

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2381

2007 SENATE FINANCE AND TAXATION

SB 2381

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2381

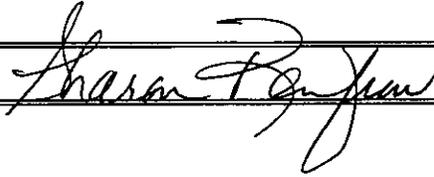
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 30, 2007

Recorder Job Number: # 2316

Committee Clerk Signature



Minutes:

Review and Discussion

Sen. Cook: this deals with certified service providers and certified automated system and it deals with compensating these providers.

Handed out "Streamlined Sales Tax Governing Board" sheet.

Sen. Cook: this is where we are going to have to compensate certified service providers to be in compliance and that's what is going to be SB 2381. ND is the only state that is in compliance that has put the issue of compensation before its Legislature. Every other state that is in compliance, their compliance legislation gave the authority to negotiate compensation for certified service providers and those who use a certified automated system to the revenue dept. Because we put it in law last session at 1 ½% we are the only state that is right now compensating those who use the certified service provider at 1 ½% we were grandfathered in and have until July 1st to correct it. This is a bill that has to pass in order for us to stay in compliance

Sen. Oehlke: is the SAS a computer system, who owns it and do we get a tax on it?

Sen. Cook: entire software package, used by service provider made it up and they own it.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2381**

Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: February 5, 2007

Recorder Job Number: # 2769

Committee Clerk Signature

Sharon Penfrow

Minutes:

Sen. Urlacher called the committee to order and opened the hearing on SB 2381.

Sen. Cook: prime sponsor of the bill appeared in support with two handouts stating this bill deals with streamlined sales tax and specifically compensation for sellers who collect and remit

ND sales tax. (See attached)

A remote seller is defined in the bill as somebody who does not have a physical presence requirement to collect and remit ND sales tax. What the bill does is it identifies or changes these remote sellers into 3 categories. This bill just references the agreement that is presently in affect with streamline as what we would compensate certified service providers.

Sen. Urlacher: so if this doesn't pass, we are not in compliance?

Answer: Yes, this is the bare minimum that we must do in our area of compensation to be in compliance with streamline sales tax.

Sen. Oehlke: this certified automated system is capped at 2 years, is that to help them pay for software equipment and that type of thing.

Answer: correct, to give them some relief and the investment that they make.

Sen. Horne: so if we pass this, those in-state sellers would not get any compensation and we would go to the scale for out-of-state sellers and then these remote sellers out-of-state would they get compensation in the future based on what the state sellers get now.

Answer: correct, but we don't change what in-state sellers what their compensation is, theirs will stay at 1 ½ % capped at \$85 per month.

Sen. Triplett: why would we not work to make the in-state folks to be on the same page as the out-of-state folks, just does it have a consistent system?

Answer: that is certainly a tax policy discussion that we could have. The reason the bill was introduced as it is is to basically do the ___ and make sure we are in compliance with streamline.

No opposition.

Sen. Tollefson: made a **Motion for DO PASS**, seconded by Sen. Cook.

Sen. Horne: How many states are in the group now?

Answer: 21, 15 are full member states in full compliance, 6 that are not in full compliance.

Roll call vote: 7-0-0

Sen. Cook will carry the bill

FISCAL NOTE
Requested by Legislative Council
01/23/2007

Bill/Resolution No.: SB 2381

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2381 adopts the reimbursements to retailers and certified service providers that is part of the Streamlined Sales Tax Agreement.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Current collections indicate approximately \$28,000 of sales tax revenue is remitted annually through certified service providers. The provisions of SB 2381 would provide compensation at a maximum rate of 8% of these collections. Therefore, the fiscal impact of this change in compensation is less than \$5000 for the 2007-09 biennium. (Passage of this bill will keep North Dakota's sales tax law in compliance with the Streamlined Sales Tax Agreement.)

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	02/04/2007

Date: 2-5-07

Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2381

Senate Finance & Tax Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Tollefson Seconded By Sen. Cook

Senators	Yes	No	Senators	Yes	No
Sen. Urlacher	✓		Sen. Anderson	✓	
Sen. Tollefson	✓		Sen. Horne	✓	
Sen. Cook	✓		Sen. Triplett	✓	
Sen. Oehlke	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Cook

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2381: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2381 was placed on the Eleventh order on the calendar.

2007 HOUSE FINANCE AND TAXATION

SB 2381

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2381A

House Finance & Taxation Committee

Check here for Conference Committee

Hearing Date: 2/27/07

Recorder Job Number: 3928

Committee Clerk Signature

D. Penner

Minutes:

Rep. Belter: We will open the hearing on SB 2381. Clerk will read title.

Sen. Dwight Cook: (see attached testimony #1). There is one piece of information that I forgot to bring down here, but it is a historical overview of sales tax in ND. I would like to give you a brief historical overview of sales tax in ND and a bit of an overview on the streamlined sales tax project and what we've accomplished since we met here two years ago. First off, ND, as many states did, they first initiated their sales tax law back in 1935, a 2% sales tax and I understand that you just had a discussion on sunset clauses. I should inform you that sales tax law that was implemented in 1935, had a two year sunset on it. Two years later they implemented it again with another two year sunset, and I think that two year sunset sits on our sales tax laws for the first 30 years of their existence in the state. I find that ironic, that it took 30 years before they took that sunset off of it. I want you to think back to the '30s, '40s, and '50s when we first started implementing sales tax and how things have changed. When sales tax statutes were first drafted, it was at a time when all commerce was done within individual states' borders. There were no computers, there was no online shopping, and there was no daily front door delivery. If you ordered something out of the catalog, I remember Montgomery Wards and Sears & Roebuck, chances are it was shipped to a catalog store and you would go

to the store and pick up what you ordered and you would pay the sales tax. Times have changed. The superhighway of ecommerce not only makes it possible, but very common for a retailer to sell and ship into all 50 states without ever leaving the state in which they were located. So what is the problem. These retailers, that are located outside of our state, don't have to, and don't want to collect and remit our sales tax, and we can't make them. We can require our own retailers, those who have a physical presence in our state to collect and remit our sales tax but not those retailers located in other states. Why, because the Supreme Court of the United States has declared that state's sales tax laws as so different and so complex that we would place an undue burden on remote sellers. This not only creates a terribly uneven playing field, but it also allows for a large amount of dollars to go uncollected. Hence, it is the streamlined sales tax project that was started to address the problem. You hear some comments once in a while about streamlined, that attacks state's sovereign rights, I will argue and those of us who have been involved in streamlined will argue that we lost our state's sovereign rights to administer our sales tax back when the Supreme Court made that very decision. I think the integrity of our sales tax laws was actually challenged and put at risk back when this economy started to change, when people started doing a lot of ecommerce out of state, and the sales tax was not being collected. So how much money are we losing? I think you have a flyer inside there, when I talk about the lost revenue, in 1994, a study done by the University of Tennessee predicted that states were losing, 45 states that collect sales tax, were losing between \$15.5-16.1 billion dollars. That is projected that by the year 2008, to be somewhere between \$21.5 to 33.7 billion dollars. That's a lot of money. It started somewhere, I don't know when, maybe back in the '60s or '70s, maybe it started when UPS came around and we had front door deliveries, or you could order out of a catalog and have it shipped directly to your door. It's an amount of dollars that is growing every year. ND, itself, we are

projected that by the 2008, our projected loss in revenue from uncollected and unremitted sales tax is somewhere between \$41-\$64 million dollars. That's a lot of revenue, that the taxes that are owed and not being collected. So states, back in the '80s, started to recognize the problem and decided to find ways to require out of state merchants to collect and remit our sales tax. ND actually led in that, when the state of ND challenged an out-of-state catalog company named Quill, which sold office supplies, we required them to collect and remit our sales tax. That, of course, went all the way to the Supreme Court and that's where the Supreme Court ruled that tax laws did place an undue burden. So after that decision in 1992, the National Governor's Association and the National Conference of State Legislators, they each formed a task force to try and find a solution and the solution that they came up with, both of them, is the streamlined tax sales project. In 2001, ND, this legislature, passed legislation that allowed ND a seat at the table of that streamlined sales tax project and today, every sales tax state in the nation, all 45 of them, all except one, Colorado, is at that table to some degree. The goal is simple, the goal is to remove the undue burden. The goal is to eventually get the United States Congress to overturn Quill vs. North Dakota. The manner in which we try to remove that undue burden, there are three words that you want to think about. One is simplify, two is technology and three is compensation. These two bills that you see here this morning, SB 2380 and SB 2381 deal with those three issues: 1) simplification; 2) technology and 3) compensation. I would just like to run you through 2001, briefly up to where we are at now at the end of 2001, that's when ND elected to participate and we were at the table for the very first meeting with the other states that had passed that legislation and in 2002, what's called the streamlined sales tax agreement was ratified by all of the implementing states that were at that table. Each state had one vote, this is what the agreement looks like. Basically what's in this agreement is simplification language, so that states could determine

whether we want to tax food, candy or pop; but whatever our decision is, it is the intent of the simplification that we all have the same definitions of that. Another condition of this agreement, was that streamlined project would not actually be up and running until at least 10 states, or equal to 20% of the population, of the 45 states that have sales tax, had passed compliance language and came into compliance with this agreement. In 2003, ND passed our first compliance language that brought us into compliance with the agreement. We were one of about 10 states that passed it then, but we did not reach the 20% threshold. The implementing states continued to meet and continued to try to refine this agreement and to further simplify it. The phrase that we use at the streamline governing table is "this road to perfection is always under construction". In other words, there will always be intent to further simplify sales tax laws among states. We understand, again, that the goal is to use the simplification, technology and compensation. The more you simplify, the less technology you need. So in 2005, we again passed some compliance language to be in compliance and that basically addressed the changes to the agreements that were made between 2003 and 2005. Then on October 1, 2005, that is the date that ND streamlined language went into effect, that 20% threshold was met and the governing board was up and running. So what does that mean, that the governing board was up and running. First off, the agreement left the session of the implementing stage and went to only the states that are in compliance, of which ND is one of them. Any changes to this agreement now, can only be made by those states and that will continue and be ongoing into the future. Since October 1, 2005, almost 1100 remote merchants/sellers have voluntarily signed up to collect sales tax for the full member states of this agreement. In the first year, from October 1, 2005 to October 1, 2006, \$31.9 million dollars was collected and remitted by these roughly 1100 merchants and remitted to the original full member states. Of that share, ND has received \$1.7 million dollars. You have a

map there, on the top of the handouts that I gave you, that map shows you the status of all the different states, the blue states are the states that are in full compliance and I might add that since this map was printed, that Vermont and Rhode Island, they came on board January 1, of this year. You can see the five states that do not have sales tax, AL, OR, MT, NH. This year, legislation is before the states that I know of, WA, AR, WY, HI, MA and NV. That should bring all of those states into compliance. As I have been trying to track this, I can tell you that the streamlined language has passed the AR Senate unanimously, it has passed the WY Senate unanimously and it has passed the WA Senate unanimously. It appears that we are going to go from 15 full member states to probably 21 states here in the first half of 2007. I want to touch just briefly on 2380 and then I won't come back for 2380, I will let Myles Vosberg introduce that. (gave testimony on 2380) Are there any questions. First off, there is a handout sheet there that is entitled on top, Technology Implementation; it should be right behind the map. You will see that there are three sellers listed, Model 1, Model 2 and Model 3 sellers. From the very conception of streamline, there is this understanding that there was going to have to be some technology introduced to help these remote sellers overcome the complexity of all these different state sales tax laws. We're talking basically here of software. The original agreement, if I can explain it, is as simple as this. You have many different states; they have many different tax policies to determine what they tax and what they don't tax. If you had just two numbers, if you had a barcode on the product and you had a nine digit zip code, you could swipe the barcode and that would tell you exactly what category that product is, whether it is candy or groceries, clothing, etc. Of course, the technology would determine what that state's tax policy is based on that category. Then you put in the 9 digit zip code and you need the 9 digit zip code because of all the local taxing jurisdictions. I think we have 114 or 113 multiple taxing jurisdictions in the state of ND, nationwide there are over 7,000. It's by

far the biggest burden of sales tax. That was the intent. Model 1 sellers are the certified service provider that was a technology company that was a third party collector of a remote seller's sales tax. This third party collector would actually collect and remit the sales tax for that seller, remit it to all of the states, and then we, as the states, would compensate that provider for the services that they are providing the state. A Model 2 seller is very similar, it uses basically the same software, the only difference is that the remote seller would buy that software and it would be installed inside his firewall. A Model 3 seller consists of all the other sellers that either have their own technology and continue to collect and remit sales tax their own way. With this technology also came the need to compensate these sellers. We have to compensate the certified service providers who actually provide the service and then we have to compensate the retailers to offset the cost that they incur for purchasing a certified automated system. SB 2381 simply deals with our compensation for these two types of sellers. The sellers who use a certified service provider and the sellers that purchases a certified automated system. The next sheet you will see a brief comparison of SB 2381. I'm comparing compensation laws that we have on Code today and the changes to these laws that 2381 will bring. Today, if you are an in-state seller filing quarterly, like the company that I have, you get zero compensation. You just simply collect and remit the sales tax, you hope that you do it right, you get zero compensation. I would like to say that you don't even get a Christmas card at Christmas time. You will be visited by some nice people at the Tax Dept. occasionally that are called auditors. You better hope you are doing it right because if you're not, they're going to find it and make you pay the taxes. Today, an instate seller filing monthly gets 1.5% and that is capped at \$85/month. All remote sellers, those sellers who do not have a requirement to collect and remit our sales tax, they are getting compensated at 1.5%, and we changed that in 2005, that when we made that at 1.5% anticipating back then that we would be

required to compensate these types of sellers. What SB 2381 does now, is the remote sellers who use a certified service provider that certified service provider will get compensated on a sliding scale of 8%-2%. A remote seller that chooses to use a certified automated system will get compensated at the 1.5% but we're adding a \$10,000 cap and this will be for two years only. Then it would go to 0%. This is simply to help offset their cost as they purchase this software that is going to enable all this to happen. Other remote sellers, those who do not use either the certified service provider or certified automated system, will now get compensated, instead of 1.5% they would be compensated the same as ND in-state sellers. That's what 2381 does. It actually lowers the cap, puts a \$10,000 cap on the 1.5% that we have in law, for those who use a certified automated system, it completely removes the 1.5% for those remote sellers that do not use the software technology and then it creates a new scale for those very few that use a certified service provider. The last sheet that you have there, shows the sliding scale, so if you have a certified service provider that collects and remits sales tax, right now there are 15 states, the first \$250,000 that they remit to the 15 states, they get compensated at 8%, the next \$750,000 they get compensated at 7%, and you can see that as that sale goes down, once they have remitted over \$25 million, they would get compensated at 2%. That is the technology component and the compensation component of this three legged stool, to try to overcome the undue burden of state sales tax laws.

Rep. Belter: Is this the rate that ND is going to have, or does everybody under the streamline, will every state have the same compensation.

Sen. Cook: Every state will have the same compensation. I might add, also, all of the other states that are already paying this level of compensation except ND. We were grandfathered in, because we had in Code that we were paying them 1.5%. We were found in full compliance; this rate had not yet been negotiated and it actually turns out to be a very smart

thing we did back in 2005. We will have to change this, this session to stay in compliance. We were grandfathered in I think until July 1, 2007.

Rep. Pinkerton: I own a veterinary clinic in Minot. We are always competing all the time with internet sales. Without changes to the sales tax issue, I think we will eventually go out of that segment of our business because we can't consistently match their prices. I applaud what you are doing. Unless we change and if we go to this, the small town merchants, the small merchants such as me, we'll just have to go out of business. The margins are very small. A follow up question, on the less than \$250,000 that we are going to remit 8%, so that will actually costs us money out of pocket, is that correct.

Sen. Cook: In the state of ND, that is the level of compensation. This will only be on new dollars, so it's dollars that we don't receive if we're not a part of this. I think as time goes on, as more states comes on board, as more merchants sign up, collect and remit, we are going to reach these levels a lot faster and I also believe that if we ever get to the top of the mountain, when all 45 states are on board, I think ultimately this compensation is going to be around 1% or 1.5%.

Rep. Weiler: You mentioned that we were grandfathered in until July 1 of this year. If we pass this, it goes into effect on August 1, is that correct.

Sen. Cook: It goes into effect July 1.

Rep. Belter: Thank you. Further testimony in support. Testimony in opposition, or neutral. We will close the hearing.

Rep. Froelich: A company in Illinois, is there anything that mandates them to collect sales tax to be in compliance. That's the general goal isn't it, to get all internet sales or out of state sales coming into compliance in collecting sales tax.

Rep. Drovdal: I think Myles will probably address this. Currently under the SSUTA agreement, it is all voluntarily, they volunteer to sign up to collect and remit the sales tax to the state of ND. If they choose not to do, so as long as they don't have a physical presence in ND, we can't make them do it.

Rep. Belter: We will close the hearing on SB 2381.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2381B

House Finance & Taxation Committee

Check here for Conference Committee

Hearing Date: 2/27/07

Recorder Job Number: 3988

Committee Clerk Signature

J Penrose

Minutes:

Rep. Belter: We will take a look at SB 2381. What are the committee's wishes.

Rep. Drovdal: I move a Do Pass.

Rep. Pinkerton: Second.

13 YES 0 NO 1 ABSENT

DO PASS

CARRIER: Rep. Drovdal

Date:
Roll Call Vote #: 2381

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House _____ Finance & Tax _____ Committee

Check here for Conference Committee

Legislative Council Amendment
Number _____

Action Taken Do Pass

Motion Made _____ Seconded By _____
By _____

Representatives	Yes	No	Representatives	Yes	No
Chairman Belter	✓		Rep. Froelich	✓	
Vice Chairman Drovdal	✓		Rep. Kelsh	✓	
Rep. Brandenburg	✓		Rep. Pinkerton	✓	
Rep. Froseth	✓		Rep. Schmidt	✓	
Rep. Grande			Rep. Vig	✓	
Rep. Headland	✓				
Rep. Owens	✓				
Rep. Weiler	✓				
Rep. Wrantham	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Drovdal

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 28, 2007 8:34 a.m.

Module No: HR-38-4075
Carrier: Drovdal
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2381: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2381 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2381



NCSL

Streamlined Sales Tax Governing Board



- **Compensation – Payment of Services to CSPs – for
Model 1 Sellers**

Tax Remitted per Seller for all States

< \$250,000	8.0%
> \$250,000 and < \$1 M	7.0%
> \$ 1 M and < \$ 2.5 M	6.0%
> \$2.5 M and < \$5 M	5.0%
> \$ 5 M and < \$10 M	4.0%
> \$ 10 M and < \$ 25 M	3.0%
> \$ 25 M	2.0%

Compensation today

In state seller filing quarterly	no compensation
In state seller filing monthly	1.5% capped at \$85.00 per month
All remote sellers	1.5%

Bill changes compensation to remote sellers only

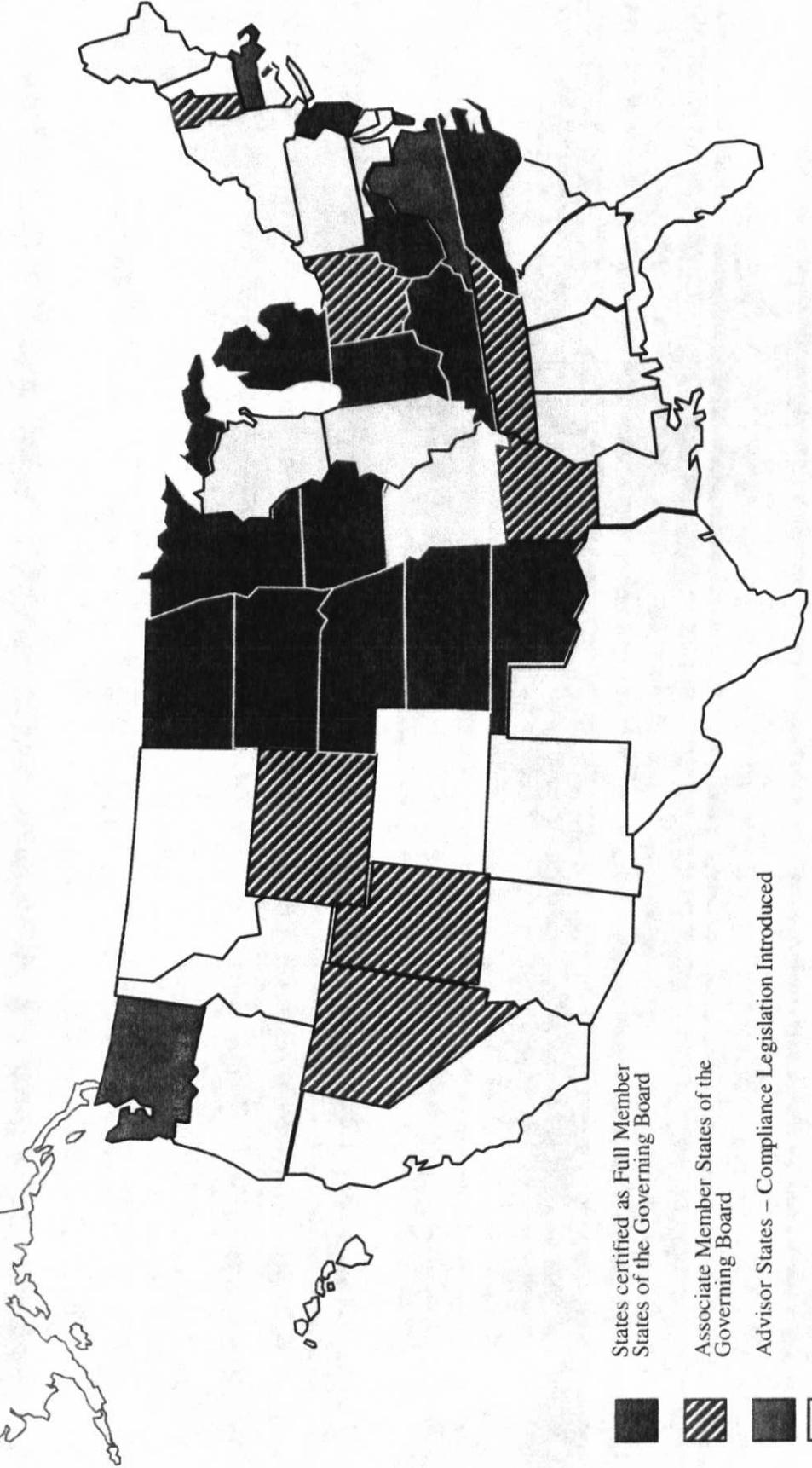
Remote sellers using CSP	sliding scale from 8% to 2%
Remote sellers using CAS	1.5% capped at \$10,000 per year For two years, then zero

Other remote sellers

no compensation
Same as in state
1.5% Capped @ \$85 per month

STREAMLINED SALES & USE TAX AGREEMENT - 2007 Status

NCSL



States certified as Full Member States of the Governing Board

Associate Member States of the Governing Board

Advisor States - Compliance Legislation Introduced

Advisor States - Non-voting members of Governing Board

Technology Implementation

- **Model 1 Sellers use services of a Certified Service Provider (CSP)**
- **Model 2 Sellers use a Certified Automated System (CAS)**
- **Model 3 sellers have an in-house (Proprietary) System**

Remote sales: What is at stake?

- "State and Local Sales Tax Revenue Losses from E-Commerce," July 2004 update to report by Dr. Bill Fox at Univ. of Tennessee: State and local governments lost between **\$15.5 billion and \$16.1 billion** in 2003 as states are unable collect sales taxes from online sales.
- **Trend increases: By 2008 revenue projected loss for state and local governments range between \$21.5 billion and \$33.7 billion, with the greatest losses occurring in states that rely most heavily on the sales tax as a revenue source.**

2006
19-27 B



NCSL

Streamlined Sales Tax Governing Board



- **Compensation – Payment of Services to CSPs – for Model 1 Sellers**

Tax Remitted per Seller for all States

< \$250,000	8.0%
> \$250,000 and < \$1 M	7.0%
> \$ 1 M and < \$ 2.5 M	6.0%
> \$2.5 M and < \$5 M	5.0%
> \$ 5 M and < \$10 M	4.0%
> \$ 10 M and < \$ 25 M	3.0%
> \$ 25 M	2.0%

SB 2381

Compensation Today

In state seller filing quarterly	No compensation
In state seller filing monthly	1.5% capped at \$85.00 per month
All remote sellers	1.5%

SB 2381 changes compensation for remote sellers only

Remote sellers using CSP	sliding scale from 8% to 2%
Remote sellers using CAS	1.5% capped at \$10,000 per year for two years, then zero
Other remote sellers	same as ND in state sellers