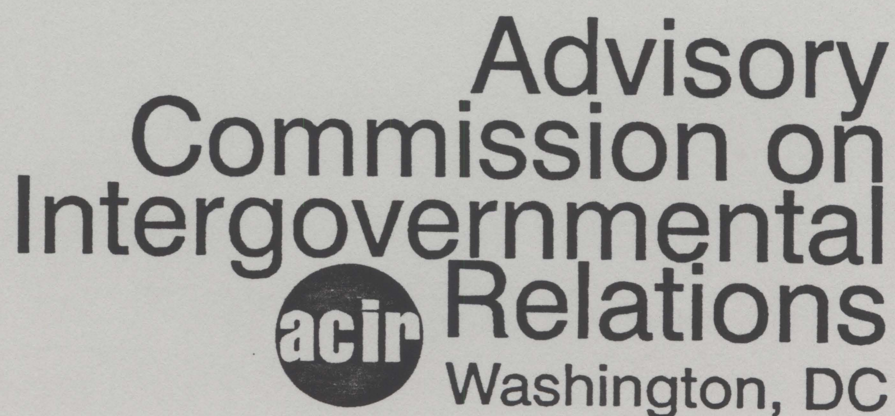
Taxation of Interstate Mail Order Sales 1994 Revenue Estimates



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Advisory Commission on
Intergovernmental Relations

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Preface and Acknowledgments

State and local governments have been unable to require collection of their sales taxes by out-of-state mail order firms since the 1967 U.S. Supreme Court opinion in *National Bellas Hess* v. *Illinois Department of Revenue*. The Court held that the companies could not be required to collect sales and use taxes for states in which their only presence consists of distributing catalogs and advertising materials.

In 1984 and 1985, the Advisory Commission on Intergovernmental Relations undertook a study of state and local taxation of out-of-state mail order sales. On September 20, 1985, a majority of the Commission voted to recommend to the Congress that legislation be enacted negating *National Bellas Hess* by requiring mail order vendors to collect state use taxes on interstate sales delivered in any state in which the vendor engaged in regular or systematic sales solicitation. The Commission recommended a substantial *de minimis* provision and a single state-local tax rate in the legislation. Six members of the Commission filed a strong dissent from the recommendation.

The recommendations, the dissent, and the staff study were published in 1986 in *State and Local Taxation of Out-of-State Mail Order Sales*. The revenue estimates were updated for 1985-1988 in *Estimates of Revenue Potential from State Taxation of Out-of-State Mail Order Sales* (1987), and for 1990-1992 in *State Taxation of Interstate Mail Order Sales* (1992).

In 1992, the Supreme Court held in *Quill Corporation* v. *North Dakota* that under certain conditions states were not barred from requiring payment of the use tax by an out-of-state seller.

In 1994, a proposed "Tax Fairness for Main Street Business Act" (S.1825) was introduced in the U.S. Senate to authorize the collection of state and local use taxes on interstate mail order sales of tangible personal property.

Holley Ulbrich of Clemson University prepared the 1994 state-local revenue estimates. Professor Ulbrich conducted the original study in 1984-85 and has prepared all the previous updates. She was assisted by Ellen W. Saltzman, a graduate research assistant at Clemson.

ACIR is grateful to Christopher Zimmerman of the National Conference of State Legislatures and to Michael R. Mazerov of the Multistate Tax Commission for their comments and suggestions.

ACIR staff members Seth B. Benjamin and Jill Gibbons also provided assistance.

ACIR assumes full responsibility for the accuracy of the study.

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Taxation of Interstate Mail Order Sales 1994 Revenue Estimates

Introduction

Consumers who purchase goods from out-of-state mail order firms owe a use tax on taxable purchases equivalent to the sales tax they would have paid on purchases from an in-state firm. Although most states have had use taxes as long as they have had sales taxes, the use tax is quite difficult to collect unless the out-of-state seller has some nexus or physical link to the state. Only if such a link exists can states require collection of the tax, according to the U.S. Supreme Court opinion in *National Bellas Hess, Inc.* v. *Illinois Department of Revenue* (1967). However, in *Quill Corporation, Inc.* v. *North Dakota* (1992), the Court ruled that the Congress could overturn the nexus provision and authorize the states to require payment.

States have been seeking relief from the nexus requirement because of (1) the effects on noncollection of state revenues and (2) adverse competitive effects on in-state retailers. This report provides estimates for 1994 of the potential revenue from collecting state and local sales or use taxes on interstate mail order sales that are presently untaxed. The estimates are based on the $3 million *de minimis* and the local sales tax provisions of legislation pending in the Congress (S.1825).

The methodology for producing the estimates was developed by ACIR in 1986 and published in *State and Local Taxation of Out-of-State Mail Order Sales*. The last estimates were published by ACIR in *State Taxation of Interstate Mail Order Sales: Estimates of Revenue Potential 1990-1992.*

In a recent study on behalf of the Direct Marketing Association, Robert Nathan and Associates used a similar methodology, but produced lower estimates than those in this report (see Appendix 2).

Highlights

- The estimated potential total sales and use tax revenue from mail order sales is $4.57 billion in 1994. This excludes firms with sales of less than $3 million.
- After allowing for estimated tax payments, the estimated *additional* revenue from taxing mail order sales that currently escape the use tax is $3.30 billion

for 1994. This figure represents approximately 2.4 percent of total state sales and use tax collections. (Five states have no sales tax.)

- Nine states would receive more than $100 million in additional 1994 revenue, with California's gain of $483 million the highest, followed by New York at $359 million. Seven states would get less than $10 million.

Methodology

Overview

A base was developed of total 1992 mail order sales (the most recent available figures) that are potentially taxable. This figure was then adjusted for the *de minimis* requirement in S.1825. Exempting firms with national sales of less than $3 million reduces collection and compliance costs considerably, with only a modest impact on the base and potential revenue.

This adjustment was made by multiplying the base by a percentage rather than by subtraction to avoid duplicating subtractions at later stages. The resulting base, $80.34 billion, was apportioned among the 50 states and the District of Columbia in proportion to personal income. The resulting figure is the mail order sales base.

For each state, we calculated a tax rate that reflects the state provisions for local sales and use taxes. The local tax adjustment was made by applying the ratio of local to state sales tax collections to the state sales tax rate. The combined state-local rate was then reduced by the proportion of mail order purchases in each state that consists of items not subject to the sales and use tax. This calculated rate, which is used to reflect relative state exemptions, is not the rate that would actually be imposed if

The Methodology at a Glance

Description	Amount (billions)
1992 Gross Mail Order Sales	**$153.13**
Less Sales Not Likely to be Taxed	
100% of Services	–26.62
75% of Business Purchases ($57.30)	–42.98
	$ 83.53
Less Federal Government Purchases	–.76
1992 Potential Taxable Base	$ 82.77
Adjust to 1994 – 5% Annually	+8.48
1994 Potential Taxable Base	$ 91.25
Less *De Minimis* Exempted Sales	–10.91
1994 Gross Base	$ 80.34
1994 Estimated Sales Tax on Mail Order Sales, Using State and Local Exemption-Adjusted Rates	**$ 4.57**
Adjustment for Sales from Which Taxes Are Collected	
1994 Gross Base	**$ 80.34**
Less Sears, Penney, Spiegel, and Cable TV Shopping Networks	–9.09
Less Other Sales by Firms with Nexus (16.5%)	–13.257
1994 Untaxed Base	$ 58.00
1994 Estimated Revenue from Untaxed Sales, Using State and Local Exemption-Adjusted Rates	**$3.302**

S.1825 is approved. The product of the exemption-adjusted state-local tax rate and the state's mail order sales base represents *total* potential revenue for each state.

To determine *additional* revenue, it was necessary to adjust the total base for in-state sales collections and for base with existing nexus or voluntary compliance on interstate sales. The resulting nexus-adjusted 1994 state mail order sales base is $58.00 billion. The exemption-adjusted rate for each state was applied to this base to determine the potential additional revenue—$3.30 billion—from taxing interstate mail order sales.

Overall Base Estimates

The adjusted mail order sales and use tax base is derived from *1993 Portable Mail Order Industry Statistics* (Richard D. Irwin), supplemented by more detailed information from Arnold Fishman's *1992 Guide to Mail Order Sales* (Marketing Logistics, Inc.). The decision to use Fishman rather than the *Census of Retail Trade* is consistent with prior estimates. In addition to being less current, the Census data are much less comprehensive than Fishman because they identify only firms whose primary business is mail order. A significant amount of mail order trade is with firms for which it is a secondary line of business.

Fishman identifies 1992 mail order sales of $153.3 billion in three categories: (1) tangible goods sold to consumers, $69.21 billion; (2) sales of nonfinancial services to consumers, $26.62 billion; and (3) products sold to business firms, $57.30 billion. All consumer tangible goods sales are initially included in the base. Adjustments for exemptions are made at a later stage because exemptions of goods vary from state to state.

No service sales were included because S.1825 would authorize collection of taxes only on mail order sales of "tangible personal property."

Finally, 25 percent of business purchases are included in the base, a somewhat arbitrary figure that was used in earlier ACIR estimates and was maintained for consistency. A review of the composition of business purchases suggests that 25 percent is quite conservative. For example, a study of Connecticut sales taxes indicated that 40 percent of the revenue was derived from business purchases. A large share of these purchases consists of office supplies, furnishings, and electronic equipment. Since such purchases are final sales (not directly incorporated in the final product), they would be taxable in many states unless they are purchased by the federal government. Federal purchases totaled $760 million in 1992 and were adjusted out of the base.

The resulting estimate of taxable mail order sales for 1992 is $82.77 billion. Assuming nominal growth of 5 percent per year, the estimated national mail order sales tax base (before adjustments) projected for 1994 is $91.25 billion.

De Minimis Adjustment

The application of a *de minimis* rule would reduce potential revenue gains to states somewhat, but would also reduce collection and compliance costs considerably. S.1825 includes a *de minimis* exemption for firms with sales less than $3 million (or less than $100,000 in a given state). The size distribution data from the *1987 Census of Retail Trade* is applied to the broader base developed from Fishman.

A cursory examination suggests that the Census size distribution pattern holds for the larger base developed by Fishman. According to the 1987 Census, 63 percent of mail order industry sales were made by firms with sales over $50 million, while Fishman's guide lists 62 percent of sales. The closest Census size data break to $3 million is at $2.5 million in sales. Adding 20 percent of the firms with sales between $2.5 million and $5 million to bring the exempt firms up to the $3 million threshold would exempt 89 percent of mail order firms but only 12.2 percent of sales from compliance.

However, each of these firms has to collect sales tax in its home state. To avoid a double correction for nexus, we remove only 98 percent of these sales from the tax base. The resulting *de minimis* adjustment is 11.96 percent of the base. The *de minimis*-adjusted 1994 mail order sales base is $80.34 billion. These sales were apportioned among the 50 states and the District of Columbia on the basis of personal income.

Exemption-Adjusted Rates

The 1994 effective state and local combined sales tax rate for each state, calculated in accordance with S.1825, was adjusted to account for

six commonly used exemptions that involve a significant share of mail order purchases: food, clothing, prescription and nonprescription drugs (separately), magazine subscriptions, newspaper subscriptions, and religious items. The rate was adjusted proportionately for each state where one or more of these categories was exempt from the sales and use tax.

For example, apparel accounted for 6.0 percent of the mail order base used in ACIR estimates. We reduced the effective tax rate in each state that exempts clothing by 6.0 percent of the official rate. (The adjustment was smaller in Connecticut, which exempts only clothing selling for less than $50.) The result of these adjustments was an exemption-adjusted effective rate in the 45 states with sales taxes. The (unweighted) average adjusted sales tax rate for the states and the District of Columbia was 5.83 percent.

The exemption-adjusted rate was applied to the sales base to determine total potential revenue from mail order sales, including sales on which taxes are being collected. This revenue was estimated to be $4.57 billion in 1994 before collections adjustments. State-by-state estimates are given in Table 1. We have greater confidence in this total revenue figure than the

Table 1
Total Potential Revenue from Mail Order Sales, 1994
(millions)

State	State Base*	Sales Tax Revenue**
Alabama	$1,063.7	$67.3
Alaska	200.7	0.0
Arizona	1,042.3	61.5
Arkansas	589.3	27.2
California	10,393.5	668.8
Colorado	1,107.9	66.3
Connecticut	1,408.6	69.8
Delaware	233.3	0.0
District of Columbia	245.2	13.7
Florida	4,159.1	233.9
Georgia	1,943.5	101.0
Hawaii	390.2	13.6
Idaho	271.7	13.4
Illinois	3,987.3	322.9
Indiana	1,621.5	75.5
Iowa	816.6	39.1
Kansas	775.9	46.4
Kentucky	984.8	57.7
Louisiana	1,066.7	85.7
Maine	357.2	18.4
Maryland	1,789.0	83.2
Massachusetts	2,295.0	95.6
Michigan	2,923.5	150.1
Minnesota	1,427.6	73.5
Mississippi	582.9	38.9
Missouri	1,551.8	88.0
Montana	208.8	0.0
Nebraska	486.2	24.1
Nevada	428.7	24.1
New Hampshire	405.3	0.0
New Jersey	3,282.8	155.4
New Mexico	384.4	23.3
New York	6,786.0	497.9
North Carolina	1,919.2	98.5
North Dakota	169.8	8.1
Ohio	3,243.8	161.1
Oklahoma	825.6	58.0
Oregon	858.2	0.0
Pennsylvania	3,863.2	200.8
Rhode Island	324.0	19.6
South Carolina	914.1	43.3
South Dakota	186.6	10.1
Tennessee	1,386.7	95.3
Texas	5,024.8	325.8
Utah	441.1	23.3
Vermont	170.5	8.3
Virginia	2,087.5	83.0
Washington	1,661.1	105.6
West Virginia	432.8	25.7
Wisconsin	1,490.9	64.6
Wyoming	128.3	6.1
Total, all states	$80,339.5	
Total, tax states only	$78,433.1	$4,573.3

* Adjusted for *de minimis*.

**Includes local taxes.

Sources: ACIR calculations based on *Portable Mail Order Industry Statistics, 1993 Edition*; Fishman's *1992 Guide to Mail Order Sales*; Advisory Commission on Intergovernmental Relations, *Significant Features of Fiscal Federalism, 1993 Edition, Volume 1*; and U.S. Department of Commerce, Bureau of the Census, *1987 Census of Retail Trade*.

nexus-adjusted figure given below because of the difficulty of determining how much of current sales tax collections are accounted for by mail order sales.

Collections Adjustment

The final correction is for taxes being collected. There is reason to believe that the collections have increased since ACIR's original estimates in 1986. These collections arise from in-state sales, nexus in other states, voluntary compliance by sellers, and collection from purchasers (mostly business).

The 1992 sales base included catalog sales by Sears, J.C. Penney, and Spiegel, which collect sales and use taxes in all states. Their combined sales are adjusted for growth and inflation to 1994 and subtracted from the base. (Sears sales were included in the 1992 base and must be adjusted out, even though the company is no longer in the catalog sales business.) In addition, the two cable TV shopping channels are a major source of voluntary compliance, and the base is adjusted for their sales. The combined sales of the three companies and two networks was $9.09 billion.

The reduction for nexus collections by other firms is much more difficult to determine. A sample of catalogs suggests that nexus is typically limited to the home state, occasionally extending to one or two others. Of a sample of 92 catalogs for a variety of consumer and some business products, 58 companies collected sales tax for one state, 16 for 2 states, 10 for 3 to 5 states, 3 for 6 to 8 states, and 4 for 11 or more states. One firm, based in New Hampshire (which does not have a sales tax), did not collect any sales tax, while one seller collected tax in 35 states. Only three firms in the sample collected sales tax in all states, and their sales were included in the previous adjustment.

We were able to obtain sales figures for 27 of these mail order firms with less than all-state collections. Twenty of them were listed by Fishman among the top 460 firms with sales of $30 million or more and seven that were subsidiaries of mail order conglomerates. The sales figures and number of states in which sales tax is collected, according to the catalogs, is reported in Table 2, with firms ranked by sales size. Based on this sample, we estimated that 16.5 percent of these sales are subject to tax. This figure was used as the second adjustment to the base for taxes being collected.

Table 2
Sales Volume and Number of States for Which Sales Tax is Collected, Selected Mail Order Firms, 1992

Firm	1992 Sales (millions)	Number of States*
L.L. Bean	$662.0	1
Land's End	597.0	3
Quill	341.0	4
Damark	270.3	1
Bradford Exchange	270.0	1
Domestications	263.0	4
L'eggs/Hanes	230.0	3
Lane Bryant	207.9	51
Victoria's Secret	200.0	35
Lillian Vernon	156.8	2
Roaman's	104.0	51
Old Pueblo Trader	79.3	1
Miles Kimball	66.0	2
Bedford Fair	54.9	2
Ambassador	41.6	1
Jackson and Perkins	40.3	51
Harriet Carter	39.6	1
Country Curtains	36.5	1
Herrington	34.8	0
Hammacher Schlemmer	33.7	5
Barnes and Noble	31.5	8
Nature's Jewelry	30.0	1
Learn and Play	16.3	2
The Stitchery	15.1	1
Unique Petite	9.6	1
Intimate Appeal	5.5	1
Jewelry Values	3.1	1

* District of Columbia included.

Sources: Fishman's *1992 Guide to Mail Order Sales* and individual company catalogs.

We recognize that there may be other collections as a result of voluntary compliance by purchasers or audits of some business purchases, which are easier to track than households. However, we have no way of determining the amount of such collections. In any case, our 1994 base after nexus adjustments for sales subject to tax is $58.00 billion, a downward adjustment of $22.34 billion. The collection-adjusted base is distributed among the states on the basis of personal income. We are less sanguine about the state-by-state collections estimates

than the overall estimates. We speculate that larger states, such as California, which have more companies with nexus and have been more aggressive about collections, are probably collecting a larger than average share, while some smaller states are collecting a less than average share.

Estimated Revenue Gain

The final step in determining revenue gain, or potential additional revenue, was to apply the exemption-adjusted rate to the *de minimis*- and collection-adjusted base. The product of these two numbers is the estimated revenue gain for 1994 for each of the 45 states with sales taxes and the District of Columbia. The resulting estimates are reported in Table 3. We place more confidence in the aggregate figure than in the individual state estimates because the allocation among states is at best an approximation. (Some states may have more mail order purchases relative to personal income than others, depending on such factors as how rural they are, how many elderly persons there are in the state, or the distribution of increasingly upscale purchases by mail.) The total revenue gain is estimated at $3.30 billion for 1994.

Table 3
Total Potential Additional Revenue from Mail Order Sales, 1994
(millions)

State	Adjusted Base*	Additional Revenue**
Alabama	$767.9	$48.6
Alaska	144.9	0.0
Arizona	752.4	44.4
Arkansas	425.5	19.6
California	7,503.2	482.8
Colorado	799.8	47.9
Connecticut	1,016.9	50.4
Delaware	168.4	0.0
District of Columbia	177.0	9.9
Florida	3,002.5	168.9
Georgia	1,403.0	72.9
Hawaii	281.7	9.8
Idaho	196.2	9.7
Illinois	2,878.5	233.1
Indiana	1,170.6	54.5
Iowa	589.5	28.3
Kansas	560.1	33.5
Kentucky	710.9	41.7
Louisiana	770.1	61.9
Maine	257.8	13.3
Maryland	1,291.6	60.1
Massachusetts	1,656.8	69.0
Michigan	2,110.6	108.4
Minnesota	1,030.6	53.1
Mississippi	420.8	28.0
Missouri	1,120.3	63.5
Montana	150.7	0.0
Nebraska	351.1	17.4
Nevada	309.5	17.4
New Hampshire	292.6	0.0
New Jersey	2,369.9	112.2
New Mexico	277.5	16.8
New York	4,898.9	359.4
North Carolina	1,385.5	71.1
North Dakota	122.6	5.8
Ohio	2,341.7	116.3
Oklahoma	596.0	41.8
Oregon	619.6	0.0
Pennsylvania	2,788.9	145.0
Rhode Island	233.9	14.2
South Carolina	659.9	31.3
South Dakota	134.7	7.3
Tennessee	1,001.1	68.8
Texas	3,627.5	235.2
Utah	318.5	16.8
Vermont	123.0	6.0
Virginia	1,506.9	59.9
Washington	1,199.2	76.2
West Virginia	312.4	18.6
Wisconsin	1,076.3	46.6
Wyoming	92.6	4.4
Total, all states	$57,998.3	
Total, tax states	$56,622.0	$3,301.5

* Adjusted for revenue currently being collected.

** Includes local taxes.

Sources: ACIR calculations based on *Portable Mail Order Industry Statistics, 1993 Edition*; Fishman's *1992 Guide to Mail Order Sales*; Advisory Commission on Intergovernmental Relations, *Significant Features of Fiscal Federalism, 1993 Edition, Volume 1*; and U.S. Department of Commerce, Bureau of the Census, *1987 Census of Retail Trade*.

Concluding Comments

Several cautions should be attached to these estimates.

1) They are based on current reporting of mail order sales. There may be unreported mail order sales that are not included.

2) One of the most difficult figures to determine is the adjustment for taxes being collected. As a result of stepped-up state enforcement in recent years, this figure may be higher than our estimates, reducing the estimated revenue gains from untaxed mail order sales.

3) The share of business purchases that would fall in the tax realm is probably higher than we thought when making earlier estimates. For consistency, we kept that ratio. However, business mail order purchases consist largely of office supplies and equipment, which are taxable in many states. Our limited inclusion of business purchases probably makes the revenue estimates too low. On the other hand, it is possible that more firms may be either meeting the nexus test or in voluntary compliance than we allowed for, so the collections adjustment may be too low. In that case, estimated revenue gains would be understated. Given these offsetting errors, the resulting revenue gain estimates should be used with caution.

4) If states are able to tax a broader range of mail order sales than is presently feasible, they may experience increases in sales and use tax revenues close to those projected in this report, but some of that revenue may come from in-state firms rather than mail order firms. These revenue projections do not attempt to account for any switching of purchases between in-state and mail order sellers as a result of changes in tax obligation.

Appendixes

Appendix 1

Changes in Methodology from the 1990-1992 Estimates

Several changes were made in the methodology for this report.

1) We used the assumptions specified in S.1825, which call for a combined state-local rate and a $3 million *de minimis* exemption. These two changes would give us higher figures than reported for 1990-1992.
2) We made the *de minimis* correction to the original base, which makes the base appear relatively smaller than in earlier estimates.
3) We reviewed other exclusions from the base more thoroughly, drawing in part on the work of Nathan Associates, which reduced the base, including a correction for sales to the government and a partial elimination of catalog showroom sales. The net effect of these changes was to reduce the base.
4) The exemptions were carefully reviewed and adjusted, particularly magazines, newspapers, and sales by religious organizations, a growing share of mail order sales. Unlike the earlier reports, this study provided an estimate of total potential tax revenue from mail order sales at this stage, including what is collected as well as the uncollected amount.
5) We gave much more attention to the issue of nexus, reviewing catalogs, utilizing some of the information from the Nathan Associates report, and raising the issue of increased voluntary compliance and collection from purchasers. The result is a larger nexus adjustment, reflected in the lower collections-adjusted revenue.

We believe that these changes increase the accuracy of the estimates and provide a firmer foundation for predicting the revenue impact of the proposed legislation.

Appendix 2

The Nathan Associates Estimates

A recent study, *The Impact of Taxing Interstate Mail Order Sales on State/Local Government Revenue* (February 1994) was produced by Robert Nathan Associates on behalf of the Direct Marketing Association. They used a methodology similar to ACIR's, but with slightly different assumptions, and estimated 1992 revenue gains of $1.38 billion. Projecting to 1994 at the current rate of growth of mail order sales, that estimate of sales and use tax revenue increases to $1.6 billion.

The Nathan Associates estimates were developed prior to the introduction of S.1825. Adjusting for the lower *de minimis* provisions of the bill and adding in the required payments on behalf of local governments would increase the estimates by approximately 10 percent, to $1.76 billion, which is 53 percent of the ACIR estimate.

The methodological differences are relatively modest, with one important exception. Both the ACIR and Nathan estimates are based on Fishman and both use the methodology developed for ACIR's 1986 study, *State and Local Taxation of Out-of-State Mail Order Sales*. Both use the Fishman data to develop the taxable base and the Census size data as a way to estimate the *de minimis* exemption, with some differences about what is included in the base. ACIR's *de minimis* threshold is lower because the Commission had access to the proposed S.1825.

Both studies adjust for exemption of certain items based on their share in the mail order base. Nathan made these adjustments to the base, while ACIR made the adjustments to the sales tax rate. Therefore, other things being equal, we would have a higher base and a lower rate, with essentially the same revenue consequences. Both sets of estimates use a state and local combined rate, as specified in current legislation, and both adjust for nexus. While the Nathan study had access to more detailed information, the ACIR adjustment of $22.02 billion is surprisingly similar to their estimate of $23.7 billion of sales currently subject to collections.

The basic differences between the two studies are not conceptual, but mathematical, in using multiplicative versus additive adjustments. We believe that the lower estimate of

revenue potential in the Nathan Associates report is based on a mathematical difference. The results of successive subtractions (Nathan) is quite different from the result of successive multiplications (ACIR). The Nathan method fails to eliminate duplicate subtractions, thus underestimating the base and the revenue potential.

Nontaxed sales should be adjusted for as a group because they involve no duplication, but subtracting different kinds of adjustments is not appropriate because the effect is nonadditive. A mail order sale of food to government would be subtracted twice; a sale of food to government by a small firm would be subtracted three times. As the number of subtractions increases, the differences increase accordingly.

Appendix 3

State Sales and Use Tax Provisions on Interstate Mail Order Sales

Alabama
Not liable if only connection with Alabama is sending catalogs into the state.

Arizona
Liable if solicitations are substantial and recurring and if retailer benefits from in-state banking, financing, debt collection, communication system, or marketing activities, or authorized installation, servicing, or repair facilities.

Arkansas
Liable if retailer engages in continuous, regular, or systematic solicitation by advertisement or through mail order or catalog publications. Use tax imposed on distribution of tangible personal property.

California
Liable if retailer engages in business in the state.

Colorado
Not liable if only connection is by U.S. mail or common carrier.

Connecticut
Liable if retailer solicits sales in the state and makes 100 or more retail sales to destinations within the state during the 12-month period ended on the preceding September 30; no tax if only using mail or common carrier.

District of Columbia
Liable.

Florida
Liable if out-of-state dealer is a corporation doing business under the laws of Florida or a person domiciled in Florida, maintains retail establishments or offices in the state, has agents in the state, creates nexus with the state or consents to imposition of the tax; if the property was delivered in this state in fulfillment of a sales contract that was entered into in this state; if another jurisdiction uses its taxing powers and its jurisdiction over the retailer in support of this state's taxing powers, the dealer is subject to service of process, the dealer's mail order sales are subject to the power of this state to tax sales or to require the dealer to collect use taxes under a statute or statutes of the United States; the dealer, while not having nexus with this state on any of the bases described above or below, is a corporation that is a member of

affiliated group of corporations (as defined in Internal Revenue Code Sec. 1504(a) whose members are includible under IRC Sec. 1504(b) and whose members are eligible to file a consolidated federal corporation income tax return and any parent or subsidiary corporation in the affiliated group has nexus with Florida on one or more of the bases described above or below; or the dealer or his activities have sufficient connection with or relationship to this state or its residents of some type other than those described above to create nexus empowering this state to tax its mail order sales or to require the dealer to collect sales tax or accrue use tax

Georgia
Liable.

Hawaii
Liable.

Idaho
Liable if retailer engages in business in the state.

Illinois
Liable if retailer maintains a business in the state.

Indiana
Liable if out-of-state retailer regularly solicits sales in Indiana – makes at least 100 retail transactions from outside Indiana to destinations in Indiana during any 12-month period or makes at least 10 retail transactions totaling more than $100,000 from outside Indiana to destinations in Indiana during a 12-month period.

Iowa
Liable if retailer benefits from any in-state banking, financing, debt collection, telecommunications, or market activities; or benefits from authorized installation, servicing, or repair facilities.

Kansas
Liable if retailer maintains place of business or agent in the state or solicits orders through catalog or other advertising media.

Kentucky
Liable if retailer utilizes services of any in-state financial institution, telecommunication system, radio or TV station, cable TV service, print media, or other facility or service.

Louisiana
Liable if retailers make sales of tangible personal property for distribution, storage, use, or other consumption in the state. Use tax due on mail order shipments by concerns having a place of business or qualified to do business in the state.

Maine
Liable if retailer has employee or agent in state.

Maryland
Liable if retailer engages in business in the state.

Massachusetts
Liable. The Massachusetts Department of Revenue will not enforce the law until federal statutory or case law specifically authorizes each state to require foreign mail order vendors to collect sales and use taxes on goods delivered to that state.

Michigan
No tax on the storage, use, or consumption of property that the state is prohibited from taxing under U.S. law.

Minnesota
Liable if retailer has a place of business in the state or any representative, agent, salesperson, canvasser, or solicitor operating in the state under the authority of the retailer or its subsidiary. A retailer making retail sales from outside the state to a destination within the state and not maintaining a place of business in the state must collect the use tax if the retailer engages in the regular or systematic soliciting of sales from potential customers in the state.

Mississippi
Liable if retailer does business in the state.

Missouri
Not liable unless retailer has agent or representative in the state or maintains place of business and a stock of goods, or engages in business activities, and total gross receipts exceed $500,000 in Missouri or $12.5 million in the U.S. in the preceding calendar year.

Nebraska
Not liable if only connection is by mail, advertisements, etc.

Nevada
Liable if retailer maintains place of business in the state.

New Jersey
Not liable if only connection is by mail or common carrier.

New Mexico
Liable if attempting to exploit in-state markets, including delivering or distributing products as a consequence of an advertising or other sales program.

New York
Liable if retailer has more than $300,000 in gross receipts from deliveries in New York and more than 100 deliveries into New York in December-November, and solicitation satisfies nexus requirement.

North Carolina
Liable if retailer engages in business in the state.

North Dakota
Liable if retailer has place of business or agent in the state; not liable if all business in state is conducted by U.S. mail, telephone, or common carrier.

Ohio
Liable if sufficient nexus exists, which includes conducting a continuing pattern of advertising for mail order retailers who benefit from in-state banking, financing, debt collection, telecommunication, or marketing activities, or from installation, servicing, or repair facilities, and telecommunication shopping systems utilizing a toll-free number intended to be broadcast or transmitted to consumers in the state.

Oklahoma
Liable if retailer engages in business through continuous, regular, or systematic solicitation of retail sales by advertisement through mail order or catalog publications.

Pennsylvania
Liable if retailer creates nexus with the state.

Rhode Island
Liable if retailer maintains place of business or agent in the state.

South Carolina
The Tax Commission has announced a moratorium on the collection of the use tax for companies that merely have an economic presence in the state.

South Dakota
Liable if retailer engages in business in the state.

Tennessee
Liable if retailer engages in regular or systematic solicitation of a consumer market by advertising or by means of a communication system.

Texas
A retailer is engaged in business in the state who engages in regular or systematic solicitation of sales of taxable items in Texas by the distribution of catalogs, periodicals, advertising flyers, or other advertising; by means of prints, radio, or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting sales of taxable items; or solicits orders by mail or through other media and under federal law is subject to or permitted to be made subject to the jurisdiction of this state for purposes of collecting the tax.

Utah
Liable if retailer engages in regular or systematic solicitation of in-state consumer market by advertising by print, radio or television, or communication system.

Vermont
Liable if retailer solicits sales through a representative, owns or controls a person engaged in the same manner or similar line of business, or maintains or has a franchisee or licensee operating under such person's name in the state if the franchisee or licensee is required to collect the sales tax, makes sales from outside the state to a destination within the state who engages in regular, systematic, or seasonal solicitation of sales in the state through the display or distribution of advertising in the state or by communication systems if such person has made sales from outside the state to destinations within the state of at least $50,000 during any 12-month period preceding the monthly or quarterly period for determining state sales tax liability.

Virginia
Not liable if retailer advertises only through U.S. mail and makes delivery by common carrier.

Washington
Liable if gross proceeds of sales of tangible personal property delivered from outside the state to in-state destinations exceed $500,000 during any 12-month period.

West Virginia
Liable if retailer has physical presence in the state or any other presence constituting nexus.

Wisconsin
Not liable if only connection is sending catalogs if subsequent orders are shipped by mail or common carrier, or receiving mail or telephone orders outside the state if such orders are shipped by mail or common carrier.

Wyoming
Liable if retailer has agents in the state.

Source: Commerce Clearing House, *State Tax Guide* (Chicago, 1993), Volume 2.

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