

PRESENTATION TO STREAMLINING SALES TAX AND MODERNIZATION COMMISSION

I am Dannie Garrett, an attorney who has worked for the LMA, the Legislature, and the Police Jury Assn, and I have now been in private practice since 2011. I serve as the LA School Boards Assn appointee on the Commission. Today I am making a presentation after consultation with the other local government entity representatives: Natalie Robottom, President of St. John the Baptist Parish, representing the PJAL, Roger Bergeron representing the LMA, Jeanine Theriot, with the Jefferson parish Sheriff's Office, representing the LA Sheriff's Assn, Mike Norton, with Bossier City, representing the LATA, and Paula Jeansonne, the collector for St. Charles Parish School Board, representing the LMTC.

I am not here to speak for any of the individual local government organizations represented on the Commission, but rather to provide some overview of some common perceptions that we share.

"LOCAL GOVERNMENT" IS NOT A SINGLE AUTONOMOUS ENTITY

"Local Government" is not a single autonomous entity. The phrase "local government" extends to municipal governments and parochial governments, to sheriffs, to school boards, to assessors and even to the multitude of local special districts, both created by local ordinance and by state statute. Each of these local taxing bodies has differing obligations, relies in differing proportions on various streams of tax revenue, including sales and use taxes and property (or ad valorem) taxes. For example many municipal and parochial governments rely on sales and use tax revenue for a significant portion of their budgets, whereas only 7 sheriffs rely on sales and use taxes and few special districts rely on sales taxes. Also, product based sales and use tax exemptions can have dramatically different impact on one community as compared to another. For example an exemption of Mardi Gras throws may have virtually no impact in Tensas Parish but have thousands of dollars of impact in Jefferson Parish. Use tax exemption for alcohol given away by a casino would have no impact in a majority of the State but would have significant impact on a few jurisdictions.

Understanding these differences is critical when consideration is given to removing the taxability of a product or transaction and/or the substitution of a reduction in sales and use tax revenue with property tax revenue, or vice versa. A change that results in significant revenue losses to a subset of local government taxing entities and the same dollar amount increase to others cannot be interpreted as "keeping local government whole."

HISTORICAL PERSPECTIVE ON SALES AND USE TAX MODERNIZATION EFFORTS

1992- Consolidated some 368 potential local collectors into one central collector per parish. Of note there are currently only about 56 local collectors in the State as a number of parishes voluntarily share a common collector.

2003- Uniform Local Sales Tax Code, (UTC) standardizing administrative and collection procedure, most in conjunction with state provisions.

2008- Implementation of Parish E-File, enabling businesses to file on-line directly with local taxing authorities (over \$8 billion in collections) which grew out of the UTC.

2010- Amendments to the UTC to address contract audit procedures.

2011- Development and implemented “Best Practices” document covering all aspects of audit procedures for both local and contract auditors

2014- Placing some adjudication authority with the Board of Tax Appeals, to foster consistency in adjudication of disputes – funded significantly by local taxing bodies

It should be noted that all of these changes have been undertaken with the goal of making the Louisiana sales and use tax system better and more uniform both among local taxing bodies and between local taxing bodies and the State. Recently, the LDOR has been more active in contracting with local collectors to provide audit services, as local collectors have a unique perspective, being on the ground in their communities. Those audits help ensure more equitable and broad based enforcement.

The above advancements are illustrative of locals being proactive rather than obstructionists, all the while being cognitive of our collection autonomy and the need to protect our limited sales tax revenue base.

IMPEDIMENTS TO JOINING THE STREAMLINED SALES AND USE TAX AGREEMENT

There are a number of issues that cause the various local taxing bodies concern, with regard to the Streamlined Sales and Use Tax Agreement. As noted in the beginning we are not a single autonomous entity. Each type of local government represented on the Commission has issues with a variety of the requirements to implement the Agreement.

That being so, there are a number of items on which there is some significant level of commonality of concern. But more significant that the issues over which each element local government has concern is what we all agree may be the most difficult impediment to overcome is Section 302. From the May 2015 version of the Agreement, Section 302 reads:

Section 302: STATE AND LOCAL TAX BASES

The tax base for local jurisdictions shall be identical to the state tax base unless otherwise prohibited by federal law. This section does not apply to sales or use taxes levied on fuel used to power motor vehicles, aircraft, locomotives, or watercraft, or to electricity, piped natural or artificial gas or other fuels delivered by the seller and the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

I have been told that the Agreement allows for groceries and prescription drugs to be exempt from the identical tax base requirement, but I have been unable to locate such a provision in the Agreement itself.

Currently there exists a significant chasm between the sales and use tax base for local sales and use taxes and State sales and use taxes. Two of the most significant are Groceries and Prescription Drugs, and the State exemption is embedded in the Louisiana Constitution. Another such exemption is new manufacturing machinery, although some local taxing bodies have granted that exemption under the local option provision in the law. Telecommunications service is a significant transaction which is exempt from local sales and use taxes but upon which the State collects tax. Over the past 20 years the Legislature has granted a number of exemptions to State sales and use tax, without extending the exemption to local sales and use taxes. This paradigm grew out of the political decision that maybe the Legislature was not the best entity to decide if a particular transaction should be exempt from a local sales and use tax levied by a local elected or appointed body subject to the authority of a local tax election. This goes back to the comments about the autonomous nature of local government. A transaction may have little if any fiscal impact on one local community while simultaneously having a significant fiscal impact on another. The disparity in the sales tax base for local and State sales and use taxes grows every time the State grants another exemption.

The shear dollars involved in the exemptions pertaining to Groceries, Prescription drugs and telecommunications would have to be scrutinized initially. Then the litany of other disparate exemptions would have to be analyzed to formulate a State and local fiscal note. Unless the resolution of the issue would be the State essentially adopting the local tax base, then any resolution would have to evaluate winners and losers.

Unless there is a reasonable resolution to this major issue, efforts to meet the other elements of the Agreement requirements would be futility. The reasonableness of any proposed solution would have to be evaluated from the perspective of each of the various local government taxing bodies, not from a generalized collective perspective, again back to the autonomous issue.

SUMMARY

We have made significant strides in improving and modernizing the Louisiana sales and use tax system over the past 20 years. At present one of the most significant issues impeding uniformity between local and State sales and use tax is the granting of exemptions at the State level. Any solution has to first address the issue of identical sales and use tax bases. Further, all discussions must recognize that “local government” is not a single autonomous unit. Simply having aggregate numbers in and out of “local government” cannot be the standard for keeping local government whole. The six of us appointed to serve on this Commission are committed to working on the issues before us to see if there is a reasonable path along which to proceed.