STAFF REPORT TO THE NEW YORK STATE SENATE SELECT COMMITTEE ON BUDGET AND TAX REFORM

Enhancing New York State's Fiscal Stability through a More Rational and Streamlined Sales Tax System

CHAIR: Senator Liz Krueger

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Based on independent research and testimony from a June 9, 2010 public roundtable in Albany.

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Executive Summary

For many states, the general sales tax was a byproduct of the Great Depression. But for New York State, the sales tax as it currently exists was wrought not by economic decline but by economic growth.[1] Facing a growing population and increased demand for public services, Governor Nelson A. Rockefeller in 1965 proposed a 2 percent statewide sales tax. The tax, he said, promised to save the State from leaning more heavily on the personal income tax or federal government for support. It also promised to save local governments from having to alone tackle their mounting obligations, with higher property taxes or the curtailment of services being their only other recourses.[2] New York that year became the 39th state to impose a sales tax.

Today, 45 states impose sales taxes and New York's stands at a rate of 4 percent. By 1996, every county had established their own sales taxes, with rates now ranging from 3 percent to 4.75 percent. It is the State's second-largest tax revenue source, accounting for almost 18 percent of revenues in the 2008-2009 fiscal year. However, the promise of the sales tax to support what Rockefeller called an "interdependence of all levels of government" is wavering.[3] Over the past two decades, a variety of economic, technological and political trends have emerged to threaten the stability of New York's sales tax base, along with the type of state government it was created to support. These threats include:

- the shift from an industrial-based economy to a service-based economy;
- rampant growth in sales tax exemptions and credits;
- uncollected sales tax revenues because of mail order and Internet sales.

To date, the impacts of these trends remain marginal. Annual collections declined in 2009 by 1.9 percent for the State and 1.6 percent for counties, though these declines were prompted more by decreased consumer spending and personal income.[4] The sales tax, while prone to fluctuations in consumer spending, continues to generate significant amounts of revenues when the economy is healthy. But the slow erosion of the sales tax base appears to be leading the State deeper into the taxing environment Rockefeller sought to avert by passing the tax.

Recognizing the need for a firmer sales tax base, the New York State Senate Select Committee on Budget and Tax Reform held a public roundtable in Albany on June 9, 2010 to examine ways to enhance New York's fiscal stability through a more rational and enhanced sales tax system. At the roundtable, the six-member, bi-partisan committee heard from 11 tax policy experts from around the country (see **Appendix 1**).

The experts mostly directed their comments to other states' strategies to modernize and simplify their sales tax systems under the uniform definitions and rules established under the Streamline Sales and Use Tax Agreement (SSUTA), a collaborative initiative between the National Conference of State Legislatures, Federation of Tax Administrators and the National Governors Association. The Select Committee, chaired by Senator Liz Krueger, used the roundtable to investigate criticisms of the SSUTA by the Department of Taxation and Finance, which was authorized and directed by the Legislature in 2003 to enter into the

Agreement (Section 28-B of the Tax Law). However, the Legislature never passed legislation conforming the State's sales tax system to the SSUTA.

Key findings and conclusions from the Select Committee's investigation into the future of the sales tax are detailed in this staff report. They include:

- **The Narrowing of a Broad-Based Tax**: In New York, the sales tax was initially designed to be an alternative broad-based tax that could leverage a new era of governmental interdependence, in which the State shouldered a greater share of local government and school aid. However, either due to actions of the Legislature beginning around 1990 or changes in consumer spending habits, the sales tax base is becoming increasingly narrow and revenues are falling short of their potential.
  - ***Services***: New York's sales tax policy regarding services is running counter to consumer consumption trends. Where Americans used to predominately buy *things*, as in durable goods, they are increasingly now buying *services*, which are exempt from the sales tax in many cases. Since 1982, the gap between U.S. household consumption of services and the consumption of goods has been widening, with services accounting for 59.7 percent of household consumption by 2007. New York's last major effort to shore up the service side of its sales tax base came in 1989 when the tax was broadened to include at least five additional services. But since 1990 the State has enacted at least 20 exemptions on services. Compared to New Jersey and Connecticut, New York imposes sales tax on far fewer services than its neighboring states.
  - ***Tax Expenditures***: Initially, New York's sales tax exemptions were designed to reduce the tax's regressive impacts on low-income households and core industries, such as manufacturing and agriculture. But over the past two decades, the State's sales tax policy regarding exemptions has lost its focus by instead targeting higher income households and non-core industries. Between 1990 and 2009, the number of exemptions rose from 84 to 145. Although cumulative effect of this exemption growth in general has mitigated some of the tax's regressivity, its greatest benefactors have been higher income households.
- **Remote Sales**: Since the U.S. Supreme Court in 1992 drastically limited states' ability to require out-of-state retailers with no physical presence within their boundaries (i.e. nexus) to collect sales tax, states have developed two main strategies for addressing this remote sales issue. The most popular remote sales taxation strategy has been a collective effort in which 23 states (soon to be 24) have agreed to adopt uniform and simplified sales tax administrative rules and definitions. For a brief period, New York explored this tactic, but it instead pursued an alternative strategy revolving around aggressive nexus legislation (e.g. the Amazon Tax).
  - ***Fiscal Impacts***: Estimates vary greatly over how much sales tax revenue New York loses to multistate remote sellers, such as Internet and mail-order retailers. A 2009 University of Tennessee study—with findings disputed by the Department of Taxation and Finance—estimated New York's State and local revenue losses ranged from $587 million in 2008 to $867 million in 2012. The Department of Taxation and Finance did in part agree with a 2000 U.S. General Accounting Office estimate that New York's State and local sales tax losses from uncollected mail order and Internet

sales ranged from $521 million to $2.3 billion in 2003.

- ***Amazon Tax***: In 2008, New York enacted the first-of-its-kind click-through-nexus tax, which states a taxable nexus arises for any company that advertises in the state through a third party. The so-called Amazon Tax generated $70 million from newly-registered vendors in fiscal year 2009-2010. More than 30 e-tailers have registered as New York sales tax vendors and began to collect the tax, but 60 sellers have also terminated their affiliate programs in the State. While at least two other states have followed New York's lead in pursuing click-through nexus measures, none have replicated its success with this the Amazon Tax. New York stands very much alone in its remote sales tax approach, and the Department of Taxation and Finance's strategy for circumventing or overturning the 1992 Supreme Court decision increasingly looks like a long shot that could take years to materialize, if ever.
- ***Streamlined Sales Tax***. Since the Streamlined Sales and Use Tax Agreement took effect on October 1, 2005, its member states have received $557 million in sales tax voluntarily remitted by vendors participating in the initiative. Under the Streamlined Agreement, member states capture only a fraction of the sales tax revenues they lose to Internet and mail-order sales, with North Carolina and Michigan, for example, receiving $14 million each in 2009. But the federal legislation that would require remote sellers to collect sales tax for Streamlined states is expected to soon be reintroduced in Congress with bipartisan support. Under the federal legislation, Streamlined states would be required to provide vendors with "reasonable" compensation, which could equate to 1 percent of total sales tax collections. Going by this assumption for reasonable compensation and 2003 sales tax statistics and estimates, New York would have been required to provide vendors with $198 million in compensation. However, the State and local governments would have had a $322.6 million net gain in new revenues from the Streamlined Agreement. Roundtable discussions suggested New York's participation in this collective effort is not as impractical or impossible as the Department of Taxation and Finance has indicated in published reports.

- **Conclusions**: The Select Committee intends to further explore the following: 1. ways to simplify New York's sales tax system, with an eye toward conforming to the rules and bylaws of the Streamlined Sales and Use Tax Agreement; 2. ways to broaden the service side of New York's sales tax in a revenue-neutral fashion, with an emphasis on parity with New York City's sales tax base and reducing fiscal volatility; and 3. ways to make the sales tax more progressive, particularly in regard to balancing the share of the tax burden various income groups must bear.

I. The Narrowing of a Broad-Based Tax

In the six years prior to the enactment of New York's sales tax, Governor Rockefeller vastly expanded the role of state government. During that period, he doubled State aid to education, accelerated the construction of State University facilities and established new community colleges, tripled college scholarship funds and advanced the largest highway construction project in the State's history. In 1965, Rockefeller wanted to continue his expansion campaign by further increasing State aid for local school districts and doubling per capita aid for local governments.[5]

However, by that point Rockefeller's six-year expansion drive had exhausted the State's revenue sources. Only a broad-based tax such as a personal income tax or sales tax, he said, could have provided the additional revenues needed for the magnitude of the expenditure requirements outlined in his 1965-1966 Executive Budget. Increasing the personal income tax was ruled out because it would have had to undergo a 50 percent increase to generate the same $330 million ($2.29 billion in 2010 dollars) a 2 percent sales tax would generate.[6]

Thirty-five years later, New York continues to need a broad-based tax to sustain a stable interdependence between State and local governments.[7] Out of the $22.9 billion in sales taxes the State collected for all taxing jurisdictions in 2009, $10.4 billion of that amount went to the State and $12.5 billion to local governments. However, either due to actions by the State Legislature or changes in consumer spending habits, the sales tax base has increasingly narrowed and revenues are falling short of their potential.

Table 1
New York State Service-Related Sales Tax Exemptions Enacted Since 1990

1990	Cable television service
	Certain information services provided over the telephone
	protective and detective services
1991	Services to computer software
1993	Barge repairs
1995	Meteorological services
1996	Municipal parking services
1997	Homeowners' association parking service
	Coin-operated car wash services
1998	Coin-operated telephone calls up to 25 cents
	Certain services used in gas and oil production
2002	Film production
2004	Aircraft parts and services
	Car vacuuming services
	Credit for vessel operators providing local transit services
2005	In-bay car washes
	Trash removal from waste transfer facilities
	Direct interstate wine shipments
	Installation of solar energy equipment
2009	Funeral-related transportation services

Exemption data from the *2010-2011 Annual Report on New York State Tax Expenditures*. Select Committee on Budget and Tax Reform

1. Services

Like many states, New York has a sales tax base heavily reliant on goods. In developing this tax decades ago, states honed their taxation efforts on tangible personal property, primarily because it was easy to identify and to track personal consumption. Goods, during the Depression years, also accounted

Table 2

Taxable services in New York City Only

Local sales tax is imposed within New York City on services performed in the city	Credit rating and credit reporting services
	Beautician, barbering and hair restoring services
	Tanning services
	Manicure and pedicure services
	Electrolysis
	Massage services
Local sales tax is imposed by every sale of services by	Weight control and health salons
	Gymnasiums
	Turkish and sauna baths
	Every charge for the use of such facilities

Sales tax information from New York State Department of Taxation and Finance, "A Guide to Sales Tax in New York State," February 2008.

two-thirds of personal consumption.[8]

However, as the nation has shifted from an industrial economy to service economy, goods made up a smaller piece of the consumption pie. In 1982, U.S. household consumption of services surpassed household consumption of goods for the first time and the trend has continued unabated. By 2007, services accounted for 59.7 percent of household consumption. The shift away from goods consumption has had negative impacts on sales tax revenues, and most states have responded to this trend by either raising their sales tax rates or including more services in their sales tax bases.[9] Excluding a three-year, 0.25 percent sales tax surcharge enacted in 2003, New York last raised its sales tax rate in 1971, from 3 percent to 4 percent.

New York State's sales tax last underwent a major expansion of services in 1989, when parking, building maintenance, interior design services, and auto leasing and 900 numbers were included into its base. Subsequent attempts to shore up the service side of the sales tax came in the form of a 5% sales tax imposed on information and entertainment services in 1993 and the repeal of the exemption for limousine services in 2009.[10]

However, since the 1989 expansion of taxable services, the Legislature has exacerbated the impact of consumer spending trends away from goods by passing at least 20 exemptions on services (See **Table 1**). Meanwhile, New York City has established a far broader sales tax base by imposing the tax on services not included in the State's base (See **Table 2**).

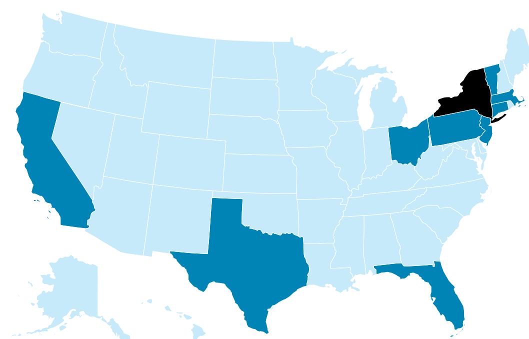
Compared to many of its neighboring states and other large states, New York imposes taxes on fewer services (See **Table 3**). According to a 2007 Federation of Tax Administrators survey of the 50 states' taxing practices for 168 services, New York noted 57 non-exempt entries, whereas New Jersey had 74 and Connecticut had 79. However, the services each state chooses to tax varies (See **Appendix 2**). For example, where Connecticut taxes dating and lobbying services, New York and New Jersey do not. Where New York exempts circus admissions, those other two states impose taxes on them.

Facing pressure from either the shift from an industrial-based economy to a service-based economy or budget crises, states such as Maine, New Jersey and Arkansas have enacted legislation levying sales taxes on more services (See **Table 4**). Governors in Michigan and Pennsylvania this year have likewise proposed adding more services to their states' sales tax bases, but those initiatives have stalled.[11] Along with bolstering the long-term stability of the sales tax base, economists argue such service-based taxation strategies could reduce fiscal volatility because the biggest sales tax revenue-generators are usually big-ticket goods, such as cars, furniture and appliances. And as the recent recession has demonstrated, these are some of the first items consumers refrain from buying in uncertain economic times.[12] New York's sales tax

Table 3

Taxation of Services by New York State and Other States

State	2008 Population Estimate*	2009 General State Sales Tax Rate	General County/ Local Sales Tax Rates	Number of Non-exempt Service Entries in 2007 FTA Survey	FY2007 General Sales Tax Revenue ($millions)****	FY2007 Revenue from Services as Percent of Current Revenues****
New York	**19,490,297**	**4%**	**3%-4.75%**	**57**	**10,194**	**49%**
Neighboring States						
Connecticut	3,501,252	6%	N/A	79	3,030	53%
Massachusetts	6,497,967	6.25%**	N/A	18	4,233	52%
New Jersey	8,682,661	7%	N/A	74	8,346	50%
Ohio	11,485,910	5.5%	0.0%-1.5%	68	7,781	39%
Pennsylvania	12,448,279	6%	0.0%-1%	55	8,662	47%
Vermont	621,270	6%	Max 1%	32	530	37%
Other Large States						
California	36,756,666	7.25%*	0.0%-1.5%	21	32,669	41%
Florida	18,328,340	6%	0.0%-1.5%	63	21,749	27%
Texas	24,326,974	6.25%	Max 2%	83	23,760	32%



*Data from U.S. Census Bureau.
**Prior to 2009, Massachusetts' sales tax rate was 5%.
***Prior to 2009, California's sales tax rate was 6.25%.
****Estimates from "Expanding Sales Taxation of Services: Options and Issues," by Michael Mazerov, senior fellow at the Center for Budget Policy and Priorities, July 2009, 5.

rests heavily on a volatile blend of goods and services, with vehicles, restaurants and entertainment accounting for 60 percent of resident taxable consumption.[13]

"We would love more predictability in that [sales tax] revenue stream," said Dave Lucas, Director of Intergovernmental Affairs for the New York State Association of Counties (NYSAC). "Obviously, [during] the Great Recession we have gone through, or are going through, it was very, very difficult for a lot of counties to manage."[14]

Counties are especially prone to volatility in the sales tax, which is their most important revenue-generator aside from the property tax. Illustrating this volatility, Lucas noted over three dozen counties statewide have gone through the past three consecutive quarters with negative year-over sales tax receipts. Because up to 80 percent of county budgets are mandated or fixed by the State, counties are limited in their ability to cut programs. And when sales taxes lag, counties usually must turn to property taxes as a last recourse.

"It's either sales tax or property tax. We all know what we feel about the property tax. At the local decision-making level, we would rather have more flexibility in the sales tax realm to tweak that level than to turn over to the property tax levy," Lucas said.

In many regards, Maine's Tax Relief and Tax Reform Act, which lawmakers enacted in 2009, can serve as a revenue-neutral model that provides the type of greater sales tax predictability and flexibility for which NYSAC advocated. One component of the Maine act involved replacing the state's personal income tax structure that featured four brackets, which had a top rate of

8.5 percent. The reform act created a new two-bracket structure, with a 6.5 percent rate for most taxpayers. The new structure also featured a 6.85 percent rate for those earning over $250,000 annually. The tax's complex system of deductions and credits were also replaced with a refundable low-income household credit. To fund the personal income tax restructuring, the state expanded the number of services subject to its 5 percent general sales tax and raised its meals and lodging tax from 7 percent to 8.5 percent. The law also provided for a maximum $50 sales tax credit to mitigate the regressive aspects of the tax on low-income earners.[15] However, Maine voters repealed the law in a June 8, 2010 referendum.

Table 4

Recent State Sales Tax Actions Involving the Elimination of Services Exemptions

Maine (Enacted in 2009)*	▶ Motor vehicle maintenance and repair ▶ Amusement and recreation ▶ Misc. repair, storage and personal services ▶ Limousine and courier
New Jersey (Enacted in 2006)	▶ Digital downloads ▶ Delivery charges ▶ Flooring and carpeting installation ▶ Mini-storage ▶ Tanning, massage, tattooing ▶ Information services ▶ Limousine service ▶ Membership fees ▶ Parking ▶ Non-clothing cleaning services ▶ Landscaping services ▶ Investigation and security services
Arkansas (Enacted in 2004)	▶ Wrecker and towing services ▶ Collection and disposal of solid waste ▶ Cleaning parking lots and gutters ▶ Dry cleaning and laundry services ▶ Industrial laundry services ▶ Mini-warehouse and self-storage rental services ▶ Body piercing, tattooing and electrolysis services ▶ Initial installation labor services ▶ Pest control services ▶ Flooring replacement ▶ Security and alarm monitoring services ▶ Boat storage and docking fees ▶ Furnishing camping spaces ▶ Locksmith services ▶ Pet grooming

Sales tax action information from "Expanding Sales Taxation of Services: Options and Issues," by Michael Mazerov, senior fellow at the Center for Budget Policy and Priorities, July 2009, 27.
*Maine voters rejected this sales tax expansion act in a June 8, 2010 referendum.

2. Tax Expenditures

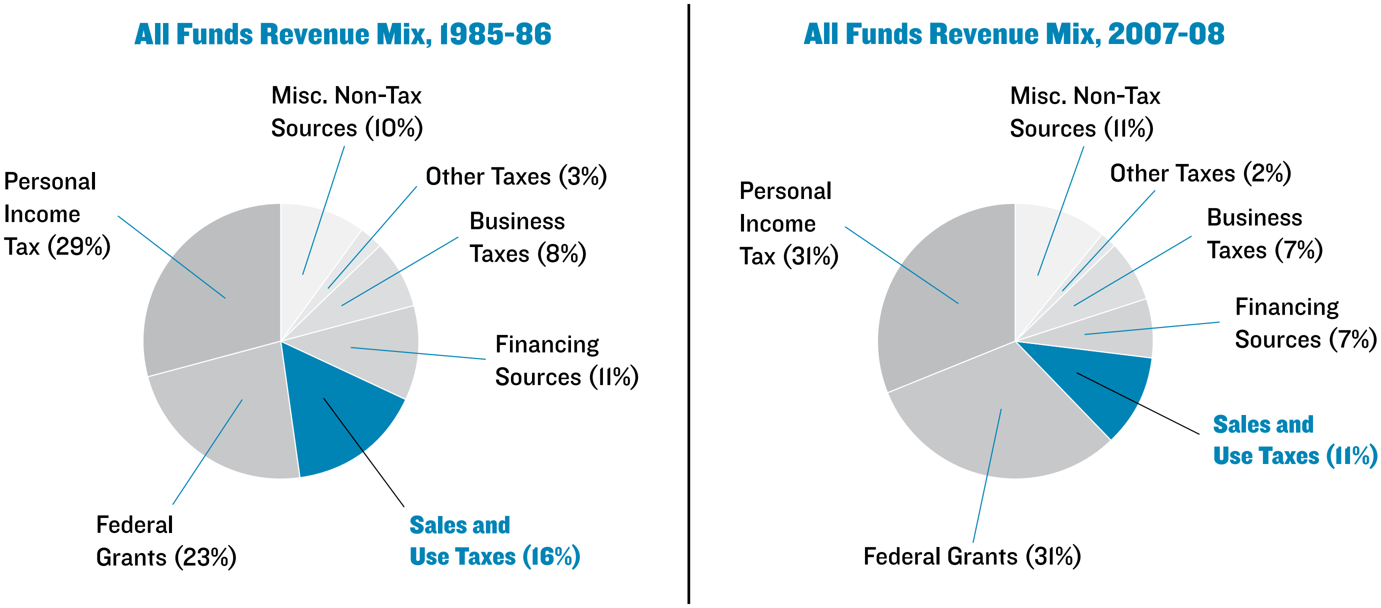
By its nature, the sales tax is a regressive tax, which places the greatest burden on the lowest earners. When New York legislators passed the sales tax in 1965, they also passed over 40 exemptions designed to mitigate the tax's regressivity. These exemptions targeted low-income earners by applying to rent, food and drugs along with medical and public transportation services. Other steps were taken that shielded the State's core industries with exemptions for farm production and machinery and equipment used in production.[16]

Over the following 25 years after the sales tax was enacted, the Legislature added to the exemption list more goods and services, furthering the State's commitment to shielding lower-income households and core industries from the sales tax. But then around 1990 the Legislature shifted its attention to higher-income households and non-core industries, starting with exemptions on cable television services and protective and detective services. Following these exemptions were others such as dues paid to homeowners' associations operating social for athletic facilities in 1995, luggage carts in 1997, hardware used for data centers in 2000 and aircraft parts and services in 2004.

By the late-1990s, sales tax exemptions had snowballed. The State's annual tax

Table 5

New York's Evolving Sales Tax Mix



Revenue Data from the 1996 and 2008 New York State Statistical Yearbooks

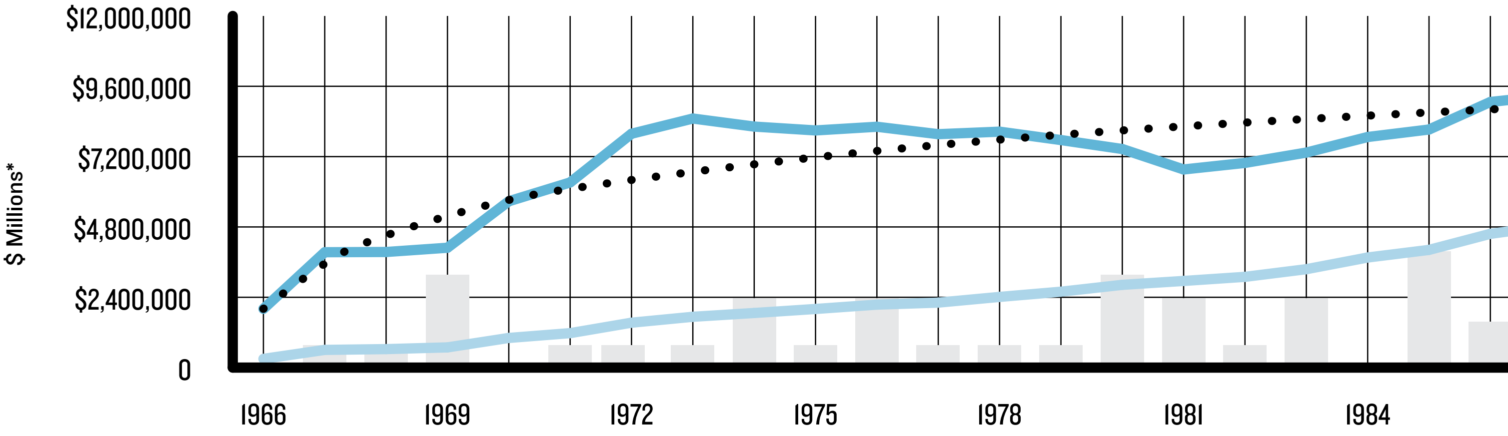
expenditure report went from listing 84 sales tax exemptions and credits in 1990 to 145 in 2009—a 72.6 percent increase. Coupled with the growth of non-taxable sales and services exceeding the growth in taxable sales, this exemption growth has made the sales tax less regressive overall, the Department of Taxation and Finance concluded in a recent study on New York's sales tax burden. But the tax continues to be overly burdensome on low-income households and the highest earning New Yorkers accrue most of the dollar benefit from the exemptions. According to the Department of Taxation and Finance study, New York lower-income households pay 5 percent of their income in State sales tax while the highest-income households pay less than 1 percent.[17]

This reduction of the sales tax burden over the past 44 years has come at a great cost to the State. Each new exemption has eroded the sales tax base and diminished the sales tax in the State's tax revenue mix (See **Table 5**). Each exemption has resulted in millions of dollars in sales tax revenues the State does not collect, ranging from an estimated $2 million in 2010 for amusement park admissions to $307 million for cable television services. (See **Table 6**). The Department of Taxation and Finance estimates that if the tax burden (i.e. taxable sales measured as a percentage of New York personal income) remained constant over the past 44 years instead of gradually declining then the sales tax would be generating $6.5 billion more above current collections.[18]

With a majority of states facing massive gaps in their 2011 fiscal year budgets, some, such as Arizona and Kansas, have enacted temporary sales tax rate hikes. Others have curtailed their offerings of sales tax exemptions. Colorado was the most aggressive in pursuing the latter by eliminating or suspending exemptions on candy and soda, to-go containers and condiments used at restaurants, printed materials used in direct-mail advertising, various compounds used in agriculture and all purchases of energy used in manufacturing.

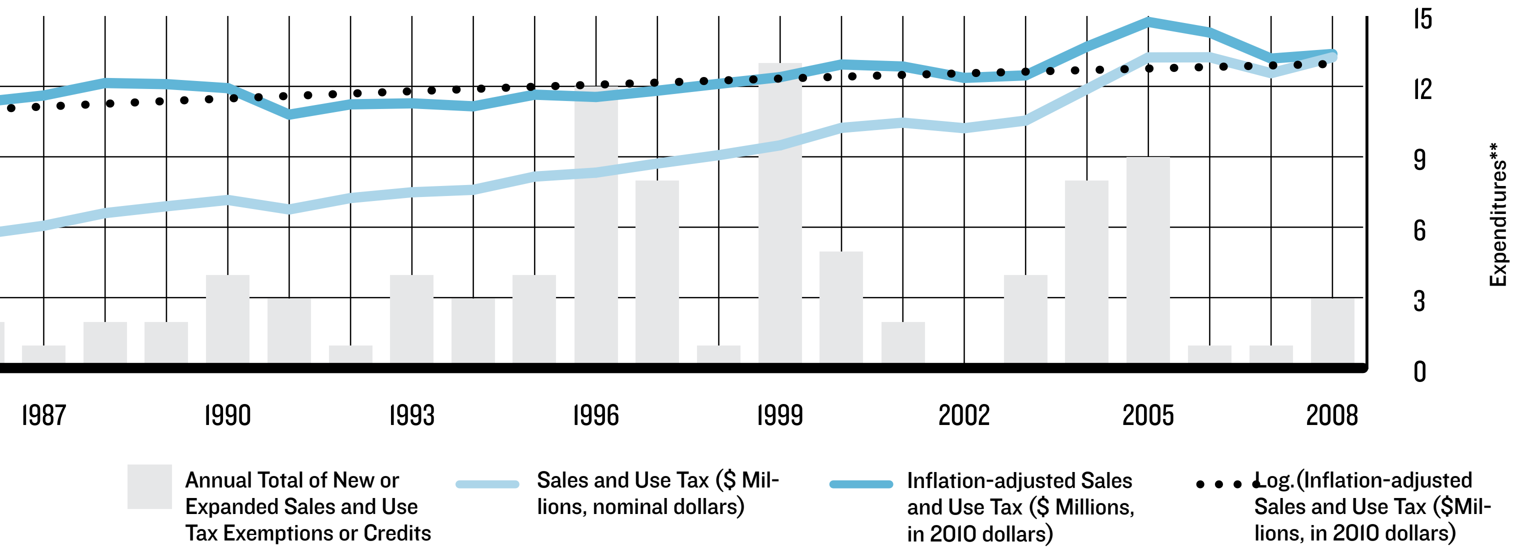
Table 6

Sales Tax Revenue Growth in Relation to New Sales Tax Expenditures



	General Fund Receipts Deposited to the Department of Audit and Control		
Year	**Sales and Use Tax**	**Inflation-adjusted Sales and Use Tax (in 2010 dollars)**	**Annual Total of New or Expanded Sales and Use Tax Exemptions or Credits**
1965	N/A	N/A	42
1966	$298,437,000	$2,004,603,000	
1967	$604,327,000	$3,937,733,000	1
1968	$630,912,000	$3,945,575,000	1
1969	$689,759,000	$4,090,271,000	4
1970	$1,012,036,000	$5,676,557,000	
1971	$1,175,898,000	$6,318,811,000	1
1972	$1,532,795,000	$7,980,472,000	1
1973	$1,734,093,000	$8,499,829,000	1
1974	$1,863,241,000	$8,225,132,000	3
1975	$2,000,854,000	$8,093,826,000	1
1976	$2,148,915,000	$8,219,166,000	3
1977	$2,218,162,000	$7,966,020,000	1
1978	$2,412,288,000	$8,051,973,000	1
1979	$2,590,405,000	$7,765,185,000	1

	General Fund Receipts Dep… Department of Audit a…
Year	**Sales and Use Tax**
1980	$2,824,284,000
1981	$2,957,368,000
1982	$3,097,272,000
1983	$3,358,195,000
1984	$3,756,974,000
1985	$4,017,094,000
1986	$4,565,368,000
1987	$4,849,363,000
1988	$5,280,734,000
1989	$5,513,238,000
1990	$5,729,010,000
1991	$5,405,347,000
1992	$5,794,037,000
1993	$5,990,769,000
1994	$6,074,403,000



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nd Control

nflation-adjusted ales and Use Tax (in 2010 dollars)	Annual Total of New or Expanded Sales and Use Tax Exemptions or Credits
$7,459,365,000	4
$6,761,845,000	3
$6,985,103,000	1
$7,337,825,000	3
$7,869,432,000	
$8,124,946,000	5
9,065,380,000	2
9,290,244,000	1
$9,714,720,000	2
$9,676,222,000	2
$9,539,481,000	4
$8,637,086,000	3
$8,987,613,000	
9,022,679,000	1
8,920,232,000	4

General Fund Receipts Deposited to the Department of Audit and Control

Year	Sales and Use Tax	Inflation-adjusted Sales and Use Tax (in 2010 dollars)	Annual Total of New or Expanded Sales and Use Tax Exemptions or Credits
1995	$6,525,064,000	$9,317,954,000	3
1996	$6,660,591,000	$9,238,694,000	4
1997	$6,971,623,000	$9,453,217,000	12
1998	$7,255,880,000	$9,687,757,000	8
1999	$7,590,519,000	$9,915,560,000	1
2000	$8,186,803,000	$10,346,702,000	13
2001	$8,363,466,000	$10,277,524,000	5
2002	$8,174,937,000	$9,889,493,000	2
2003	$8,434,104,000	$9,975,666,000	
2004	$9,507,878,000	$10,953,992,000	4
2005	$10,587,347,000	$11,797,926,000	8
2006	$10,592,500,000	$11,434,803,000	9
2007	$10,050,370,000	$10,549,103,000	1
2008	$10,590,478,000	$10,704,989,000	1
2009	N/A	N/A	3

*General fund sales tax receipts deposited to the Department of Audit and Control, as reported in the 2008 New York State Statistical Yearbook. Inflation adjustments calculated through U.S. Inflation Calculator (www.usinflationcalculator.com).
**Sales tax expenditure data from annual reports of New York State Tax Expenditures.
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Colorado also expanded the definition for taxable types of software, including software purchased online. Washington state, likewise, eliminated or suspended exemptions for candy and gum, bottled water, equipment and services related to the management of livestock nutrients and out-of-state lawyers, engineers and architects providing services in the state.[19]

In New York, the Legislature temporarily eliminated sales tax exemption on clothing and footwear under $110 for the period beginning October 1, 2010 and ending March 31, 2011. The exemption will be partially restored for clothing and footwear up to $55 on April 1, 2011 and it will be fully restored on April 1, 2012.

Part II. Streamlined Sales and Use Tax Agreement

I. Fiscal Impacts of E-Commerce

For almost two decades, states have been struggling with how to address the Internet's rapidly-growing role in the retail sales market. In the fifteen years since the online giants Amazon.com and eBay ushered in a new era of electronic commerce, e-commerce has grown to account for 4 percent of total retail sales nationwide by the first quarter of 2010, compared to 3.7 percent a year earlier.[20]

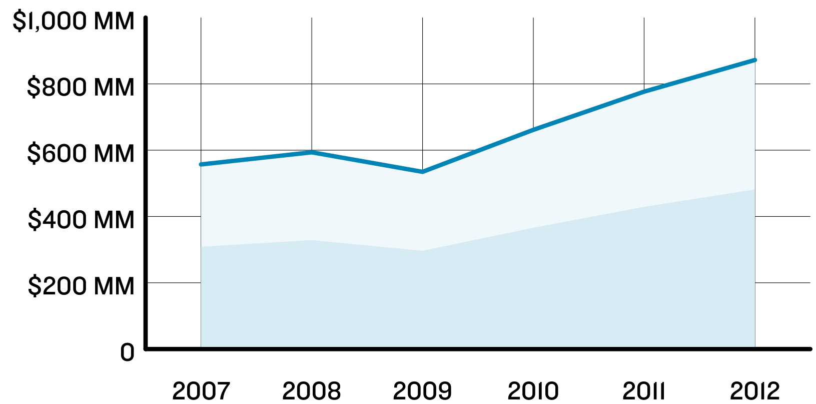
The growing influence of e-commerce has posed a series of challenges for sales tax states. These states have largely been unable to collect sales taxes on taxable goods from people who are within their boundaries but buy the goods over the Internet from certain out-of-state retailers. When these out-of-state retailers, also known as remote sellers, lack a brick-and-mortar store, warehouse or office in a state into which they sell goods, federal law in most cases guarantees they do not have to collect sales taxes, even if the state levies such a tax on the goods sold. Nationwide, this nexus issue has contributed to an estimated $7.2 billion in uncollected state and local e-commerce sales tax revenue losses in 2007, and that figure is expected to grow to $12.4 billion in 2012.[21]

Estimates on e-commerce's fiscal impacts in New York vary greatly. A 2000 study by the U.S. Government Accountability Office (then known as the General Accounting Office) estimated New York's State and local sales tax losses from uncollected mail order and Internet sales ranged from $521 million to $2.3 billion in 2003. For the same year, a July 2004 study by Bruce Donald and William Fox at the Center for Business and Economic Research at the University of Tennessee estimated New York's State and local e-commerce sales tax losses to be $1.1 billion. They forecast a $2.4 billion revenue loss for New York in 2008.[22]

In an updated study released in April 2009, Donald and Fox, using different calculations for measuring business-to-business e-commerce activity, produced significantly lower e-commerce revenue loss estimates for New York. Loss estimates ranged from $587 million in 2008 to $867 million in 2012 (See **Table 7**). In a 2006 report, the Department of Taxation and Finance concluded the Government Accountability Office's lower-end estimate for 2003 (i.e. $521 million) best reflected the actual amount of sales tax revenues the State fails to

Table 7

Total State and Local Sales and Use Tax Estimated Revenue Losses from E-Commerce Sales ($millions)



	2007	2008	2009	2010	2011	2012
New York State*	550.4	586.9	528.1	654.9	770.0	865.5
New York City	248.4	264.9	238.3	295.5	347.5	390.6
Non-New York City	302.0	322.1	289.8	359.3	422.5	474.9

Revenue Estimates from Bruce, Donald, William F. Fox and LeAnn Luna, "State and Local Government Sales Tax Revenue Losses from Electronic Commerce," Transactions Tax Standards Association, April 9, 2009, Table 1. Accessed at www.t2sa.org.

*The New York State Department of Taxation and Finance believes the 2009 Bruce and Fox study "significantly overstates" New York's uncollected taxes on e-commerce, stemming from assumptions on business-to-business transactions (Plattner, Robert A, Daniel Smirlock and Mary Ellen Ladouceur, "A New Way Forward for Remote Vendor Sales Tax Collection," State Tax Notes, January 18, 2010, 191).

collect from remote sales, including e-commerce.[23] The Department of Taxation and Finance also included in this report an estimate of $290 million in uncollected business-to-consumer remote sales in New York, but this figure does not include the business-to-business and local sales taxes incorporated into Donald and Fox's estimate.[24]

2. Remote Sales Background

States' problems in collecting sales taxes from out-of-state Internet and mail-order retailers can be traced back 1930, when Mississippi became the first state to adopt a general sales tax. Over that decade, 23 other state adopted sales taxes, followed by six in the 1940s, five in the 1950s and 11 in the 1960s. Vermont in 1969 became the last state to adopt a sales tax, leaving Alaska, Delaware, New Hampshire, Montana and Oregon as the last states without the tax.[25] It was through this gradual adoption of the sales tax that states have laid the foundation for their collection difficulties.

"The history of state sales tax administration is doing exactly the same thing from state to state to state differently than everybody else," said Scott Peterson, Executive Director of the Streamlined Sales Tax Governing Board in Nashville, Tennessee.[26]

Individually, the sales tax systems each state crafted were acts of state sovereignty. But when taken as a whole, the 45 states had created a jumbled and unconstitutional taxing structure with over 6,000 taxing districts. Many of these taxing districts impose different rates, definitions and exemptions; thus presenting to out-of-state retailers the daunting task of compliance. In 1992, just as the Internet was emerging as a force in the retail market, the U.S. Supreme Court weighed in on this remote sales issue.

In *Quill Corp. v. North Dakota*, the court ruled a state's sales tax collection requirement for out-of-state retailers with no physical presence in a state creates an undue burden on interstate commerce in violation of the Commerce Clause of the U.S. Constitution. The case involved Quill Corp., an office equipment and supplies business with offices and warehouses in Illinois, California and Georgia. Although the company was the sixth largest supplier of office supplies and equipment in North Dakota, it had no operations in the state and it delivered goods via mail or common carrier from out-of-state locations. In 1987, North Dakota attempted to tie the tax collection responsibilities of remote sellers, such as Quill, to their in-state advertising efforts. The state amended its definition of "retailer" to "every person who engages in regular or systematic solicitation of a consumer market in th[e] state."[27]

With the *Quill* decision, the Supreme Court "took away your state sovereignty," said Christopher Rants, co-chair of the National Conference of State Legislatures Task Force on State and Local Taxation of Communications & Electronic Commerce. "…The federal government told us you can't collect taxes off remote sales."[28] However, Rants added, the Supreme Court in the *Quill* ruling noted a way states could reassert their right to require remote sellers to collect sales tax. It said: "Congress is now free to decide whether, when, and to what extent the States may burden interstate mail order concerns with a duty to collect use taxes."[29] Here, in the ruling's conclusion, Rants said, was a "blueprint" for remote sales tax collection.

In response to *Quill*, states have pursued two key tactics to get remote sellers to collect sales taxes. They include simplifying and streamlining their sales tax systems or developing aggressive nexus laws (See **Table 8**). The latter is represented by the click-through nexus legislation (i.e. "Amazon Tax) that claims a taxable nexus arises for any company, such as online bookseller Amazon.com, that advertises in the state using a third party, such as a radio station or its Web site. The former is represented by the Streamlined Sales and Use Tax Agreement (SSUTA), a broad set of rules and definitions regarding sales tax administration that states can uniformly adopt with the prospect of collecting sales taxes from remote sellers that voluntarily participate in the program.[30]

Another important aspect of the SSUTA is its corresponding federal legislation. In August 2007, U.S. Representatives William Delahunt (D-MA), Spencer Bachus (R-AL) and Ray LaHood (R-IL) introduced the Sales Tax Fairness and Simplification Act (H.R. 3396). The legislation proposes to turn the SSUTA into a mandatory initiative, compared to its present voluntary status, by requiring out-of-state sellers to collect sales tax on remote sales in member states. The bill, which is expected to be reintroduced in Congress soon, featured a small business exemption.[31]

"We're all trying to get to the same place, and we all recognize there are two roads to get there. One way involves modernizing the sales tax law in New York, and the other doesn't," said Stephen Kranz, a Partner with Sutherland Asbill and Brennan LLP in Washington, D.C.

3. The Streamlined Sales Tax and Amazon Tax in New York

On May 15 2003, the Legislature re-passed a State budget for the 2003-2004 fiscal year, overriding Governor George Pataki's veto. Included in that budget was Article 28-B of the Tax Law—*The Simplified Sales and Use Tax Administration Act*. The law made New York an official participant in the Streamlined Sales Tax Project (SSTP), an initiative organized by the National Conference of State Legislatures, National Governors Association and Federation of Tax Administrators in March 2000.[32] Passage of Article 28-B came about six months after delegates from 35 states participating in the SSTP ratified the Streamlined Sales and Use Tax Agreement. Not all of these participating states took the necessary steps to attain full SSUTA membership. The Agreement seeks to "simplify and modernize sales and use tax administration in member states in order to substantially reduce the burden of tax compliance."[33]

Like all the other states that impose sales taxes, excluding Colorado, New York helped craft the Agreement. Between March 2000 and May 2003, the Department of Taxation and Finance sat in on SSTP meetings as unofficial observers.[34] After the enactment of Article 28-B, New York appointed delegates representing the Governor, Senate, Assembly and Tax Commissioner to an Implementing States group. The group included delegates from 41 states who voted on recommended sales tax definitions and administration processes. After fulfilling a requirement for the combined population of the member states to equal at least 20 percent of the population of all states imposing a sales tax, the SSUTA took effect on October 1, 2005.[35]

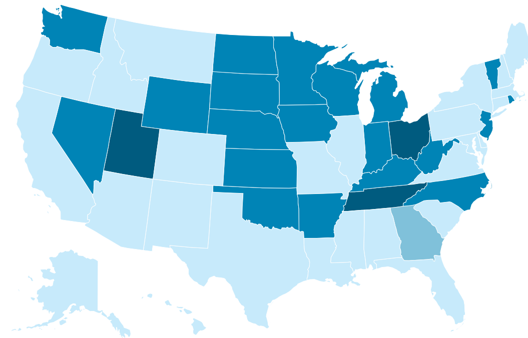
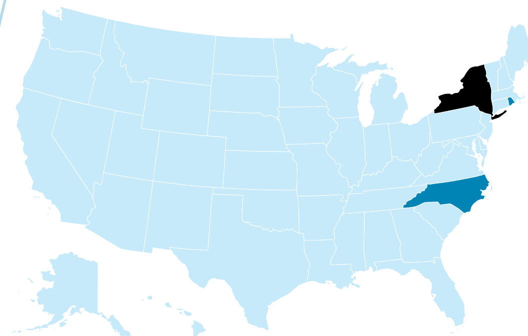
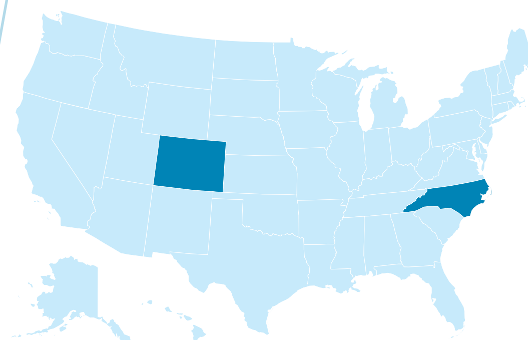
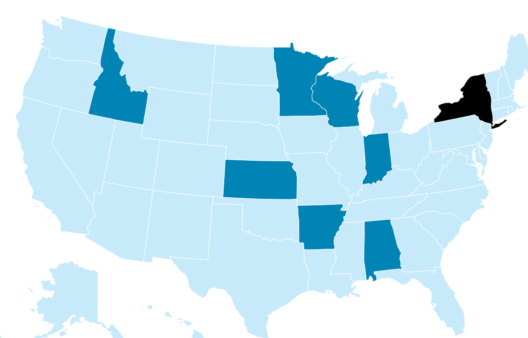
Under Article 28-B, the Department of Taxation and Finance was authorized and directed to enter into the SSUTA. But the act neither amended any State or local sales tax provisions nor committed New York to enacting legislation that would align its sales tax rules, definitions and procedures with those outlined in the SSUTA. In October 2006, the Department of Taxation and Finance issued a report outlining how conformity to the SSUTA poses several policy and administrative challenges for New York. These challenges

Table 8

States' Remote Sales Tax Strategies

Strategy	Participating States	Description	Effectivenes
Streamlined Sales and Use Tax Agreement	▶ (20) Full members: Arkansas, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Vermont, Washington, West Virginia, Wisconsin, Wyoming, Georgia (membership pending) ▶ (3) Associate members: Ohio, Tennessee, Utah	▶ A broad set of rules and definitions regarding sales tax administration that states can uniformly adopt with the prospect of collecting sales taxes from remote sellers that voluntarily participate in the program.	▶ $557 millio ted and rec between O ▶ $160 millio 2009, incl and $10 mi ▶ Over 1,220 sellers.
Affiliate Nexus Amazon Tax	▶ New York, North Carolina, Rhode Island	▶ States a taxable nexus arises for any company that advertises in the state using a third party.	▶ In New Yor tered vend ▶ More than New York s collect the
Affiliate Nexus Alternative Amazon Tax	▶ Colorado, North Carolina	▶ Requires remote sellers to report to the state the online purchases of state residents, or also inform their customers about their state tax liabilities and that these taxes must be paid directly to the state.	▶ Unknown, 2010.
Affiliate Nexus	▶ Alabama, Arkansas, Idaho, Indiana, Kansas, Minnesota, New York, Wisconsin	▶ Extends an in-state retailer's vendor status to its separate but commonly-owned e-tail or catalog remote sale operations.	▶ Enabled N Inc., the Fr clothing ca when it op Colonie in

Select Committee on Budget and Tax Reform

s	Setbacks	
on sales taxes voluntarily remit- distributed among member states ctober 1 2005 to April 1, 2010. on remitted under SSUTA in uding $14 million to NC and MI illion to OH. voluntarily participating remote	▶ Failure to get the Streamlined Sales and Use Tax corresponding federal legislation passed in Congress keeps it a voluntary program instead of one under which remote sellers are mandated to collect sales taxes. ▶ Membership growth has slowed to a crawl, though Wisconsin joined in 2009 and Georgia passed legislation to conform to it in May 2010. ▶ The ranks of voluntarily participating vendors are growing slowly, at a rate of roughly four per week.	
k: $70 million from newly-regis- lors in fiscal year 2009–2010. 30 e-tailers have registered as sales tax vendors and began to tax.	▶ In New York, approximately 60 sellers terminated their affiliate programs in the State. ▶ Amazon.com and Overstock.com sued New York, claiming the Amazon Tax is unconstitutional. ▶ Amazon.com terminated its affiliate programs in Rhode Island and North Carolina. ▶ The click-through nexus law does not address out-of-state retailers with no in-state affiliate advertisers selling into the state.	
passed in Colorado in February	▶ Unknown in Colorado. ▶ In April 2010, Amazon.com sued North Carolina over the customer information disclosure requirement.	
ew York to require L.L. Bean reeport, Maine-based outdoor atalog giant, to collect sales tax ened a retail store in the Town of 2007.		

included establishing uniformity among State sales taxes and local taxes and establishing single State and local rates that prohibit eliminating add-on rates. The Department of Taxation and Finance concluded some—but not all—of the Agreement's provisions might be worth pursuing.[36] New York never became an SSUTA member.

Instead of pursuing membership in the SSUTA, New York passed its first-of-its kind Amazon Tax in 2008. Compared to the massive and time-consuming overhaul of the sales tax system that conformity to the SSUTA would have required, the Amazon Tax proved to be a simple alternative that immediately resulted in greater sales tax compliance. The click-through nexus rule prompted 30 electronic retailers, or e-tailers, to register as sales tax vendors who began to collect the tax. Although, about 60 sellers terminated their New York affiliate programs. In the 2009-2010 fiscal year, New York netted approximately $70 million from newly-registered State and local sales tax revenues.[37]

However, other states that have adopted their own Amazon taxes, such as Rhode Island and North Carolina, have not been able to replicate New York's success with the Amazon Tax. After New York enacted the click-through nexus rule, Amazon.com maintained its affiliate programs in the State. But the online retailer terminated its contracts with in-state affiliates upon the enactment of the similar Amazon Taxes in Rhode Island and North Carolina.[38] Governors in California and Hawaii have vetoed click-through nexus statutes styled after New York's Amazon Tax.[39] New York stands very much alone in its remote sales tax collection strategy.

"If you want to be sovereign, fine. But you just have to be an island when you do it," said Peterson. For the Amazon Tax's ability to establish a greater degree of parity between in-state retailers required to collect sales taxes and remote sellers that had previously skirted that responsibility, it earned the support of the Retail Council of New York State.[40] But concerns abound in the retail industry that the Amazon Tax is detracting from states' efforts to simplify and modernize their sales tax systems. As Scott Mackey, an Economist and Partner with Kimbell Sherman Ellis LLP in Montpelier, Vermont, explained, "They want the revenue, but they don't want to have to make the tough decisions, and this may be seen as an easy way to get what they want without having to make those changes."[41]

Ted Potrikus, Director of Government Affairs for the Retail Council, called the Amazon Tax "something along the way" toward the type of less burdensome sales tax structure called for in *Quill*—not a substitute for the SSUTA.[42] But the crux of New York's click-through nexus strategy rests less on *Quill* than the Supreme Court's nexus-specific *Scripto v. Carson* decision in 1960, according to experts at the roundtable. In *Scripto*, the court ruled that a Georgia company's salesmen operating in Florida "actively engaged" in that state as a representative of the company and therefore established a taxable nexus.[43] With the Amazon Tax, New York equated online affiliates with *Scripto*'s door-to-door salesmen.[44]

"We believe we're attacking or answering the question the Supreme Court set the test for," Rants said of SSUTA member states. "It seems to me, and tell me where I'm wrong, that New York and the others have said we don't need to answer the Supreme Court test. We're just going to do it and get *Quill* thrown out altogether."

4. Reassessing the Streamlined Sales Tax

In January 2010, the Department of Taxation and Finance revisited the issue of remote sales taxation with a *State Tax Notes* article, in which the agency heaped more criticism on the SSUTA. The agency concluded: "SSUTA provisions go far beyond what is necessary to address the narrow issue of the collection burdens on remote multistate sales tax vendors."[45] The Department of Taxation and Finance's criticisms in the report titled, "A New Way Forward for Remote Vendor Sales Tax Collection," included:

- **Many states have not joined the SSUTA, and none of the most populous states such as California or Florida have conformed to the agreement;**
- **New York already has the highest compliances rates among states imposing sales taxes, and it might not be practical or cost-effective for the State to conform to the SSUTA to collect the 10 to 15 percent of currently uncollected sales tax revenues;**
- **The SSUTA requires member states to abide to the rules, bylaws and definitions, raising state sovereignty concerns because the Legislature could be perceived as surrendering its constitutionally-granted taxation powers;**
- **The federal legislation, which would make multistate remote sellers collect sales tax in SSUTA member states mandatory instead of voluntary, remains elusive;**
- **The vendor compensation that New York would be required to collect under the SSUTA's corresponding federal legislation would be substantial while its payoff in terms of new collections remains unclear.**[46]

In the view of the Department of Taxation and Finance, sales tax simplification does not require uniformity among states, whose rights have long been favored by the principles of federalism over "modest benefits to interstate commerce of uniform state tax laws." As alternatives to the SSUTA, the agency recommended a multi-pronged strategy involving: 1. aggressive nexus legislation; 2 recognition of new technologies that could advance compliance; 3. proposed federal legislation that ties a remote seller's obligation to collect the tax to simplification within a state rather than uniformity across the states; and 4. an attempt to overturn *Quill* through an action that would lead to litigation.[47]

At the roundtable, experts challenged many of the conclusions the Department of Taxation and Finance made in the *State Tax Notes* article. The experts noted:

- **Regardless of how the principles of federalism favor states' rights, other major state taxes such as the personal income taxes and estate taxes regularly change uniformly and in tandem with their corresponding federal taxes.** "The streamlined movement brings us closer to that in kind of bringing the sales tax closer to other types of taxes, and as the economy grows on a national scale it seems to me that's going to happen [through a federal sales tax or collective effort]," said Jennifer Boll, a Principal with Tuczinski, Cavalier, Gilchrist & Collura, P.C. in Albany.[48]
- **Aggressive nexus strategies such as the Amazon Tax have been too narrow in scope and largely ineffective in other states.** "It hasn't solved the problem that there are a lot of Internet companies that are selling into New York without using affiliate advertisers, and New York cannot change that," Kranz said of the Amazon Tax. "That is a matter of U.S. constitutional law. The only way that could be addressed is for the states' sales tax to be simplified and that's what a lot of SST does. But that's the long road. It's the heavy lift

of changing the rules that have been in place here since 1965."

- **Conformity to the SSUTA would neither compromise state sovereignty nor contract away the Legislature's constitutional taxation powers to the Streamlined Sales Tax Governing Board.** Just as the Legislature can opt to align New York's rules and bylaws with those in the SSUTA, it can choose to break from the Agreement if its rewards do not justify conformity. "We're not saying take away your autonomy to tax, but let's at least agree on what everything means," said Mackey.
- **As the recent recession has sent states scouring for revenues, enrollment in the SSUTA has picked up after a lull.** Wisconsin became a full Streamlined member on October 1, 2009. On May 27, 2010, Georgia Governor Sonny Perdue signed legislation to bring his state in full compliance with the SSUTA, effective January 1, 2011. Rants said he expects Michigan to join the SSUTA next year.
- **The SSUTA's corresponding federal legislation is expected to be introduced with broad bi-partisan support and is expected to move through Congress after the November elections, during the lame duck session,** according to Kranz.
- **Many New York retailer's run the risk of being run out of business by remote sellers unless the sales taxation playing field is leveled soon, and the Department of Taxation and Finance's alternative strategies could take years to achieve their goals.** "They don't have time to wait for Washington," Potrikus said of New York retailers. The Department of Taxation and Finance's proposal to attempt to overturn *Quill* is a long shot, given that there is no guarantee the Supreme Court would side with New York. It took five years for *Quill* to be ruled on by the nation's highest court, from the time North Dakota enacted its more aggressive nexus statute. Also, the corresponding SSUTA federal legislation is far more advanced in the Congress' legislative process than the type of federal nexus legislation proposed by the Department of Taxation and Finance.
- **The vendor compensation that New York would be mandated to provide to multistate remote sellers under the federal SSUTA legislation could be almost four times the amount of vendor compensation the State currently provides under its Sales Tax Vendor Credit, but that higher compensation amount would still be a fraction of amount of new revenues that would be remitted.** While the Streamlined Sales Tax Governing Board is still trying to determine what "reasonable compensation" would be for vendors under the federal legislation, Peterson said that definition could equate to 1 percent of total State and local sales tax collections. Assuming this 1 percent vendor compensation rate, New York would have been required to devote $198 million in 2003 to vendor compensation, compared to the $48 million in compensation the State provided that year under its Sales Tax Vendor Credit. The $198 million SSUTA compensation would have been 38 percent of the $521 million the GAO estimated (accepted by the Department of Taxation and Finance) the State did not collect in 2003 in mail order and Internet sales taxes, resulting in a net gain in new tax revenues of $322.6 million (See **Table 9**).

The Department of Taxation and Finance's resistance to the SSUTA is not an uncommon reaction for a revenue office, even among states that have conformed to its rules and bylaws. In 2006, the Department of Taxation and Finance produced a 99-page report mostly outlining complications associated with conforming to the SSUTA. The Agreement itself is over 100 pages in length and features an additional 120 pages of rules, bylaws and interpretations. Christopher Rants, who was also Speaker of the Iowa House of Representatives when his state became a full member of the SSUTA on October 1, 2005, recalled how the Iowa Department of Revenue and Finance was similarly hesitant about conformity to the Agreement. But the Iowan agency is now quite pleased with the SSUTA, Rants said.

When looking at the expansive list Streamlined requirements and relevant New York State and local provisions that the Department of Taxation and Finance included in its 2006 report, Rants said "I chuckle. You see that everywhere." However, the Department of Taxation and Finance was accurate in its assessment that conformity to the SSUTA would require a substantial overhaul of the sales tax system entailing tough policy calls regarding uniform product definitions, the elimination of discrepancies between State and local sales tax bases, additional tax rates and exemption thresholds. During the past decade, Potrikus said the disparity in the tax bases proved to be the greatest hurdle to New York becoming an SSUTA member. However, in addressing many of the challenges presented in the Department of Taxation and Finance's Streamlined requirements list, legislators could also address other issues with the sales tax, particularly those regarding the consumer consumption shift to services and gross and irrational exemption growth (See **Appendix 3**).

"The reality is we all have to make some sort of change and investment if we're going to participate [in the SSUTA]," Rants said. "But the benefits of participating far outweigh the headache. And that's what it is: a headache to make these changes… We need to have the ability to collect the taxes that are owed to us."

Table 9

Calculations for New York's Potential Streamlined Vendor Compensation Liability

$19,315,909,910	total sales tax collections, all taxing jurisdictions in 2003
+$521,000,0000	GAO estimate of uncollected mail order and Internet sales in 2003
$19,836,909,910	
× 1%	possible SSUTA "reasonable" vendor compensation rate
$198,369,099	NY vendor compensation liability under possible federal SSUTA legislation

$48,000,000,000	Sales Tax Vendor Credit* =	0.2% of total collected taxes
$198,039,999	SSUTA vendor compensation =	1.0% of total collected and uncollected taxes
	=	38% of uncollected taxes

Estimated net gain in new State and local tax revenues from SSUTA in 2003 = $322,630,090

* In 2003, the Sales Tax Vendor Credit equaled 3.5 percent of the State sales tax collected up to a maximum credit of $150 per return. The credit currently equals 5 percent of State and local taxes remitted up to a maximum credit of $200 per return. In 2007, the credit totaled an estimated $94 million

Conclusions

Despite being a leader in developing methods to collect sales tax in the Internet age with measures such as the Amazon Tax, New York trails other states in regard to simplifying the tax and adjusting to the consumer consumption shift from goods to services. In many regards, the SSUTA includes some rules and bylaws that could bolster New York's sales tax in areas where it is failing to keep pace with modern trends. But as New York City Department of Finance Deputy Commissioner Michael Hyman noted, "Going all the way is creating…hurdles to a more streamlined fashion."[49] Therefore, the Select Committee recommends the following:

- explore ways to simplify New York's sales tax system, with an eye toward conforming to the rules and bylaws of the Streamlined Sales and Use Tax Agreement, if not pursuing full Streamlined membership;
- explore ways to broaden the service side of New York's sales tax in a revenue-neutral fashion, with an eye toward establishing parity with New York City's sales tax base and reducing fiscal volatility;
- explore ways to make the sales tax more progressive, particularly in regard to balancing the share of the tax burden various income groups must bear.

Appendices

APPENDIX I

SENATE SELECT COMMITTEE ON BUDGET AND TAX REFORM

WEDNESDAY, JUNE 9, 2010

Public Roundtable Participants

Brad Austin
Director of State Legislative Affairs
Empire State Development Corp.

Jennifer Boll
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Tuczinski, Cavalier, Gilchrist & Collura, P.C.

Michael Hyman
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Scott Peterson
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Streamlined Sales Tax Governing Board

Ken Pokalsky
Senior Director of Government Affairs
Business Council of New York State

Ted Potrikus
Director of Government Affairs
Retail Council of New York State

Christopher Rants
Chairman
National Conference of State Legislatures
Task Force on Electronic Commerce

APPENDIX 2

Sales Taxation of Services in New York State and Other States

E = exempted from sales tax
 # = sales tax rate

		Neighboring States					Other Large States		
Services	NY	CT	NJ	PA	OH	VT	AZ	CA	TX
Personal Services									
Barber shops and beauty parlors	E	E	E	E	5.5	E	E	E	E
Carpet and upholstery cleaning	4	6	7	6	5.5	E	E	E	6.25
Dating services	E	6	E	E	E	E	E	E	E
Debt counseling	E	6	E	E	E	E	E	E	E
Diaper service	E	E	E	E	5.5	E	5.6	E	6.25
Income from funeral services	E	E	E	E	E	E	E	E	E
Fishing and hunting guide services	E	E	E	E	E	E	E	E	E
Garment services (altering & repairing)	E	6	E	E	5.5	E	E	E	6.25
Gift and package wrapping service	E	E	E	6	5.5	6	E	7.25	E
Health clubs, tanning parlors, reducing salons	E	6	7	E	5.5	6	E	E	6.25
Laundry and dry cleaning services, coin-op	E	E	E	E	E	E	E	E	E
Laundry and dry cleaning services, non-coin op	E	E	E	E	5.5	E	E	E	6.25
Massage services	E	6	7	E	5.5	E	E	E	6.25
900 Number services	9	6	7	6	5.5	E	E	E	6.25
Personal instruction (dance, golf, tennis, etc.)	E	E	E	E	E	E	E	E	E
Shoe repair	E	E	E	E	5.5	E	E	E	6.25
Swimming pool cleaning & maintenance	4	6	7	E	5.5	E	E	E	6.25
Tax return preparation	E	E	E	E	E	E	E	E	E
Tuxedo rental	4	6	E	6	5.5	E	5.6	7.25	6.25
Water softening and conditioning	E	E	E	6	E	E	E	E	E
Business Services									
Billboards	E	E	E	E	E	E	E	E	E
Radio & television, national advertising	E	E	E	E	E	E	E	E	E
Radio & television, local advertising	E	E	E	E	E	E	E	E	E
Newspaper	E	E	E	E	E	E	E	E	E
Magazine	E	E	E	E	E	E	E	E	E
Advertising agency fees (not ad placement)	E	6	E	E	E	E	E	7.25	E

		Neighboring States					Other Large States		
Services	**NY**	CT	NJ	PA	OH	VT	AZ	CA	TX
Armored car services	**4**	6	7	E	5.5	E	E	E	6.25
Bail bond fees	**E**	E	E	E	E	E	E	E	E
Check & debt collection	**E**	E	E	6	E	E	E	E	6.25
Commercial art and graphic design	**E**	6	7	E	E	6	5.6	7.25	6.25
Commercial linen supply	**E**	E	7	6	5.5	E	5.6	E	6.25
Credit information, credit bureaus	**E**	6	7	6	E	E	E	E	6.25
Employment agencies	**E**	6	E	6	5.5	E	E	E	E
Interior design and decorating	**4**	E	E	E	E	E	E	E	E
Maintenance and janitorial services	**4**	6	7	6	5.5	E	E	E	6.25
Lobbying and consulting	**E**	6	E	6	E	E	E	E	E
Marketing	**E**	E	E	E	E	E	E	E	E
Packing and crating	**E**	E	7	E	E	E	E	E	E
Exterminating (includes termite services)	**4**	6	7	6	5.5	E	E	E	6.25
Photocopying services	**4**	6	7	6	5.5	6	5.6	7.25	6.25
Photo finishing	**4**	6	7	6	5.5	6	5.6	7.25	6.25
Printing	**4**	6	7	6	5.5	6	5.6	7.25	6.25
Private investigation (detective) services	**4**	6	7	E	5.5	E	E	E	6.25
Process server fees	**E**	E	E	E	E	E	E	E	E
Public relations, management consulting	**E**	6	E	E	E	E	E	E	E
Secretarial and court reporting services	**E**	6	E	6	E	E	E	E	E
Security services	**4**	6	7	E	5.5	E	5.6	E	6.25
Sign construction and installation	**4**	6	7	6	5.5	6	5.6	7.25	E
Telemarketing services on contract	**E**	E	E	E	E	E	E	E	E
Telephone answering service	**4**	6	7	6	E	E	E	E	6.25
Temporary help agencies	**E**	6	E	6	5.5	E	E	E	E
Test laboratories (excluding medical)	**E**	E	E	E	E	E	E	E	E
Tire recapping and repairing	**4**	6	7	6	5.5	E	E	7.25	E
Window cleaning	**4**	6	7	6	5.5	E	E	E	6.25
Admissions & Amusements									
Pari-mutuel racing events	**4**	10	E	E	E	6	E	E	6.25
Amusement park admission & rides	**4**	10	7	E	E	6	5.6	E	6.25
Billiard parlors	**E**	E	E	E	E	6	5.6	E	6.25

Services	NY	CT	NJ	PA	OH	VT	AZ	CA	TX
			Neighboring States				Other Large States		
Bowling alleys	**E**	E	E	E	E	6	5.6	E	6.25
Cable TV services	**E**	6	E	E	E	6	E	E	6.25
Direct Satellite TV	**E**	6	E	T	5.5	6	E	E	6.25
Circuses and fairs—admission and games	**E**	10	7	E	E	6	5.6	E	6.25
Coin operated video games	**E**	E	E	E	E	E	5.6	E	E
Admission to school and college sports events	**E**	10	7	E	E	E	E	E	E
Membership fees in private clubs	**4**	10	E	E	5.5	6	5.6	E	6.25
Admission to cultural events	**E**	10	7	E	E	6	E	E	6.25
Pinball and other mechanical amusements	**E**	E	E	E	E	E	5.6	E	6.25
Admission to professional sports events	**4**	10	7	E	E	6	5.6	E	6.25
Rental of films and tapes by theaters	**4**	E	E	E	E	E	E	E	E
Rental of video tapes for home viewing	**4**	6	7	6	5.5	6	5.6	7.25	6.25

Tax data from the Federation of Tax Administrators' *Sales Taxation of Services: 2007 Update*, October 2008.

APPENDIX 3

Streamlined Requirements

Streamlined Requirement (as of October 2006)*	Relevant New York State and Local Tax Provisions (as of October 2006)*	Select Committee Notes**
Uniform State and Local Tax Base	New York State and Local taxes are non-uniform in the following areas: Local options to various exemptions such as: ▶ Clothing and footwear; ▶ Qualified Empire Zone Enterprise purchases; and ▶ Residential solar energy systems. Local tax differences in NYC including ▶ NYC local sales tax on services of beauty salons, barber shops, health salons, massage, gymnasium, saunas and credit bureaus; ▶ NYC local exemption for interior decorating and design services; ▶ NYC standard for its exemption of hotel occupancy by permanent residents; ▶ NYC taxation of energy used in the production of gas, electricity, refrigeration or steam; ▶ NYC taxation of certain services to exempt tangible personal property used in farm production or in commercial horse boarding; ▶ NYC tax on property used at qualified marine terminal facilities. Sales tax on utility services imposed by twenty school districts in 15 counties. Segmented sales taxes imposed by the cities of Lockport and Niagara Falls, Long Branch, Newburgh and Port Jervis	Some of these obstacles to a uniform base may no longer stand in the way of uniformity, at least temporarily. For example, the 2010-2011 budget: ▶ suspended the clothing and footwear exemption; and ▶ replaced the Empire Zones program with a statewide Excelsior jobs program. Parity with NYC's sales tax base could: ▶ bolster the service side of the State's sales tax base, which a string of exemptions has eroded; ▶ help the sales tax adjust to modern trends, such as the shift in consumer consumption from goods to services; ▶ shield the State from the fiscal volatility wrought by a too-narrow sales tax base.
Participation in an Online Registration System	New York would need to participate in the Streamlined registration system.	According to the Department of Taxation and Finance, the State already has an online registration program. It would need to be updated to provide for the registration of sellers in multiple states. Questions asked in the Streamlined registration form differ from those asked in New York's form.
Notice of Tax Rate Changes	All local rate changes would have to occur on the first day of a calendar quarter and with a minimum of 60 days notice. The notice requirement is extended to 120 days for retailers selling via printed catalogs.	Local laws imposing sales taxes are required by New York Tax Law to provide 90 days prior notice before they take effect on the first day of March, June, September and November. State sales tax rate changes do not take effect on the first day of a calendar quarter.
State and Local Rate Database	Streamlined requires the State to provide a database identifying State and local tax rate and jurisdictional information based on 5- and 9-digit ZIP codes. If the ZIP code area includes more than one tax rate, the database must apply the lowest rate in the ZIP code.	The Department of Taxation and Finance has established an electronic sales tax jurisdiction lookup service. New York's taxing jurisdictions consist of county, city and school districts which do not always share the same boundaries as the corresponding areas for ZIP codes. New York is not alone in facing complexities matching ZIP codes with local tax rates, but private vendors have developed databases states can use for these purposes.

Streamlined Requirement (as of October 2006)*	Relevant New York State and Local Tax Provisions (as of October 2006)*	Select Committee Notes**
Single Rate	New York State and local sales tax uses "additional rates" in the following areas: ▶ An additional 5 percent State tax levied on information and entertainment services furnished over the telephone (e.g. 900 numbers); ▶ A cents-per-gallon sales tax on motor fuel and diesel motor fuel; ▶ An additional MTA rate of 0.375 percent in the 12-county MTA Commuter Transportation District and an associated 0.75 cent-per-gallon MTACTD on motor fuel and diesel motor fuel; ▶ A $1.50 per unit per day fee on NYC hotel occupancy; ▶ The 6 percent NYC sales tax on parking services; ▶ The 8 percent NYC additional tax rate on parking services sold in Manhattan.	According to the Department of Taxation and Finance, some rate discrepancies are permitted under the SSUTA, such as the State's additional 5 percent rate on passenger rentals and county and city rates on residential energy. But new administrative processes would be required to collect these taxes.
Sourcing Rules	New York would need to certify that it is in compliance with 48 sourcing-related items found in the Certificate of Compliance. While generally following "destination sourcing" principles, the Agreement imposes several new requirements.	According to the Department of Taxation and Finance, New York's sourcing rules are mostly consistent with those in the SSUTA.
Enactment of exemptions	When enacting exemptions, New York would need to abide to uniform product definitions found in the Agreement.	By prohibiting carve outs in the definitions for certain products, the SSUTA definitions could eliminate many irregularities in the State's sales tax exemption system.
Exemption administration	New York must adopt the uniform policy with respect to exemption certificates.	New York would need to accept a uniform exemption certificate.
Sales tax holidays	Any temporary sales tax exemptions in effect while New York is a member state must: ▶ Only apply to items for which there is a uniform definition in the Agreement; ▶ Not use local options; ▶ Give sellers at least 60 days notice before the calendar quarter in which the exemption period begins; and ▶ Abide by the sales tax holiday administrative procedures in the SSUTA.	No sales tax holidays are currently scheduled under law.
Caps and thresholds	New York uses sales tax thresholds in the following exemptions: ▶ Clothing and footwear items priced at $110; ▶ Coin-operated telephone services where charges are 25 cents or less; ▶ Social or athletic club dues below $10 per year; ▶ Hotel room rent of $2 or less per day; ▶ Admission charges of 10 cents or less; ▶ Precious metal bullion sold for investment for more than $1,000; ▶ Tangible personal property sold at a person's residence where the receipts are not expected to exceed $600 per year (e.g. garage sales); ▶ 75 percent of the admission charge to a qualified place of amusement; and ▶ Race horse purchased through claiming races (partial exemption).	Some of these capped exemptions are becoming increasingly becoming less valuable to consumers, are out-dated or no longer in effect. For example: ▶ As more consumers use cell phones instead of pay phones, the coin-operated telephone service exemption has gone from totaling an estimated $3 million in 2004 to $1 million in 2010; ▶ The clothing and footwear exemption was suspended in the 2010-2011 budget; ▶ Very few venues have admission charges of 10 cents or less. Many other admissions are exempt from sales tax, such as races tracks, boxing, wrestling mates, live circus performances, dramatic, or musical arts performances, etc.; At 75 percent of admission charge, the amusement park exemption traditionally totals $2 million annually. Other Streamlined states, such as Rhode Island, have been able to provide an exemption for garage sales without applying a cap.

Streamlined Requirement (as of October 2006)*	Relevant New York State and Local Tax Provisions (as of October 2006)*	Select Committee Notes**
Library of Definitions	Streamlined conformity would require New York to utilize the uniform definitions contained in the Agreement's Library of Definitions. If a term defined in the Library of Definitions appears in New York's sales and use statutes or administrative rules or regulations, the State must adopt the Library definition of the term in Tax Law in substantially the same language as the library definition. The Library of Definitions contains 64 definitions contained in three parts: ▶ Part I: Administrative definitions including tangible personal property; ▶ Part II: Product definitions; ▶ Part III: Sales tax holiday definitions.	According to the Department of Taxation and Finance, adoption of the Library of Definitions could change the taxability of some products and alter the foundation of the sales tax.
Taxability matrix	Streamlined conformity would require New York to complete a taxability matrix specifying its tax treatment of each of the administrative and product definitions in the Agreement's Library of Definitions. A seller or Certified Service Provider (CSP) that relies on the information in the matrix is relieved from liability for incorrectly collecting tax resulting from erroneous information provided in the matrix by New York.	New York does not maintain a chart noting the taxability of goods and services, though such a chart would enhance government transparency along with simplifying tax compliance. To an extent, New York provides some of the faulty information relief the SSUTA mandates. Under the New York Taxpayer Bill of Rights, penalties and excess interested are abated when the Department of Taxation and Finance provides a taxpayer with incorrect written advice.
Effective dates for rate changes	New York would need to follow transitional rules for service contracts covering a period which overlaps the effective date of a tax rate change.	According to the Department of Taxation and Finance, New York rate changes are effective on services rendered on or after the change's effective date, whereas new rates under the SSUTA take effect on when a bill is issued for the taxable service.
Tax amnesty	New York would offer a tax amnesty from uncollected or unpaid sales or use tax to sellers that voluntarily register under the Agreement.	It is unlikely New York would be able to recover a bulk of these uncollected sales taxes, even under the alternative federal nexus legislation for which the Department of Taxation and Finance has advocated.
Provisions for technology models-methods of remittance	Streamlined Conformity would require New York to allow sellers to use the three technology models described in the Agreement: ▶ Model I: wherein a seller selects a CSP as an agent to perform all the seller's sales or use tax functions, other than the seller's obligation to remit tax on its own purchase. ▶ Model 2: wherein a seller selects a Certified Automated System (CAS) to use which calculates the amount of tax use on a transaction. ▶ Model 3: wherein a seller utilizes its own proprietary automated sales tax system that has been certified as a CAS.	The State neither accommodates nor certifies the technology models included in the SSUTA. The Department of Taxation and Finance would not be able to audit vendors using Model I for sales tax fraud.

Streamlined Requirement (as of October 2006)*	Relevant New York State and Local Tax Provisions (as of October 2006)*	Select Committee Notes**
Provisions for technology models-monetary allowances	New York would agree to offer monetary compensation to CSPs and sellers that use a CAS. The Governing Board recommends the following schedule for CSP compensation: Tax remitted per seller/Rate <$250,000 8% >$250,000 and <$1,000,000 7% >$1,000,000 and <$2,500,000 6% >$2,500,000 and <$5,000,000 5% >$5,000,000 and <$10,000,000 4% >$10,000,000 and <$25,000,000 3% >$25,000,000 2%	New York already provides vendors with compensation in the form of the Sales Tax Vendor Credit. With a compensation rate equal to 5 percent of State and local taxes remitted up to a maximum credit of $200 per return, New York's rate falls slightly below the average for SSUTA states. For example, SSUTA member state compensation rates range from: ▶ $75/month in NV; ▶ $255/quarter in ND; ▶ $3,300/month in OK. Currently, out of the 23 SSUTA states, seven do not offer any vendor compensation. They include KA, IA, NJ, NC, RI, SD, TN. Some member states, such as OK, reduced their compensation rates in 2010. Under the SSUTA's corresponding federal legislation, SSUTA states would be required to provide vendors with "reasonable" compensation, which could equate to up to 1 percent of total collections. In New York in 2003, 1 percent of total State and local collections—including estimated $521 million uncollected sales taxes—would have equaled $198 million, leaving New York with a net gain of $322.6 million in new revenues.

* Tax information from "Streamlining New York's Sales Tax: Examining Requirements for Compliance with the Streamlined Sales and Use Tax Agreement," New York State Department of Taxation and Finance, October 2006, iv-vi.
**Notes based on Select Committee roundtable discussions, the Department of Taxation and Finance's 2006 report, "Streamlining New York's Sales Tax" and the Streamlined Sales Tax Governing Board.

About the Select Committee on Budget and Tax Reform

On February 5, 2009, the New York State Senate adopted Senate Resolution No. 315, which created the Select Committee on Budget and Tax Reform. Since then, the six-member, bipartisan committee chaired by Senator Liz Krueger has sought to look at New York State's entire tax structure. It aims to determine what aspects of it are working smoothly and where there are inequities and complications that must be rectified.

Select Committee activities have included:

Personal Income Tax Reform

Exploring progressive changes to New York State's personal income tax system.

- Public hearing: Albany, March 12, 2009.
- Report: April 2009

Business Tax Reform

Evaluating the equitability of New York State's business and banking tax structures and their effectiveness to foster economic growth statewide.

- Public hearings: Rochester, April 30, 2009; Manhattan, May 21, 2009.
- Report: July 2009

Telecommunications Tax Reform

Modernizing New York State's telecommunication taxes.

- Roundtable: Albany, August 12, 2009.
- Report: September 2009

Property Tax Exemption Reform

Evaluating the needs for and costs of New York State property tax exemptions.

- Roundtable: Albany, October 13, 2009.
- Report: December 2009

Budget Reform

Improving transparency, forecasting and flexibility in New York State's budget process.

- Public hearing: Manhattan, December 17, 2009
- Report: April 2010

Sales Tax Reform:

Enhancing New York State's fiscal stability through a more rational and streamlined sales tax system.

- Public hearing: Albany, June 9, 2010
- Report: August 2010

The Select Committee's members also include Senators Neil Breslin, Kenneth LaValle, Kevin Parker, Bill Perkins and Michael Ranzenhofer. Select Committee staff includes Executive Director Michael Lefebvre, Principal Analyst Richard Mereday and Administrator James Schlett.

Notes

1. Even New York State experimented with the sales tax during the Great Depression by passing in 1933 a one-year, 1 percent "license tax" on receipts from retail sales of tangible personal property. New York City's sales tax, which dates back to 1934, was the nation's first for a local government.
2. Nelson A. Rockefeller, "Message of the Governor," *State of New York 1965-1966 Executive Budget*, m5-m7, m20-m21.
3. Ibid, m5.
4. Percentages based on sales tax collection statistical from the *2008-2009 New York State Tax Collections: Statistical Summaries and Historical Tables* (Table 26) and *2007-2008 New York State Tax Collections: Statistical Summaries and Historical Tables* (Table 24) produced by the New York State Department of Taxation and Finance.
5. Nelson A. Rockefeller, "Message of the Governor," *State of New York 1965-1966 Executive Budget*, m6.
6. Ibid, m20-m21.
7. New York State Department of Taxation and Finance, *2008-2009 New York State Tax Collections: Statistical Summaries and Historical Tables*, 47.
8. Mazerov, Michael, "Expanding Sales Taxation of Services: Options and Issues," Center for Budget Policy and Priorities, July 2009, 1.
9. Ibid.
10. New York State Division of the Budget, *2010-2011 Executive Budget: Economic and Revenue Outlook, January 2010*, 249-250.
11. Prah, Manela M., "Do you want a tax with that?" Stateline.org, March 3, 2010.
12. Mazerov, Michael, "Expanding Sales Taxation of Services: Options and Issues," Center for Budget Policy and Priorities, July 2009, 15.
13. New York State Department of Taxation and Finance, "Who Bears the Burden of the State Sales and Use Tax?" *2010-2011 Annual Report on New York State Tax Expenditures*, 17.
14. Lucas, Dave, Director of Intergovernmental Affairs for the New York State Association of Counties, testimony at Select Committee on Budget and Tax Reform roundtable, 9 June 2010, Albany.
15. Fehr, Stephen H., "A Tax Reform Test in Maine," Stateline.org, June 5, 2010.
16. Department of Taxation and Finance, *2010-2011 Annual Report on New York State Tax Expenditures*.
17. New York State Department of Taxation and Finance, "Who Bears the Burden of the State Sales and Use Tax?" *2010-2011 Annual Report on New York State Tax Expenditures*, 15-17, 20-21.
18. New York State Department of Taxation and Finance, "Who Bears the Burden of the State Sales and Use Tax?" *2010-2011 Annual Report on New York State Tax Expenditures*, 15
19. National Conference of State Legislators, Actions and Proposals to Balance FY 2011 Budgets: Sales, Corporate Income and Personal Income Taxes," June 2010. Accessed at www.ncsl.org.
20. Internet Retailer's Daily News Service, "E-tail puts together back-to-back double-digit growth quarters," May 18, 2010. Accessed at www.Internetretailer.com.
21. Bruce, Donald, William F. Fox and LeAnn Luna, "State and Local Government Sales Tax Revenue Losses from Electronic Commerce," Transactions Tax Standards Association, April 9, 2009, Table 1. Accessed at www.t2sa.org.
22. New York State Department of Taxation and Finance, *Streamlining New York's Sales Tax: Examining Requirements for Compliance with the Streamlined Sales and Use Tax Agreement*, October 2006, 79.
23. Ibid, 79.
24. Ibid, ix.
25. Fox, William F., "History and Economic Impact," University of Tennessee, March 13, 2002. Accessed at http://cber.bus.utk.edu/staff/mnmecon338/foxipt.pdf.
26. Peterson, Scott, Executive Director, Streamlined Sales Tax Governing Board, testimony at Select Committee on Budget and Tax Reform roundtable, 9 June 2010, Albany.

27. *Quill Corp. v. North Dakota* (91-0194), 504 U.S. 298 (1992).

28. Rants, Christopher, Co-Chair, National Conference of State Legislatures Task Force on State and Local Taxation of Communications & Electronic Commerce, testimony at Select Committee on Budget and Tax Reform roundtable, 9 June 2010, Albany.

29. *Quill*

30. Kranz, Stephen, Partner, Sutherland Asbill and Brennan LLP, testimony at Select Committee on Budget and Tax Reform roundtable, 9 June 2009, Albany.

31. National Conference of State Legislature, "The Executive Committee Task Force on State and Local Taxation of Telecommunications and Electronic Commerce: Federal Legislation," February 2008. Accessed at: http://www.ncsl.org/default.aspx?tabid=12671.

32. Department of Taxation and Finance, *Streamlining New York's Sales Tax*, 9.

33. SSUTA §102.

34. Department of Taxation and Finance, *Streamlining New York's Sales Tax*, 12,

35. Plattner, Robert A, Daniel Smirlock and Mary Ellen Ladouceur, "A New Way Forward for Remote Vendor Sales Tax Collection," *State Tax Notes*, January 18, 2010, 190.

36. Department of Taxation and Finance, *Streamlining New York's Sales Tax*, 85.

37. Ibid, 195.

38. Grovum, Jack, "The 'Amazon Tax' War Escalates," Stateline.org, 26 April 2010.

39. Plattner, Smirlock and Ladouceur, "A New Way Forward for Remote Vendor Sales Tax Collection," 196.

40. The Business Council of New York State has not surveyed its members on the SSUTA. But Ken Pokalsky, the trade organization's Senior Director of Government Affairs, said there is "a lot of support" within the Business Council for the Streamlined principles, "if not explicit support for that policy" (Pokalsky, Ken, Senior Director of Government Affairs, Business Coiuncil of New York State, testimony at Select Committee on Budget and Tax Reform roundtable, 9 June 2010, Albany).

41. Mackey, Scott, Economist and Partner, Kimbell Sherman Ellis LLP, testimony at Select Committee on Budget and Tax Reform roundtable, 9 June 2010, Albany.

42. Potrikus, Ted, Director of Governmental Affairs, Retail Council of New York State, testimony at Select Committee on Budget and Tax Reform roundtable, 9 June 2009, Albany.

43. U.S. Supreme Court, *Scripto v. Carson*, 362 U.S. 207 (1960)

44. Potrikus.

45. Plattner, Smirlock and Ladouceur, "A New Way Forward for Remote Vendor Sales Tax Collection," 192.

46. Ibid, 190-192.

47. Ibid, 187.

48. Boll, Jennifer, Principal, Tuczinski, Cavalier, Gilchrist & Collura, P.C., testimony at Select Committee on Budget and Tax Reform roundtable, 9 June 2010, Albany.

49. Hyman, Michael, Deputy Commission, New York City Department of Finance, testimony at Select Committee on Budget and Tax Reform roundtable, 9 June 2010, Albany.

Select Committee on Budget and Tax Reform Chairwoman Senator Liz Krueger (above) moderates discussions at a June 9, 2010 public roundtable in Albany on the future of New York State's sales tax.

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