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Laura R. Ingraham, K. R. Nunez, and L. M. Wright. "Use tax collections" *Journal of State Taxation* (2005): 29-36.

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Use Tax Collections

By Karen R. Nunez, Lorraine McClenny Wright and Laura R. Ingraham

Karen Nunez, Lorraine McClenny Wright and Laura Ingraham examine the level of compliance with state use tax laws.

They discuss the results of a survey that looks at the methods states use to enforce the reporting and collection of use tax, and note what seems to work the best.

Introduction

Over the past decade, marketing techniques and consumer buying patterns have changed dramatically and there has been a significant increase in purchases over the Internet, from television shopping networks and through mail order catalogs. Most states apply a sales tax at the time of purchase, and the seller is responsible for collecting, reporting and remitting the tax to its state department of revenue. However, if a business lacks a presence in a state (nexus), for example, a store, a warehouse or a sales staff, then it is not required to apply a sales tax. If a sales tax is not applied at the time of purchase (or the tax is applied at a lower rate), then a use tax is due after a purchase is made, and the buyers or consumers are responsible for reporting and remitting the use tax to their state departments of revenue.

The use tax is imposed upon virtually all types of merchandise purchased by individuals and businesses. Unreported and uncollected use taxes are a key contributor to state budget deficits. Thus, many states are more aggressively pursuing collection of the use tax to bridge budget shortfalls.¹ This study examines the level of compliance with state use tax laws. A survey was conducted to discover the methods used by states to enforce reporting and collection of use tax. The results of the study suggest that reporting and collection method changes may increase compliance with state use tax laws.

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Background

Generally, the buyer or consumer owes sales or use tax regardless of where the purchase is made if the purchase is taxable in their home state. Even when a sales tax is

paid, if it is at a tax rate that is less than the tax rate in the home state, the buyer or consumer still owes a use tax for the tax rate difference. However, many buyers and consumers are unaware of the use tax laws or intentionally avoid paying use tax. Furthermore, many merchandisers assist buyers and consumers in use tax avoidance by not collecting sales taxes and by not informing them of their obligation to report their out-of-state purchases to their state departments of revenue.²

The Supreme Court held in *National Bellas Hess Inc.*³ that state or local governments cannot require a retailer to collect and remit sales tax unless the business has nexus within that state. In addition, in *Quill*,⁴ the Supreme Court ruled that an out-of-state mail order house without sales outlets or sales representatives in the state is not required to collect and remit use taxes on goods and services purchased for use in the state. Typically, firms that lack nexus in a state do not collect use taxes. As a result, many states have lost millions in uncollected use taxes. It is estimated that uncollected sales and use taxes on Internet retail sales was \$35 billion in 2003.⁵ The loss is projected to rise to over \$48 billion by 2011.⁶

Traditionally, states have enforced use tax laws through voluntary compliance.⁷ They have used special use tax forms/returns for buyers and consumers to declare and

pay use taxes. However, voluntary compliance has been problematic at the individual level because most individuals are often unaware of the existence of the use tax as well as the special use tax forms/returns.

Currently, 28 states continue to rely solely upon special use tax forms/returns and voluntary compliance.

Only recently, in an effort to increase state revenues, have states started to more aggressively pursue use tax collection. Several states have added lines to their individual income tax re-

turns so that filers can declare and pay unpaid use taxes when they file their state income tax returns. Currently, 18 states (including Washington, D.C.) have lines on their state income tax returns. Seven of those states rely exclusively on this method for collection of use taxes, while 11 of those states use a special use tax form/return in conjunction with the line on their return.

States have also used other use tax collection efforts such as the Multistate Tax Compact, Federation of Tax Administrators Uniform Exchange of Information Agreement, and the National Nexus Program and the Joint Audit, which have been in place for a number of years. However, the majority of these efforts have focused on large ticket purchases such as airplanes, cars and boats; and ignore the millions of dollars for purchases of smaller items such as books, audio and

Unreported and uncollected use taxes are a key contributor to state budget deficits.

Exhibit 1

Descriptive Statistics (By State)–PANEL A Dollar Amount of Collections (in thousands)

STATE	N	METHOD	MEAN	STD DEV	MINIMUM	MAXIMUM	MEDIAN
CO	4	2	71,110.0	7,764.8	63,562.0	78,513.0	71,182.5
CT	4	3	1,704.9	485.8	1,376.7	2,413.5	1,514.7
IA	4	2	238,664.6	10,541.0	223,023.2	246,041.0	242,797.2
IL	4	2	929,500.0	98,557.9	823,000.0	1,045,000.0	925,000.0
KY	4	3	725.4	67.5	656.9	818.6	713.0
MI	4	1	1,222.5	118.7	1,092.2	1,355.4	1,221.1
MO	4	2	299,699.2	27,408.4	271,105.6	333,889.4	296,900.9
NC	4	3	1,307.4	2,396.8	99.3	4,902.7	113.9
OK	4	2	133,618.5	13,781.9	118,972.9	152,068.1	131,716.4
PA	4	2	4,925.0	753.9	4,283.3	6,016.0	4,700.4
TX	4	2	1,021,131.6	71,787.5	963,526.7	1,124,789.0	998,105.4
WI	4	1	259,760.8	39,159.0	226,908.0	316,076.0	248,029.5

Method 1 = Line on return 2 = Separate form 3 = Both N = No. of years

videotapes, compact discs, records, clothing, *etc.* upon which the payment of use tax is required.

Some states have used joint and individual programs to locate noncompliers. The interstate compliance programs include the Southeastern Association of Tax Assessors Exchange Program, Great Lakes States Tax Enforcement Pact and the Midwest Border States compact. States also collect data from several other sources—other states, the FAA on airplane purchases, shipping information from the Department of Agriculture, bills of lading from transportation companies, U.S. customs, Uniform Commercial Code filings, Dodge Reports, license bureaus and newspaper ads.

Another effort by the states to increase the amount of sales and use tax collected on out-of-state purchases is the Streamlined Sales Tax Project (SSTP). The SSTP, which has been adopted by over 30 states, is an effort by state governments to simplify and modernize the collection of sales and use taxes. The SSTP has as its mission to “develop measures to design, test and implement a sales and use tax system that radically simplifies sales and use taxes.” The SSTP grew out of work done in the Advisory Committee on Electronic Commerce (ACEC). The project will, among other

things, establish uniform definitions for products, simplify tax rates and tax bases, establish uniform sourcing rules and simplify exemptions administration. Several of the major areas of difficulty in the multistate tax administration are the existence of separate tax rates for individual local jurisdictions, separate tax rates for different goods within a state or local jurisdiction, and multiple tax bases within a state. Once a simple structure is put in place, it will be much easier for states to collect the correct amount of sales tax due on purchases and determine

where the tax should be remitted.

Several states have attempted to get Congress to pass effective cybertax laws to help level the playing field between brick and mortar businesses and Internet retailers. However, the ACEC, mandated by the Internet Tax Freedom Act (ITFA),⁸ was not able to produce a course of action to satisfy the state and local governments, retailers and Congress. The committee was supposed to recommend international, federal, state and local tax policy for Internet commerce. In fact, 42 governors signed a statement of disapproval of the report. As a result, Congress passed an Internet Moratorium Extension Bill that prohibited further imposition of cybertaxes under the ITFA until

As a result of reporting and collection changes, several states are seeing increased compliance with state use tax laws.

Exhibit 1

Descriptive Statistics (By State)—PANEL B

Number of Taxpayers Reporting (in thousands)

STATE	N	METHOD	MEAN	STD DEV	MINIMUM	MAXIMUM	MEDIAN
CO	4	2	8.70	-	8.70	8.70	8.70
CT	4	3	12.92	1.25	11.52	14.46	12.86
IA	4	2	18.22	0.26	17.90	18.48	18.25
IL	4	2	-	-	-	-	-
KY	4	3	17.54	1.10	16.64	19.11	17.21
MI	4	1	-	-	-	-	-
MO	4	2	23.14	0.61	22.46	23.83	23.15
NC	4	3	95.46	133.14	1.32	189.60	95.46
OK	4	2	-	-	-	-	-
PA	4	2	4.21	1.17	2.97	5.66	4.11
TX	4	2	662.81	16.77	645.36	683.18	661.34
WI	4	1	196.15	9.97	187.10	207.03	195.24

Method 1= Line on return 2= Separate form 3= Both N = No. of years

November 1, 2003. Unfortunately, the moratorium was allowed to lapse. As a result, the debate over cybertaxes will include a combined discussion of access as well as collection of sales taxes.

Most states also have compliance initiatives: field audits of retailers, special reporting arrangements with certain out-of-state retailers, special boat and airplane compliance programs and public educational programs, such as Web sites and brochures.

It appears as if some buyers and consumers are paying attention. The state tax department in New York received more than \$57 million in voluntary sales and use tax filings in the year ended March 31, 2003. That was up sharply from about \$9.5 million in the prior year.⁹ However, states that have added use tax reporting lines on their state income tax returns are finding that compliance is generally limited to the most honest taxpayers.¹⁰ States threaten noncompliers with serious charges, but most state officials concede they rarely crack down.

A case study of the collection efforts in North Carolina¹¹ reported a dramatic increase in use tax collections resulting from a change in reporting and collection methods. Prior to 1999, The North Carolina Department of Revenue used a separate use tax form for reporting and collection of use taxes. The Department of Revenue even included a copy of the form along with information and instructions in the State Individual Income Tax Form Booklet from 1991-1998. However, in 1999, North Carolina passed legislation requiring individuals to report and remit use tax on their state individual income tax return effective with the 1999 tax year.¹²

Prior to the change in reporting and collection methods in North Carolina, the average use tax revenue collected for the five fiscal years from July 1994 to May 1999 was \$85,970. Subsequent to the change in North Carolina reporting and collection procedures, revenue collected from use tax for tax years 1999 and 2000 increased to \$4,902,652 and \$4,675,325, respectively.¹³ Similarly, while there were only 1,320 taxpayers reporting use tax between July 1998 and May 1999, the number of taxpayers self-reporting use tax for the 1999 and 2000 tax years were 189,602 and 169,752, respectively.¹⁴ After examining the compliance level in the state of North Carolina and the effects of a use tax reporting line on the state individual income tax return, we designed our study to investigate use tax reporting and collection methods.

Study

Our key research questions were:

1. What methods are used for use tax reporting and collection?
2. How have use tax reporting and collection methods changed in the last five years?
3. How have use tax collections (in dollars) changed in the last five years?
4. What is the estimated use tax compliance level?

Our use tax survey (Appendix A) was mailed to all 50 states and the District of Columbia. The surveys were addressed to the director of the sales and use tax division in each state's department of revenue. The responses were obtained directly from the individual

Exhibit 2

Descriptive Statistics (By Year, By Method)–PANEL A Dollar Amount of Collections (in thousands)

YEAR	N	METHOD	MEAN	STD DEV	MINIMUM	MAXIMUM	MEDIAN
1997	2	1	114,000.1	159,675.9	1,092.2	226,908.0	114,000.1
1998	2	1	121,546.1	170,252.7	1,159.3	241,933.0	121,546.1
1999	2	1	158,679.5	222,592.3	1,283.0	316,076.0	158,679.5
2000	2	1	127,740.7	178,735.8	1,355.4	254,126.0	127,740.7
1997	7	2	352,800.2	382,124.6	4,668.2	963,526.7	223,023.2
1998	7	2	373,629.6	403,640.8	4,283.3	1,011,081.1	243,039.0
1999	7	2	389,246.1	414,829.3	4,732.6	985,129.7	242,555.3
2000	7	2	426,409.1	462,875.0	6,016.0	1,124,789.0	246,041.0
1997	3	3	814.2	767.8	102.9	1,628.1	711.7
1998	3	3	711.0	640.4	99.3	1,376.7	656.9
1999	3	3	746.9	638.8	124.9	1,401.2	714.4
2000	3	3	2,711.6	2,058.3	818.6	4,902.7	2,413.5

Method 1 = Line on return 2 = Separate form 3 = Both N = No. of states

states. Twenty-six completed surveys were received. Eight of the completed surveys contained insufficient data. Twelve of the remaining 18 surveys contained a common reporting period, 1997-2000.

The qualitative survey data include reporting and collection methods, amnesty periods and the status of the SSTP. The quantitative data include the dollar amount of collections and the number of taxpayers reporting use taxes.

Results

Most states use one of two use tax reporting and collection methods or some combination of the two methods: (1) separate use tax form/return, or (2) separate line on the state income tax return. Following is a summary of the reporting and collection methods used by the 12 states with a common reporting period:

- Two states use a separate line on their state income tax return for reporting and collecting use taxes (Method 1).
- Seven states use a separate form/return for reporting and collecting use taxes (Method 2).
- Three states use both a separate form/return and a separate line on their state income tax return for reporting and collecting use taxes (Method 3).

Most states view noncompliance as a problem; nonetheless, the majority of states (55.5 percent in our study) continue to rely upon voluntary compliance through self-reporting on a separate use tax form/return (Method 2).

Method 3 is fairly new and not used by very many states. However, North Carolina has recently adopted it and has seen significant increases in use tax collections.

Exhibit 1 contains descriptive statistics by state on the dollar amount of collections and the number of taxpayers reporting. The highest average use tax collections were reported in Texas (\$986 million), Illinois (\$956 million) and Missouri (\$300 million). All three of these states aggressively collect use taxes by requiring a sales and use tax return (Method 2).

Descriptive statistics by year, by method, are presented in Exhibit 2. It is obvious from Exhibit 2 that the largest average dollar amount of collections are for states that use a separate form/return for use tax reporting and collection (Method 2). The next largest average dollar amount of collections are for states that reported using a separate line on their state income tax returns for reporting and collecting use taxes (Method 1). Furthermore, Exhibit 2 indicates that states that use a separate line on their state income tax returns for reporting and collecting use taxes (Method 1) have a higher number of taxpayers reporting.

Size and tax rate differences could lead to size related effects; therefore, the raw data is not tested. However, statistical tests were performed on the annual growth rates (annual growth rates by state are reported in Exhibit 3). The test variables are:

1. dollar collections (growth),
2. number of taxpayers (growth), and
3. dollar collections per taxpayer (growth).

Exhibit 2

Descriptive Statistics (By Year, By Method)—PANEL B Number of Taxpayers Reporting (in thousands)

YEAR	N	METHOD	MEAN	STD DEV	MINIMUM	MAXIMUM	MEDIAN
1997	2	1	207.0	-	207.0	207.0	207.0
1998	2	1	202.2	-	202.2	202.2	202.2
1999	2	1	187.1	-	187.1	187.1	187.1
2000	2	1	188.3	-	188.3	188.3	188.3
1997	7	2	141.5	286.4	3.6	653.6	17.9
1998	7	2	144.5	293.3	3.0	669.1	18.4
1999	7	2	147.8	299.4	5.7	683.2	18.5
2000	7	2	139.8	282.7	4.6	645.4	18.1
1997	3	3	16.8	3.3	14.5	19.1	16.8
1998	3	3	15.1	2.6	13.3	17.0	15.1
1999	3	3	10.1	7.9	1.3	16.6	12.4
2000	3	3	72.9	101.1	11.5	189.6	17.5

Method 1 = Line on return 2 = Separate form 3 = Both N = No. of states

Exhibit 3

Annual Growth Rates—By State, By Year

STATE	YEAR	METHOD	\$ COLLECT	# REPORTS	\$/REPORT
CO	1998	2	-2.67%	0.00%	-2.67%
CO	1999	2	23.52%	0.00%	23.52%
CO	2000	2	-1.85%	0.00%	-1.85%
CT	1998	3	-15.44%	-7.93%	-8.15%
CT	1999	3	1.78%	-6.76%	9.16%
CT	2000	3	72.24%	-7.14%	85.48%
IA	1998	2	8.97%	2.66%	6.15%
IA	1999	2	-0.20%	0.61%	-0.80%
IA	2000	2	1.44%	-1.95%	3.46%
IL	1998	2	6.68%	N/A	N/A
IL	1999	2	10.71%	N/A	N/A
IL	2000	2	7.51%	N/A	N/A
KY	1998	3	-7.69%	-11.23%	3.99%
KY	1999	3	8.76%	-1.89%	10.85%
KY	2000	3	14.57%	4.91%	9.21%
MI	1998	1	6.14%	N/A	N/A
MI	1999	1	10.68%	N/A	N/A
MI	2000	1	5.64%	N/A	N/A
MO	1998	2	5.38%	-1.54%	7.03%
MO	1999	2	7.85%	-2.66%	10.80%
MO	2000	2	8.37%	-1.64%	10.17%
NC	1998	3	-3.47%	N/A	N/A
NC	1999	3	25.74%	N/A	N/A
NC	2000	3	3826.27%	14263.79%	-72.67%
OK	1998	2	9.06%	N/A	N/A
OK	1999	2	3.03%	N/A	N/A
OK	2000	2	13.76%	N/A	N/A
PA	1998	2	-8.25%	-17.82%	11.65%
PA	1999	2	10.49%	90.51%	-42.00%
PA	2000	2	27.12%	-18.72%	56.39%
TX	1998	2	4.94%	2.37%	2.51%
TX	1999	2	-2.57%	2.11%	-4.58%
TX	2000	2	14.18%	-5.54%	20.87%
WI	1998	1	6.62%	-2.34%	9.18%
WI	1999	1	30.65%	-7.46%	41.17%
WI	2000	1	-19.60%	0.64%	-20.11%

Method
 1 = Line on return
 2 = Separate form
 3 = Both

\$ Collect = \$ amt. of collections
 # Reports = No. of taxpayers
 \$/Report = \$ amt. collected per report

We calculated group means for the test variables for each state, for each collection method and for each year.

To test for differences among groups, we performed ANOVAs. The ANOVA is an overall test of equality of the means of the groups; it provides an F-test of the null hypothesis that the means are equal. Where the null hypothesis was rejected, indicating a difference in the means, we performed the Tukey multiple comparison procedure¹⁵ to determine which means are different. Multiple comparison procedures determine which groups are significantly different when compared two at a time. ANOVA and Tukey results are reported in Exhibits 4 and 5.

The ANOVA test results on dollar collections (growth) (Exhibit 4, Model A) do not indicate any significant differences for the three collection methods, the 12 states or the four years (1997-2000) covered by our study.

The ANOVA test results on number of taxpayers (growth) (Exhibit 4, Model B) indicate that significant differences exist among the 12 states, but not among the three collection methods or the four years covered by our study. The Tukey results (Exhibit 5, Model B) indicate significant differences between mean growth in North Carolina and the other eight states reporting data on the number of taxpayers. The ANOVA test results on collections per taxpayer (growth), (Exhibit 4, Model C) indicate that no significant differences for the three collection methods, the states or the four years covered by our study.

Conclusion

Most states have traditionally used separate use tax forms/returns to collect use taxes. However, in recent years, some states have either replaced use tax forms/returns with a line item on the state income tax return, or use both methods to report and collect use taxes. In 1999, North Carolina began requiring individuals to report and remit use tax on their state income tax return.¹⁶ This change

appears to be driving the state differences documented in this study. The ANOVA and Tukey results suggest that using a line item on the state income tax return to collect use taxes might lead to increases in the number of taxpayers. As states continue to struggle with budget deficits, they will more aggressively look for opportunities to increase state revenues. The significant growth realized in North Carolina may lead other states to revise their use tax reporting and collection methods.

The growth in business-to-consumer e-commerce, mail order and home shopping retail activity poses a significant problem for the collection of state and local government sales and use tax revenue. As a result of reporting and collection changes, several states are seeing increased compliance with state use tax¹⁷ laws. The additional revenue collected as a result of modifications in use tax reporting and collection procedures may not make a huge dent in the state budget shortfall, but it is a significant contributor to the alleviation of state budget woes. Once the SSTP is in full swing, it will be even easier for states to collect use tax and further increase the collection of use tax revenue. These efforts to increase the collection of sales and use taxes will help level the playing field between brick and mortar stores and other types of retailers, and will further ease the current budget crisis.

ENDNOTES

- ¹ T. Herman & M. Higgins, *Attention Shoppers: Pay Your Sales Tax*, WALL ST. J., Nov. 13, 2003.
- ² *Id.*
- ³ *National Bellas Hess Inc. v. Department of Revenue of the State of Illinois*, 386 U.S. 753 (1967).
- ⁴ *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).
- ⁵ *States Move to Tax Internet Sales*, TECHWEB NEWS, March 4, 2004. URL: www.internetweek.com.
- ⁶ Donald Bruce & William F. Fox, *State and Local Sales Tax Revenue Losses from E-Commerce: Updated Estimates*, prepared for the Institute for State Studies, Salt Lake City, Utah (2004).
- ⁷ Five states do not have a general sales tax.
- ⁸ The committee was composed of 19 members including the secretaries of Commerce and Treasury, the U.S. trade representative and representatives from state and local governments and the electronic commerce industry.

Exhibit 4 Anova Results

MODEL A

VARIABLE: DOLLAR COLLECTIONS (GROWTH)

GROUP	N	J	F-VALUE	P(F)	R-squared
STATE	36	12	1.00	0.471	0.315
METHOD	36	3	1.58	0.221	0.088
YEAR	36	3	1.05	0.363	0.060

MODEL B

VARIABLE: NUMBER OF TAXPAYERS (GROWTH)

GROUP	N	J	F-VALUE	P(F)	R-squared
STATE	25	12	48,190.80	0.001*	0.999
METHOD	25	3	1.31	0.290	0.106
YEAR	25	3	0.87	0.432	0.074

MODEL C

VARIABLE: COLLECTIONS PER TAXPAYER (GROWTH)

GROUP	N	J	F-VALUE	P(F)	R-squared
STATE	25	12	1.26	0.331	0.386
METHOD	25	3	0.02	0.976	0.002
YEAR	25	3	0.10	0.908	0.009

Method

1 = Line on return

N = No. of observations

2 = Separate form

J = No. of means

3 = Both

* indicates significance at the 0.05 level.

Exhibit 5 Tukey Multiple Comparison Procedure Results (Type I experimentwise error rate = 0.05)

MODEL B

VARIABLE: NUMBER OF TAXPAYERS (GROWTH)

GROUP	N	J	CRITICAL VALUE
STATE	25	12	5.03

Significant Comparisons*

NC vs. PA

NC vs. WI

NC vs. TX

NC vs. MO

NC vs. CO

NC vs. KY

NC vs. IA

NC vs. CT

GROUP	N	J	VALUE
STATE	51	3	3.42

Significant Comparisons*

Method 1 vs. Method 2

Method 1 vs. Method 3

N = No. of observations

J = No. of means

*indicates significance at the 0.05 level.

ENDNOTES

⁹ The WALL ST. J., 2003.

¹⁰ *Id.*

¹¹ L.R. Ingraham, K.R. Nunez & M.L. Wright, *Use tax collections on the rise in North Carolina. Interim Report* (2d ed. 2002).

¹² Individuals not required to file a North Carolina individual income tax return must file the separate use tax form.

¹³ Data collected from the Sales and Use Tax

Division, Department of Revenue, State of North Carolina. The North Carolina Department of Revenue estimates that the unreported use tax on mail order, Internet, home shopping and other out-of-state shipments was \$140 million for the fiscal year ending June 30, 2001. It is also estimated that this loss could grow to \$400 million by the end of 2003/2004.

¹⁴ Starting with the December 2001 report, use taxes were no longer separately stated. In addition, there was a .5 percent increase in the sales and use tax rate.

¹⁵ J.W. Tukey, *The problem of multiple comparisons*. Mimeo (1953).

¹⁶ Individuals not required to file a North Carolina individual income tax return must file the separate use tax form.

Appendix A: State Survey

1. a. Position Title of person completing this survey _____
b. E-mail address (optional) _____
2. What method does your state use to collect use tax? ☐ Line item on individual income tax return
☐ Separate Use Tax Form ☐ Other (list) _____ ☐ Use tax not enforced
3. Has this method changed within the last five years? ☐ yes ☐ no
4. Please complete the following table:

FYE	Last 5 Years Under Current Method			Last 5 Years Prior to Change Under Previous Method		
	Dollar Amount of Collections	Total Number of Taxpayers Reporting	Estimated Percentage Compliance	Dollar Amount of Collections	Total Number of Taxpayers Reporting	Estimated Percentage Compliance
2001						
2000						
1999						
1998						
1997						
1996						
1995						
1994						
1993						

5. Please list any other methods being used to collect use tax on items purchased out-of-state.
6. List any methods the state is using to identify unreported purchases of out-of-state merchandise subject to the consumer use tax.
7. Did your state have an amnesty period for the payment of use tax during these reporting periods?
☐ During current method ☐ Previous method ☐ No amnesty period
8. In your opinion, was the amnesty the possible reason for the level of collections during that period? If not, have any other reasons been identified?
9. Have you adopted the Streamlined Sales and Use Tax Project (SSTP)? ☐ Yes ☐ No
10. What do you see as the strengths or weaknesses of the SSTP?