



## Multistate Tax Commission

States Working Together Since 1967 . . . To Preserve Federalism and Tax Fairness

June 26, 1997

TO: Participants in the Public Participation Working Group for  
the Constitutional Nexus Guideline for Application of  
a State's Sales and Use Tax to an Out-of-State Business

FROM: Paull Mines, General Counsel  
Multistate Tax Commission

RE: The Bumpers Bill—S.545 (104<sup>th</sup> Cong., 1<sup>st</sup> Sess.)

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Pursuant to the express request of the Public Participation Working Group, I am attaching a copy of the latest filed version of the Bumpers Bill. This item is proposed legislation that would establish a bright line based on the quantity of sales and deal with other issues of the application of sales and use taxes to interstate commerce, including the local tax issue. It is our understanding that Senator Bumpers intends to reintroduce this legislation in the latest Congress. When that occurs, depending upon the interest of the PPWG, we can forward the most current version of the proposal.

104TH CONGRESS  
1ST SESSION

# S. 545

To authorize collection of certain State and local taxes with respect to the sale, delivery, and use of tangible personal property.

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## IN THE SENATE OF THE UNITED STATES

MARCH 13 (legislative day, MARCH 6), 1995

Mr. BUMPERS (for himself and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To authorize collection of certain State and local taxes with respect to the sale, delivery, and use of tangible personal property.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the "Consumer and Main  
5       Street Protection Act of 1995".

6       **SEC. 2. FINDINGS.**

7       The Congress finds that—

8               (1) merchandise purchased from out-of-State  
9       firms is subject to State and local sales taxes in the

1 same manner as merchandise purchased from in-  
2 State firms,

3 (2) State and local governments generally are  
4 unable to compel out-of-State firms to collect and  
5 remit such taxes, and consequently, many out-of-  
6 State firms choose not to collect State and local  
7 taxes on merchandise delivered across State lines,

8 (3) moreover, many out-of-State firms fail to  
9 inform their customers that such taxes exist, with  
10 some firms even falsely claim that merchandise pur-  
11 chased out-of-State is tax-free, and consequently,  
12 many consumers unknowingly incur tax liabilities,  
13 including interest and penalty charges,

14 (4) Congress has a duty to protect consumers  
15 from explicit or implicit misrepresentations of State  
16 and local sales tax obligations,

17 (5) small businesses, which are compelled to  
18 collect State and local sales taxes, are subject to un-  
19 fair competition when out-of-State firms cannot be  
20 compelled to collect and remit such taxes on their  
21 sales to residents of the State,

22 (6) State and local governments provide a num-  
23 ber of resources to out-of-State firms including gov-  
24 ernment services relating to disposal of tons of cata-

1 logs, mail delivery, communications, and bank and  
2 court systems,

3 (7) the inability of State and local governments  
4 to require out-of-State firms to collect and remit  
5 sales taxes deprives State and local governments of  
6 needed revenue and forces such State and local gov-  
7 ernments to raise taxes on taxpayers, including con-  
8 sumers and small businesses, in such State,

9 (8) the Supreme Court ruled in *Quill Corpora-*  
10 *tion v. North Dakota*, 112 S. Ct. 1904 (1992) that  
11 the due process clause of the Constitution does not  
12 prohibit a State government from imposing personal  
13 jurisdiction and tax obligations on out-of-State firms  
14 that purposefully solicit sales from residents therein,  
15 and that the Congress has the power to authorize  
16 State governments to require out-of-State firms to  
17 collect State and local sales taxes, and

18 (9) as a matter of federalism, the Federal Gov-  
19 ernment has a duty to assist State and local govern-  
20 ments in collecting sales taxes on sales from out-of-  
21 State firms.

22 **SEC. 3. AUTHORITY FOR COLLECTION OF SALES TAX**

23 (a) **IN GENERAL.**—A State is authorized to require  
24 a person who is subject to the personal jurisdiction of the  
25 State to collect and remit a State sales tax, a local sales

1 tax, or both, with respect to tangible personal property  
2 if—

3 (1) the destination of the tangible personal  
4 property is in the State,

5 (2) during the 1-year period ending on Septem-  
6 ber 30 of the calendar year preceding the calendar  
7 year in which the taxable event occurs, the person  
8 has gross receipts from sales of such tangible per-  
9 sonal property—

10 (A) in the United States exceeding  
11 \$3,000,000, or

12 (B) in the State exceeding \$100,000, and

13 (3) the State, on behalf of its local jurisdictions,  
14 collects and administers all local sales taxes imposed  
15 pursuant to this Act.

16 (b) STATES MUST COLLECT LOCAL SALES TAXES.—  
17 Except as provided in section 4(d), a State in which both  
18 State and local sales taxes are imposed may not require  
19 State sales taxes to be collected and remitted under sub-  
20 section (a) unless the State also requires the local sales  
21 taxes to be collected and remitted under subsection (a).

22 (c) AGGREGATION RULES.—All persons that would  
23 be treated as a single employer under section 52 (a) or  
24 (b) of the Internal Revenue Code of 1986 shall be treated  
25 as one person for purposes of subsection (a).

1 (d) DESTINATION.—For purposes of subsection (a),  
2 the destination of tangible personal property is the State  
3 or local jurisdiction which is the final location to which  
4 the seller ships or delivers the property, or to which the  
5 seller causes the property to be shipped or delivered, re-  
6 gardless of the means of shipment or delivery or the loca-  
7 tion of the buyer.

8 **SEC. 4. TREATMENT OF LOCAL SALES TAXES.**

9 (a) UNIFORM LOCAL SALES TAXES.—

10 (1) IN GENERAL.—Sales taxes imposed by local  
11 jurisdictions of a State shall be deemed to be uni-  
12 form for purposes of this Act and shall be collected  
13 under this Act in the same manner as State sales  
14 taxes if—

15 (A) such local sales taxes are imposed at  
16 the same rate and on identical transactions in  
17 all geographic areas in the State, and

18 (B) such local sales taxes imposed on sales  
19 by out-of-State persons are collected and ad-  
20 ministered by the State.

21 (2) APPLICATION TO BORDER JURISDICTION  
22 TAX RATES.—A State shall not be treated as failing  
23 to meet the requirements of paragraph (1)(A) if,  
24 with respect to a local jurisdiction which borders on  
25 another State, such State or local jurisdiction—

1 (A) either reduces or increases the local  
2 sales tax in order to achieve a rate of tax equal  
3 to that imposed by the bordering State on iden-  
4 tical transactions, or

5 (B) exempts from the tax transactions  
6 which are exempt from tax in the bordering  
7 State.

8 (b) NONUNIFORM LOCAL SALES TAXES.—

9 (1) IN GENERAL.—Except as provided in sub-  
10 section (d), nonuniform local sales taxes required to  
11 be collected pursuant to this Act shall be collected  
12 under one of the options provided under paragraph  
13 (2).

14 (2) ELECTION.—For purposes of paragraph  
15 (1), any person required under authority of this Act  
16 to collect nonuniform local sales taxes shall elect to  
17 collect either—

18 (A) all nonuniform local sales taxes appli-  
19 cable to transactions in the State, or

20 (B) a fee (at the rate determined under  
21 paragraph (3)) which shall be in lieu of the  
22 nonuniform local sales taxes described in sub-  
23 paragraph (A).

1 Such election shall require the person to use the  
2 method elected for all transactions in the State while  
3 the election is in effect.

4 (3) RATE OF IN-LIEU FEE.—For purposes of  
5 paragraph (2)(B), the rate of the in-lieu fee for any  
6 calendar year shall be an amount equal to the prod-  
7 uct of—

8 (A) the amount determined by dividing  
9 total nonuniform local sales tax revenues col-  
10 lected in the State for the most recently com-  
11 pleted State fiscal year for which data is avail-  
12 able by total State sales tax revenues for the  
13 same year, and

14 (B) the State sales tax rate.

15 Such amount shall be rounded to the nearest 0.25  
16 percent.

17 (4) NONUNIFORM LOCAL SALES TAXES.—For  
18 purposes of this Act, nonuniform local sales taxes  
19 are local sales taxes which do not meet the require-  
20 ments of subsection (a).

21 (c) DISTRIBUTION OF LOCAL SALES TAXES.—

22 (1) IN GENERAL.—Except as provided in sub-  
23 section (d), a State shall distribute to local jurisdic-  
24 tions a portion of the amounts collected pursuant to  
25 this Act determined on the basis of—

1 (A) in the case of uniform local sales taxes,  
2 the proportion which each local jurisdiction re-  
3 ceives of uniform local sales taxes not collected  
4 pursuant to this Act,

5 (B) in the case of in-lieu fees described in  
6 subsection (b)(2)(B), the proportion which each  
7 local jurisdiction's nonuniform local sales tax  
8 receipts bears to the total nonuniform local  
9 sales tax receipts in the State, and

10 (C) in the case of any nonuniform local  
11 sales tax collected pursuant to this Act, the geo-  
12 graphical location of the transaction on which  
13 the tax was imposed.

14 The amounts determined under subparagraphs (A)  
15 and (B) shall be calculated on the basis of data for  
16 the most recently completed State fiscal year for  
17 which the data is available.

18 (2) TIMING.—Amounts described in paragraph  
19 (1) (B) or (C) shall be distributed by a State to its  
20 local jurisdictions in accordance with State time-  
21 tables for distributing local sales taxes, but not less  
22 frequently than every calendar quarter. Amounts de-  
23 scribed in paragraph (1)(A) shall be distributed by  
24 a State as provided under State law.

1           (3) TRANSITION RULE.—If, upon the effective  
2           date of this Act, a State has a State law in effect  
3           providing a method for distributing local sales taxes  
4           other than the method under this subsection, then  
5           this subsection shall not apply to that State until the  
6           91st day following the adjournment sine die of that  
7           State's next regular legislative session which con-  
8           venes after the effective date of this Act (or such  
9           earlier date as State law may provide). Local sales  
10          taxes collected pursuant to this Act prior to the ap-  
11          plication of this subsection shall be distributed as  
12          provided by State law.

13          (d) EXCEPTION WHERE STATE BOARD COLLECTS  
14          TAXES.—Notwithstanding section 3(b) and subsections  
15          (b) and (c) of this section, if a State had in effect on Janu-  
16          ary 1, 1995, a State law which provides that local sales  
17          taxes are collected and remitted by a board of elected  
18          States officers, then for any period during which such law  
19          continues in effect—

20                 (1) the State may require the collection and re-  
21                 mittance under this Act of only the State sales taxes  
22                 and the uniform portion of local sales taxes, and

23                 (2) the State may distribute any local sales  
24                 taxes collected pursuant to this Act in accordance  
25                 with State law.

1 **SEC. 5. RETURN AND REMITTANCE REQUIREMENTS.**

2 (a) **IN GENERAL.**—A State may not require any per-  
3 son subject to this Act—

4 (1) to file a return reporting the amount of any  
5 tax collected or required to be collected under this  
6 Act, or to remit the receipts of such tax, more fre-  
7 quently than once with respect to sales in a calendar  
8 quarter, or

9 (2) to file the initial such return, or to make  
10 the initial such remittance, before the 90th day after  
11 the person's first taxable transaction under this Act.

12 (b) **LOCAL TAXES.**—The provisions of subsection (a)  
13 shall also apply to any person required by a State acting  
14 under authority of this Act to collect a local sales tax or  
15 in-lieu fee.

16 **SEC. 6. NONDISCRIMINATION AND EXEMPTIONS.**

17 Any State which exercises any authority granted  
18 under this Act shall allow to all persons subject to this  
19 Act all exemptions or other exceptions to State and local  
20 sales taxes which are allowed to persons located within the  
21 State or local jurisdiction.

22 **SEC. 7. APPLICATION OF STATE LAW.**

23 (a) **PERSONS REQUIRED TO COLLECT STATE OR**  
24 **LOCAL SALES TAX.**—Any person required by section 3 to  
25 collect a State or local sales tax shall be subject to the  
26 laws of such State relating to such sales tax to the extent

1 that such laws are consistent with the limitations con-  
2 tained in this Act.

3 (b) LIMITATIONS.—Except as provided in subsection  
4 (a), nothing in this Act shall be construed to permit a  
5 State—

6 (1) to license or regulate any person,

7 (2) to require any person to qualify to transact  
8 intrastate business, or

9 (3) to subject any person to State taxes not re-  
10 lated to the sales of tangible personal property.

11 (c) PREEMPTION.—Except as otherwise provided in  
12 this Act, this Act shall not be construed to preempt or  
13 limit any power exercised or to be exercised by a State  
14 or local jurisdiction under the law of such State or local  
15 jurisdiction or under any other Federal law.

16 **SEC. 8. TOLL-FREE INFORMATION SERVICE.**

17 A State shall not have power under this Act to re-  
18 quire any person to collect a State or local sales tax on  
19 any sale unless, at the time of such sale, such State has  
20 a toll-free telephone service available to provide such per-  
21 son information relating to collection of such State or local  
22 sales tax. Such information shall include, at a minimum,  
23 all applicable tax rates, return and remittance addresses  
24 and deadlines, and penalty and interest information. As  
25 part of the service, the State shall also provide all nec-

1 essary forms and instructions at no cost to any person  
2 using the service. The State shall prominently display the  
3 toll-free telephone number on all correspondence with any  
4 person using the service. This service may be provided  
5 jointly with other States.

6 **SEC. 9. DEFINITIONS.**

7 For the purposes of this Act—

8 (1) the term “compensating use tax” means a  
9 tax imposed on or incident to the use, storage, con-  
10 sumption, distribution, or other use within a State  
11 or local jurisdiction or other area of a State, of tan-  
12 gible personal property;

13 (2) the term “local sales tax” means a sales tax  
14 imposed in a local jurisdiction or area of a State and  
15 includes, but is not limited to—

16 (A) a sales tax or in-lieu fee imposed in a  
17 local jurisdiction or area of a State by the State  
18 on behalf of such jurisdiction or area, and

19 (B) a sales tax imposed by a local jurisdic-  
20 tion or other State-authorized entity pursuant  
21 to the authority of State law, local law, or both;

22 (3) the term “person” means an individual, a  
23 trust, estate, partnership, society, association, com-  
24 pany (including a limited liability company) or cor-  
25 poration, whether or not acting in a fiduciary or rep-

1       representative capacity, and any combination of the  
2       foregoing;

3               (4) the term "sales tax" means a tax, including  
4       a compensating use tax, that is—

5                       (A) imposed on or incident to the sale,  
6                       purchase, storage, consumption, distribution, or  
7                       other use of tangible personal property as may  
8                       be defined or specified under the laws imposing  
9                       such tax, and

10                      (B) measured by the amount of the sales  
11                      price, cost, charge or other value of or for such  
12                      property; and

13               (5) the term "State" means any of the several  
14       States of the United States, the District of Colum-  
15       bia, the Commonwealth of Puerto Rico, and any ter-  
16       ritory or possession of the United States.

17 **SEC. 10. EFFECTIVE DATE.**

18       This Act shall take effect 180 days after the date of  
19       the enactment of this Act. In no event shall this Act apply  
20       to any sale occurring before such effective date.