BELOW IS A SUMMARY OF THE IDEAS SUBMITTED TO THE COMMITTEE IN RESPONSE TO ISSUANCE OF THE REMOTE SALES PRINCIPLES

I. SSUTA-TYPE COMPACT GOVERNING INTERSTATE TRANSACTIONS ONLY

Since its inception in 2005, twenty four states have adopted the Streamlined Sales and Use Tax Agreement (SSUTA) designed to reduce the burden on sellers collecting sales tax. SSUTA identifies ten points of focus under the general theme of uniformity and simplification. Simplification measures include uniformity in state and local tax bases and major tax base definitions, central electronic registration for participating sellers, and simplification of rates exemptions, returns and remittances. Member states must also provide vendor compensation to help offset the costs of compliance. A persistent question is why more states have not joined SSUTA, given that by some estimates states lose as much as $23 billion annually in uncollected sales tax. The key seems to be that SSUTA governs both remote and intrastate sales. Many states, particularly large ones, are hesitant to surrender autonomy over their internal taxing policy. This is particularly true since SSUTA membership alone does not confer authority to require remote sellers to collect sales tax. Rather, the expectation under SSUTA was that once all sales tax states joined, compliance would be so simple that there would be no undue burden on interstate commerce, so that either Congress or the courts would grant collection authority. A fresh compact governing remote sales taxes only, might resolve the remote sales tax issue and avoid reticence by states to join. Once a threshold number of states joined, each could impose collection duties on remote sellers located in other member-state jurisdictions. States would be free to tax *intra*state sales as they see fit.

II. MULTISTATE COMPACT TO COLLECT & REDISTRIBUTE SALES TAX

Sellers collect sales tax on remote sales and remit it to their home state at the home-state rate, just as they do for in-state sales. Sellers include in their tax filing the amount of aggregate sales to purchasers in each state. The home-state taxing authority then forwards each state its proportional share of the sales tax collected. The use of a “Home or Base jurisdiction” is a not a new method of taxation in multistate compacts. The International Fuel Tax Agreement uses it to allow truckers to file in their home jurisdiction instead of in every state through which they drive. The home state then allocates the revenue to each state through a central clearinghouse. This approach creates one simple rule for sellers. They need only know the laws and rates in their home jurisdiction. At the same time, it ensures the tax accrues to the purchaser’s jurisdiction, where the item is being used and where the purchaser enjoys the benefits of government that the tax helps fund. Audits can be performed by the seller’s home state authority, which is the best expert on its own tax laws. The suggestion is for the compact to apply only to remote sales. Sellers with a physical presence would be fully responsible for collecting and remitting taxes at the appropriate rate in a jurisdiction. Non-compact states would not benefit from the redistribution mechanism. Sellers in no-sales-tax states could be permitted to select a state with sales tax as their base jurisdiction or, following the Colorado law model, report remote sales to the clearinghouse so the purchaser's state could enforce its use tax law.

III. REQUIRE REPORTING, NOT COLLECTION

Require remote sellers to report sales to the purchaser's home state. Every state with a sales tax has a companion use tax, which is supposed to be paid by its residents who have purchased items out of state on which no sales tax was paid. In practice, few consumers pay this tax, which is why states want remote sellers to collect it instead at the point of sale. A reporting requirement would make it easier for the home state to collect the use tax from its own residents. There is precedent for this approach. U.S. Customs has arrangements with states under which it reports foreign purchases of which it is made aware to the purchasers' state so that use tax may be collected. Similarly, in 2010, Colorado passed a law requiring remote sellers with over $100,000 in Colorado gross sales to report purchaser information to the Department of Revenue.[1] This information includes purchasers' names, billing addresses, shipping addresses, and total purchase amounts for the previous calendar year. Sellers are also required to notify purchasers of their use tax obligations and provide a summary of taxable transactions for customers who spent more than $500. As an alternative to reporting, sellers are permitted to collect and remit the tax themselves. On February 18, 2014, a Denver District Court issued a preliminary injunction blocking the law as a burden on interstate commerce. Further litigation is expected, but whatever the outcome for the Colorado law, the Federal Government has Commerce Clause authority to impose a reporting requirement on interstate sales.

IV. GRANT STATES THE POWER TO EXCLUDE INSTEAD OF THE POWER TO TAX

Authorize states to bar remote sellers who do not collect states' sales taxes from engaging in commerce in the taxing state. Remote sellers who do not wish to subject themselves to the taxing authority of a particular state are free to refrain from selling products or services into that state. Absent Congressional authorization, such an exclusion would be an impermissible burden on interstate commerce. The proposed authorization to exclude would not allow states to impose new taxes. However, as a practical matter, remote sellers would likely agree to collect sales tax rather than face exclusion from the taxing state. Congress could condition authority to exclude on the taxing state meeting certain simplification requirements to address concerns about extraterritorial audits and the compliance burden on remote sellers who agree to collect rather than suffer exclusion.

[1] Colo. Rev. Stat. § 39-21-112(3.5)(d)(II)(A)(2013).

V. ORIGIN-BASED COLLECTION

Establish an origin-based collection regime under which interstate sales are taxed based on the location of the seller rather than the buyer. This is the simplest approach for sellers because it requires them to learn only the rates and rules that prevail in their home jurisdictions. A number of states already employ origin sourcing for *intra*state sales. Indeed, for years, a number of them, including Texas and Virginia, refused to join the Streamline Sales and Use Tax Agreement precisely because SSUTA required destination sourcing for in-state sales.[2] Ohio attempted to comply with a destination regime, but reverted to origin sourcing in 2009 in response to small business concerns that the destination approach was too complex. To offset the costs of the switch back, Ohio offered vendors compensation.[3] Ultimately, SSUTA changed its rules to allow origin sourcing for *intra*state sales.

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[2] *See*, FRED CONKLIN, ED., U.S. MASTER SALES AND USE TAX GUIDE 10, 11 (2008).
[3] *Agreement's Destination Sourcing Unravels*, [Vol. XVIII] Sales & Use Tax Alert (CCH) No. 8, 1-3 (May 1, 2008).