

Resolution 97-6

Achieving Collection of Sales and Use Taxes on Interstate Sales

WHEREAS, from the inception of consumption-based sales taxation by States, they have understood the need to impose a compensating use tax to prevent both the economic damage to their in-state merchants and the loss of sales tax revenue inherent in the ability of persons to make purchases in States imposing no sales taxes or imposing them at lower rates, and

WHEREAS, the U.S. Supreme Court held in *National Bellas Hess v. Illinois* 386 U.S. 753 (1967) and again in *Quill Corp. v. North Dakota*, 112 S.Ct. 1904 (1992) that an interstate seller whose contacts with a State are limited to dealing with its customers by U.S. mail and common carriers lacks the "substantial nexus" required under the Commerce Clause as a condition of the State's imposition of a duty to collect its use taxes on such sales, and

WHEREAS, business collection of sales and use taxes is essential to administering the tax on a cost-effective basis, and the absence of state jurisdiction over many out-of-state sellers therefore largely undermines the inherent rationale for the use tax, and

WHEREAS, the continuing growth of untaxed interstate sales by mail order and other direct marketing companies results in a competitive disadvantage, loss of business, and loss of employment for local retailers who must collect sales taxes, and

WHEREAS, state and local governments are losing more than \$3 billion in legally due revenues annually from their inability to require direct marketers to collect use taxes on interstate sales, and

WHEREAS, it is less burdensome for consumers to have the use tax collected by the seller at the time of sale than to have to calculate and remit the tax long after the purchases creating the tax obligation were made, and

WHEREAS, representatives of the direct marketing industry are negotiating with representatives of the States to craft an agreement for the collection by certain qualified direct marketers of sales and use taxes under simplified procedures; and

WHEREAS, the U.S. Supreme Court in *Quill* held that Congress may determine whether and under what conditions certain interstate sellers without a "substantial nexus" with a taxing State may be required to collect that State's use taxes (including local use taxes), and

WHEREAS, Congress is moving toward the imposition on state and local governments of enormous new financial responsibilities for providing education, training, infrastructure, and social welfare services that have heretofore been shared on a fixed formula basis with the federal government, and

WHEREAS, commensurate with these new responsibilities, Congress should provide sufficient authority for state and local governments to collect revenues to which they are legally entitled, and

WHEREAS, the Multistate Tax Commission has joined other state and local government and business associations to coordinate efforts to pass legislation requiring large mail order companies and other interstate marketers to collect use taxes on interstate sales,

NOW, THEREFORE, BE IT RESOLVED, that the Multistate Tax Commission and its member States shall work diligently with their retailing communities and other affected constituencies to educate the Members of Congress on the effects of the "unlevel playing field" resulting from the U.S. Supreme Court's *National Bellas Hess* and *Quill* decisions and to achieve enactment of federal legislation authorizing them to require large interstate sellers to collect sales and use taxes on interstate sales, and

BE IT FURTHER RESOLVED, that the Multistate Tax Commission remains supportive of negotiations between States and direct marketers to promote greater use tax collection by out-of-state sellers, and

BE IT FINALLY RESOLVED, that this resolution will expire on the day before the Multistate Tax Commission Annual Meeting in 2001.

Adopted this 8th day of August, 1997, by the Multistate Tax Commission.

Dan R. Bucks, Executive Director