; North Carolina; North Dakota; Ohio; Oklahoma; South Dakota; Tennessee; Texas; Utah; Vermont; Washington; West Virginia; and Wyoming) and any other state that may later do so, in-state retailers and voluntary remote sellers will be able to avail themselves of a simpler, less costly system for sales tax collection beginning as soon as 2005. SSTA represents the necessary first step for equal collection responsibility for all sellers.

Voluntary v. Mandatory Sales Tax System.

The SSTA is a voluntary agreement; voluntary to the states (a state must pass legislation or adopt rules to be in compliance with the SSTA), and voluntary to remote sellers without nexus in a state. The benefit to a remote seller that volunteers under the SSTA is that the incentives – both financial and the audit hold-harmless provisions – are attractive and significant for those remote sellers that may have either questionable nexus with a state(s), or in instances where the SSTA provisions compliment the remote seller's business development plan.

A voluntary system is a good start, but it does not take care of the problem of winners and losers in the retail world. On its own, SSTA can only provide a framework for a voluntary system for both participation by remote sellers and collection of remote tax. The inequity for all sellers can only be fixed with a mandatory system, one that does not discriminate based on the way in which

goods are bought or sold, and one that mandates collection by all sellers in states that are in compliance with the SSTA. In order for the voluntary SSTA to transition to a mandatory system in the near future, Congress must act.

Likewise, in accordance with this mandatory plan, Virginia must first pass legislation to come into compliance with SSTA in order for the Commonwealth to be eligible for mandatory collection of Virginia use tax by out of state merchants.

Why Do Retailers Care? Assumptions and Realities.

NRF involvement in the development of SSTA was predicated on the following:

- 1) Sales tax is here to stay. Of the tax revenue sources used in states – property, income and/or sales – a consumption tax such as the sales tax has been found in numerous polls and public opinion surveys to be the least offensive to taxpayers, as taxpayers can “choose” to pay the tax based on how much they consume;
- 2) Pre-SSTA, state and local sales tax systems were complicated and costly for retailers to administer. There is a cost bourn by sellers that collect the tax. Even under SSTA, there will be some residual cost to collect tax for state and local government. All sellers should be compensated for reasonable costs that do and may continue to exist for tax collection;
- 3) Pre-SSTA, retailers have no certainty. 7,600 different taxing jurisdictions have varying rates, varying definitions and varying rules, often forcing retailers to guess about taxability;

4) This is not a new tax, and it does not address or affect access to the Internet. The Internet Tax Freedom Act of 2001 (ITFA), whose primary Republican sponsor in the United States Senate is Virginia's own Honorable George Allen, expired late last year is still under consideration in the Congress. ITFA does not apply to sales tax collection responsibilities. ITFA does not address or fix the inequity problem on the sales and use tax collection side.

With over 30 major administrative and political changes, the SSTA provides a baseline framework for a simpler system of sales and use tax collection.

SSTA is not perfect – but it is a vast improvement over the systems in place today. Work is ongoing in the area of more definitions, more simplifications, bundling of services and goods, more CERTAINTY for retailers. Mechanisms exist within the SSTA for states to form a Governing Board to act as the primary decision-making body for future iterations of the SSTA that will ensure that simplification efforts will continue, and plans for the formation of that Board are underway with an anticipated operational date of Summer-Fall 2005.

Benefits of SSTA to Retailers.

Of the numerous benefits to retail articulated in the SSTA, a few of the most notable are:

1) Centralized administration at the state level of all sales and use taxes;

- 2) Uniform exemption certificates with a shift in the burden to the state for authentication;
- 3) Limitations on audits and a hold-harmless provision for mistakes made by retailers using a state authorized system or software program;
- 4) Common definitions;
- 5) Harmonized local and state tax base;
- 6) Limited rates.

SSTA establishes a road map for retailers to know what is taxable, and at what rate – thus providing retailers with certainty in administration, while preserving the sovereign rights of states on political issues of taxability.

Economic Necessity.

Online sales are skyrocketing. In a May 2004 report conducted by Forrester Research for NRF's division, Shop.org, 150 retailers surveyed reported online sales of \$114 billion in 2003, up 51%, representing 5.4% of all retail sales that year. During 2004, the study forecasts that online sales will reach 6.6% of all retail sales. In the wake of this growth, retailers of all kinds are bolstering their efforts to integrate their channels of distribution – store-based, Web-based, and catalog-based – all interdependent and symbiotic. A success merchant keeps an eye on the customer, and responds to the customer needs and wants, or the merchant fails. A copy of the Shop.org/Forrester report is attached to these comments.

Likewise, state economies are becoming more service based and tax revenues used to provide core services are becoming skewed or inordinately burdensome on in-state businesses and/or citizens that could instead benefit from tax relief IF only their state could collect taxes already owed. Use tax from out-of-state purchases made by Virginia residents goes uncollected, even though the tax is due.

Internet sellers with a strong business model are flourishing, and the customers that purchase from them should benefit from a deal on the underlying cost of the merchandise or service purchased, and not have the excuse of tax avoidance as the differential or reason for buying online. This competitive disadvantage where one channel of delivery collects tax while one does not for sale of the same item is simply bad policy and a failure of government to be fair and equal. The marketplace should determine retail winners and losers, not tax policy.

Summation.

NRF and VRMA support the Streamlined Sales Tax Agreement, and we urge the Commonwealth of Virginia to join with other states in adopting sales tax simplifications. As retail assumes that the sales tax is a significant, viable and the least offensive source of state and local government revenue, the rules for sales and use tax collectors should be the same. The most efficient collector of this consumption tax is the retailer, who with the help of modern technology, will now know with certainty what is taxed, and at what rate, regardless of which

venue is used to shop and ultimately complete the sale. By adopting a law that would bring Virginia into compliance with the Streamlined Sales Tax Act provisions, Virginia will take the necessary first step toward a mandatory sales tax system that is both fair and equitable across all states. Likewise, federal legislation to transition the SSTA into a mandatory system is supported by NRF and VRMA, and needed in order for retail to share equal collection responsibilities, and for retail venues to be subject to the same tax rules.

Mr. Chairman and members of the study subcommittee, I appreciate the invitation to come and address you on the merits the sales tax simplification effort overall, and to specifically endorse action by Virginia to modernize its state sales tax system at the earliest possible time.

Thank you for your kind attention.

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