No Excuses: Automation Advances Make Sales Tax Collection Easier for Everyone

by Diane L. Yetter and Joe Crosby

Diane Yetter
YETTER
diane@yettertax.com
(312) 701-1800

No Excuses: Automation Advances Make Sales Tax Collection Easier for Everyone

by Diane L. Yetter and Joe Crosby

Diane L. Yetter

Joe Crosby

Diane L. Yetter is president of Yetter Consulting Services Inc., a sales tax consulting and technology firm, and the founder of the Sales Tax Institute, which provides sales tax education to business professionals. Joe Crosby, a principal with MultiState Associates, is a nationally recognized expert on state and local business tax policy.

In this article, Yetter and Crosby trace the history of tax automation software, noting that since *Quill* was decided in 1992, there have been tremendous advances in both the capability and availability of sales and use tax collection software that have rendered the *Quill* rule virtually obsolete.

Introduction

One of the key issues the U.S. Supreme Court identified in *Quill Corp. v. North Dakota*[1] was the potential burden on remote sellers from being forced to comply with the sales tax collection rules of multiple taxing jurisdictions. That concern was fair — if somewhat overstated — at the time, but the collection burden has been greatly reduced since. Since *Quill*, we have witnessed a proliferation of more sophisticated technology through which sellers can affordably track sales tax collection rules, collect taxes owed, remit them to taxing jurisdictions, and comply with other requirements. The technology available today bears no resemblance to what existed in 1992. Like all tax compliance, sales tax compliance is challenging. But innovations in data management, network computing, state legal regimes, and this market have made those challenges quite reasonable to meet for typical remote sellers.

Two comparisons help demonstrate this fact. First, the costs and challenges of sales tax compliance are not meaningfully different from those that arise regarding other taxes not subject to the *Quill* rule. Second, and perhaps even more tellingly, the bulk of the cost, challenge, and risk already exists under the *Quill* rule — and perhaps because of it. As the Supreme Court indicated in *Quill*, the bright-line physical presence nexus standard is "artificial at its edges," and there are now myriad approaches in different states to assert sufficient nexus to collect sales tax. Potential taxpayers already face their greatest challenge in tracking these ever-changing state nexus laws and assessing their status thereunder. They also face their greatest risk there because if they have nexus and fail to collect sales taxes, they can owe significant taxes with little recourse to recoup them from purchasers.

Allowing states to require remote sellers to collect and remit sales taxes will add only a readily manageable challenge and expense to the operation of those businesses. Moreover, the market for tax compliance solutions would react to additional remote sellers collecting by making even better and more affordable tools available through

---

[1] 504 U.S. 298 (1992).

competition. And to the extent that these costs and challenges are not fully offset by the compensation frequently offered to sellers for sales tax compliance, the compliance burdens will not be materially different from those imposed on all businesses as part of various, entirely permissible tax schemes.

Sales tax compliance has changed dramatically since *Quill*, and the changes that have occurred regarding compliance burdens now recommend against that decision. Our three-part analysis will first address challenges associated with sales tax collection and compliance. Second, focusing on the changes that have occurred since 1992, we offer a history of sales tax automation efforts. Finally, we address compliance costs and how they have been mitigated historically and in relation to other costs that already exist.

Sales Tax Collection and Compliance Overview

It is important to acknowledge that tax compliance can be complicated and often impose challenges and costs on businesses. If that were not true — for all types of taxes — there would be no market for tax compliance and automation professionals. Two important points should be kept in mind. First, these costs and challenges do not vary based on whether a seller has a physical presence in a state or jurisdiction. Second, these costs and challenges map to the scale of the businesses involved: It is only when a retailer has a substantial market throughout the United States that it needs to meet the challenge of complying with nationwide obligations.

The 'Nexus' Issue

The first step in the sales tax (or seller's use tax) collection process is understanding where the seller has a collection responsibility. Sellers are obligated to determine when and where they face tax collection requirements — a process referred to as nexus identification.

The rules for establishing nexus vary by jurisdiction. Ironically, this problem arises from *Quill* itself; because states cannot rely on the fact of in-state sales alone to establish nexus, states have taken positions to define what constitutes nexus sufficient to trigger a sales tax collection obligation. These efforts frequently (and permissibly) rely on very slight physical

connections, affiliate agreements, minimally related business activities, and the like. *Quill* recognized as much by noting that the boundaries of its nexus standard would be "artificial at its edges." As a result, it is not obvious to businesses when they have nexus, and they frequently have to conduct extensive legal and business research to answer the question in every state where they make sales, without being able to rely on common sense. Physical presence can be established incidentally, such as by simply conducting a few deliveries through a noncommon-carrier delivery agent or the brief presence of a single employee in the state. Thus, even under the existing rule, sellers face significant compliance issues in determining nexus and tracking states' ever-changing legal rules.

In fact, sellers are already required as both a practical and a legal matter to closely monitor all of their business activities to determine when they enter the state, perform an activity, or reach specific sales levels that might create nexus. The activities that must be monitored are not only those performed by the seller itself, but also those performed by others (for example, agents) operating on behalf of the seller. Many small to midsize businesses operate in such a way that regardless of any change in the *Quill* rule, they already have established nexus and are unaware of the obligations that arise from their activities. For example, common business models that rely on fulfillment agents and third-party warehousing of inventory create traditional nexus for sellers.

Sellers have to not only monitor their activities in the states, but also monitor state nexus legislation and track regulations, rulings, and cases to stay up-to-date on how each state defines a seller required to collect its tax. Few states follow the same standards as to what activities — or levels of those activities — create nexus. With the explosion of e-commerce, states have enacted more legislation aimed at broadening their nexus rules in permissible but hard-to-anticipate ways. States' passage of nexus-broadening legislation — including click-through, affiliate, agency, and marketplace nexus provisions — has further complicated tracking and understanding how these rules apply to an individual seller. Again, these costs and challenges are already part of the system, and — if anything —

would likely fall away without the "artificial edges" associated with *Quill*.

It is also very important to note that for sellers that fail to monitor their activities, the risk to their business associated with a nexus mistake can be significant. The actual sales tax amount should be a passthrough collected from the customer, not a cost to the seller. But for every transaction that a seller fails to tax correctly, the average cost is 7 percent of the sales price (not of the net profit), which means the seller will take a big loss. If a seller has nexus under an everchanging, artificial "physical" nexus regime and fails to appreciate that fact, the scale of this loss could be very large. This is also an understatement, because penalties and interest on the uncollected tax can easily add another 30 percent to 40 percent to the tax bill over a three-year audit period. In our experience, failure to collect sales tax has put many companies at risk of failure.

Collection costs are quite simply much less than the risk of noncompliance, and the biggest risk of noncompliance is endemic to — and may be exacerbated by — the *Quill* rule itself.

Determining Taxability and Amount Owed

Once a seller identifies a collection and filing responsibility in a state or locality, it must then examine its sales revenue sources within the jurisdictions. This can be products or services or a blend of both. Each product or service must then be evaluated as to its classification for sales or use tax purposes. A seller's classification of its products and services may not always coincide with a state's, and may not always be the same across the states. The seller must also review any ancillary items for which sales revenues are generated (that is, shipping, handling, installation, other fees, and services), because the taxability of these items can vary among jurisdictions. Assessing whether a given set of products or services is subject to tax in each relevant jurisdiction — and the applicable rate — is one aspect of compliance for sellers collecting sales tax.

A related compliance issue for sellers is applying exemptions or lower rates associated with sales of specific types of products or specific uses of products. Some states have different rate classifications for items such as food, clothing, medicine, and digital goods. There can also be taxability and rate differences for how an item might be used, such as for manufacturing, research

and development, agriculture, call centers, data centers, and many others. These exemptions typically require the customer to submit an exemption certificate. But if the vendor sells these types of items, it must still determine the correct classification and taxability mapping given the varying state definitions of what items qualify for a use exemption. And if a single sale involves taxable and nontaxable components, sellers have the issue of documenting the separate components to avoid a sales tax collection requirement on the entire "bundled" invoice. These aspects of tax compliance do impose costs on sellers, but they are imposed equally today on retail establishments with even the slightest physical presence in a state, regardless of whether that presence is limited to a single geographic location or multiple locations.

Determining the state and local jurisdiction where a sale occurs is generally easy when selling tangible personal property to consumers. Most states impose tax where the goods are delivered to the customer, though some use an alternative rule that could apply tax at the seller's location when the seller and customer are in the same state. In general, however, sellers with a small geographic presence in a state that ship to other areas in the state routinely make these determinations without significant trouble or expense. While these determinations can be somewhat more complex for sales of digital goods or services, many sellers likewise routinely handle them under the existing regime.

Determining the tax rate will generally follow the determination of the tax jurisdiction. Some states provide a state rate only that applies to all taxable transactions, while others require collection of tax at the state rate and an additional local rate, which may vary between jurisdictions within a state. Nine states do not impose any local general sales and use taxes. But even in states with many local or special tax jurisdictions, data and maps are readily available to make the relevant determinations and, as explained later, this information is already incorporated into readily available software solutions.

Post-Collection Matters

Sales or use taxes collected from customers are held in a tax liability account until remitted. Sales tax is considered a trust tax and carries with it the

legal obligation to timely remit tax collections to tax authorities. Similar to withholding taxes, collection without registration or remittance is generally considered fraud and should not occur. In simple terms, the seller is collecting the tax from consumers for the state, and while it has use of the money in the interim, it must see that the money reaches the tax authority.

Compliance with that obligation involves periodically reporting the tax collected and remitting it at required intervals. These periods are generally monthly, quarterly, or annual. The tax is reported on a tax return that can be submitted manually or electronically. An increasing number of states provide for or even require electronic filing and payment. Most tax returns include, at a minimum, reporting gross sales less exemptions or deductions to arrive at the taxable sales. Depending on the number of reportable taxing jurisdictions, a tax return may be one or multiple pages.

The seller must submit the completed return and the tax remittance to the taxing jurisdiction. The tax remittance is generally the full amount of tax calculated as due, although many states allow a vendor's filing discount. Generally a 1 percent to 3 percent deduction from the final tax amount calculated, this discount is provided to offset the cost of the collection and remittance process.

Recordkeeping

As part of sales and use tax collection and compliance, sellers must maintain complete and accurate documentation for audit purposes. This includes maintaining records for the duration of open-audit statute periods, although experience has shown that the likelihood of audit for smaller sellers or those with limited business in a taxing jurisdiction is very low. Documentation requirements related to sales and use tax collection include exemption certificates, sales data, purchase data, and tax collected amounts. Again, these record requirements are quite similar to those that apply regarding other state-by-state taxes, and companies already need to preserve some of these records to demonstrate the absence of nexus under the sales tax or other applicable statutes.

History of Sales Tax Automation

As the foregoing discussion suggests, there are a number of logistical challenges associated with sales tax compliance and collection. These challenges are not dissimilar, however, from the challenges that arise with other taxes. So just as companies have benefitted tremendously from automation in those areas (like payroll processing for employees in different states, or different state income and franchise taxes), automation has become a prominent feature of sales tax compliance as well.

This section is based on public information available regarding the various tax automation companies, extensive experience in the field, and discussions with some of the most established tax engine vendors. There are now a host of options available, and so — except when necessary — we have left out specific details about the vendors who provide clients with automated sales tax solutions. Additional information is included in the appendix.

Early History

Sales tax automation has been around in some form since the mid-1970s. The two original pioneers (Taxware currently known as Sovos and Vertex) created a "sales tax rate file" providing data to companies, either on paper or on tape, listing the tax rates in various jurisdictions. Before 1989, when the first sales tax calculation product was launched (shortly before *Quill*), taxpayers built their own sales tax calculation logic into their billing systems. Many used the rate files offered by the vendors to do so. But these were the early days of computing, so even the hand-built systems that sellers created were difficult to integrate into sales systems and had limited functionality.

Importantly, computer systems at that time bore essentially no relationship to the network computing we see today — especially when it comes to the easy integration of different systems. For example, at that time there were a limited number of standard invoicing systems, a far cry from today's environment in which invoicing software can "talk to" tax software while both systems update themselves with new information from the cloud. Instead, most companies built their own financial systems to meet their needs, with very little ability to rely on systems integrations to ease the process.

Accordingly, when *Quill* was decided in 1992, there were limited options for taxpayers to manage

their sales tax calculation and compliance. Even then, however, the Court identified "advances in computer technology" that could "greatly ease the burden of compliance."[2] Nevertheless, almost all relevant progress in this field has happened since *Quill*. As a reference point, while the *Quill* dissent discusses how "purchasers place orders with sellers by fax, phone, and computer linkup," and suggests that computing advances had lowered the costs and complications associated with compliance,[3] the 1992 opinion (of course) does not mention the internet, anything about the ease of software integration, or anything resembling modern software functionality.

Modern Automation

Ironically, *Quill* was decided shortly before the explosion in networked computing that resulted in the rapid evolution of tax automation solutions, which was driven by two forces. The first was the rise of the internet and network- and cloud-based solutions to problems involving the integration of various data sources (like purchase prices, delivery locations, product types, tax rules, and tax rates). Second was the Y2K scare and concern about building robust computer-based systems that would not crash on December 31, 1999.

Before this time, companies like SAP, Oracle, PeopleSoft, and others had limited sales and use tax functionality included, and third-party sales tax vendors thus responded to these technological challenges by introducing more robust, integrated versions of their original products. For example, from 1995 to 1997 Vertex introduced its first enterprise resource planning (ERP) software integration, first client-server-based version of its sales tax calculation product, and first database version of its product for automatically generating sales tax returns.

Even in the 1990s, the functionality of calculation products was fairly simplistic. Taxability rules could be created based on customers, products, jurisdictions, and combinations of these three variables, but that process was not automatic. The tax engine software included tax rates, jurisdictional rules based

primarily on a ZIP Code or variation of it, and calculation logic including sourcing, caps, and thresholds that applied regardless of the product. Minimal product taxability content was available, although Taxware did include taxability tables in their product in the late 1990s. Tax rates, rules, and functionality were provided for the United States and Canada for items subject to the general sales tax, but specialty taxes were not covered. Simply put, the products had some of the data necessary for accurate tax assessment and accounting built in, but not all of it, and they had no built-in method for dealing with changes other than constant software updates.

Moreover, tax engines at that time were written in a language that was only understandable by individual billing systems and only compatible with a particular technology platform. This technology thus required a significant investment by the tax engine providers, who were forced to maintain many different versions of the same product for use with different sellers' varying systems. Creating integrations required billing-system connectors, so billing-system vendors had to be involved in building each software integration. This resulted in various integrations and inconsistent accuracy of the calculation results. None of the connectors or integrations were reviewed or certified by governmental authorities. If a business used more than one platform or billing system, multiple tax engines were required. What's more, all of these tax engine solutions were "on premise," meaning that businesses that used them were required to obtain the hardware necessary to run the tax engine and integrate it within their infrastructure. Thus, even as these tools became available shortly after *Quill*, they remained very complicated, expensive, and difficult to use — especially by modern standards.

As the internet grew and more shopping cart and e-commerce systems became available, however, the need for simple, low-cost tax solutions grew. In 1996 — 21 years ago, but almost half a decade after *Quill* — Taxware released the first software program that provided sales and use tax compliance for internet merchants. According to Taxware, its "INTERNET Tax System" quickly became the system of choice for almost every e-commerce software system on the market and was provided as part of e-commerce solutions. Vertex

---

[2] *See, e.g.,* 504 U.S. at 303.

[3] *See, e.g., id.* at 328, 332.

also offered an e-commerce version of its client-server solution.

The biggest change, however, would come with the rise of modern, web-based (as opposed to client-server) solutions. In 2000 Sabrix (now known as Thomson Reuters OneSource Indirect Tax) entered the market and drastically changed the landscape. The Sabrix solution was robust and allowed the use of multiple data points to assist in making a tax determination. No longer were sellers limited to customer, product, and jurisdiction as the options to define tax rules. The Sabrix solution was a global solution as well as a centralized tax engine. The technology was developed on a web-services platform that eliminated the need for various technology platform versions and allowed for much easier updates. The Sabrix Application Suite seamlessly connected to all financial applications requiring the determination, calculation, and recording of transaction taxes. Reporting was easier since all the tax data were in one system. Maintenance was also streamlined since changes to tax rules did not require maintenance in multiple systems. And tax logic was enhanced to allow the creation of custom rates and rules that supported excise taxes and other industry-specific taxes. It was only at this point that integrated tax software solutions started to approach today's power and functionality.

Progress since then has been steady and significant. The entry of Sabrix to the market pushed Vertex and Taxware to develop similar solutions. With the improved reliability of hosted solutions (that is, web-based or cloud-based solutions rather than client-server based solutions) and their adoption by larger corporations, all the major tax-engine providers started offering their products in a hosted model. This infrastructure change has reduced maintenance and the technical hardware investment required, and tends to make the product available at a much lower cost even to midsize and smaller users. The result has been an ongoing increase in functionality, ease of integration, and overall cost-effectiveness of sales tax engines for all retailers.

State Contributions and Recent Developments

Progress was driven not just by changes in technology, but by state governments' contributions. In 1999 the National Governors Association and the National Conference of State Legislatures created the Streamlined Sales Tax Project to simplify sales tax collection. Leaders from the NGA and NCSL were members of the Advisory Commission on Electronic Commerce, which Congress established as part of the 1998 enactment of the Internet Tax Freedom Act (which prohibits internet access taxation and "multiple or discriminatory taxation" on internet commerce). The commission was concerned that a 1930s sales tax scheme would not be relevant in 21st century commerce. This finding resulted in governors directing their tax administrators to develop a simpler, business-friendly sales tax system.

One major component of SSTP is the availability of automated solutions that are certified by the member states and provided at no charge to sellers that voluntarily collect sales tax despite not having traditional physical presence, of which there are more than 3,000 today. This functioned as a kind of state subsidy that fueled significant growth in tax automation providers and provided additional alternatives to the on-premise enterprise solutions available at that time. Technological advancements that supported hosted options in lieu of on-premise solutions were in turn a major factor helping these providers to offer lower-cost solutions for sales tax calculation.

The SSTP also adopted the Streamlined Sales and Use Tax Agreement, which established common sales tax definitions, administrative procedures, and certification models for the software options. States had been reluctant to allow sellers to transfer their tax collection liability and responsibility to a third party. The certification of the providers was the result of these discussions. Any provider that wanted to participate as a certified service provider (CSP) was required to submit their sales tax solution to the Streamlined Sales Tax Governing Board for review and certification, which resulted in a review and certification of sales tax engines by the states. Also, the CSP was required to maintain not only rates and boundaries but also taxability content, making the process smoother for all involved.

The governing board approved its first three CSPs in 2006, and today there are seven. The certification process facilitates entry by new providers because they obtain the credibility benefit of governmental approval, which also

confers liability protection to sellers that use CSPs. This helps increase competition, reduce prices, and improve the quality of the products offered. CSPs can now easily integrate to approximately 80 percent of all current online shopping carts. There are challenges integrating for some sellers who are still using legacy and custom-built systems (which is not the case for the overwhelming majority of internet sellers), but even those can be overcome, and the use of custom-built systems continues to decline for nontax-related economic reasons.

Outsourcing sales tax calculations through the CSP market had not been permitted by the states. It became an accepted practice under SSTP, when the states became comfortable with taxpayers assigning their responsibility and liability for tax compliance to certified providers. Of course, taxpayers have long been able to outsource compliance by hiring an accountant — whether for sales and use taxes or other taxes — but this bears little resemblance to the free, state-certified, automated solutions available through the CSP model. Online filing and payment capabilities offered by states have also enhanced the ability to outsource these functions. This is further evidence that the processes for tracking and remitting sales taxes is becoming simpler, and that the costs and complications will be even further reduced in the near future.

Costs of Compliance Studies and Reports

While automation has significantly simplified tracking and remitting sales taxes — notwithstanding the many jurisdictions involved — costs remain. But while sales and use tax compliance costs are often a part of the discussion about expanding the states where sellers are required to collect tax, the analysis frequently fails to compare those burdens with the costs under the existing system. Calculating and paying taxes is part and parcel of operating a business, and the challenges of sales and use tax collection are commensurate with those of other concededly valid state taxes.

For example, the IRS estimates that federal business returns will take an average of 23 hours to file and cost an estimated $420 each. Labor and employment tax compliance alone costs businesses an additional 55 hours annually. Further time is spent filing state income and other taxes each year. For most states, the number of tax deductions,

credits, exclusions, exemptions, and other provisions tallies into the hundreds. Each of these items requires more time to file, and many must be verified by state officials after returns are submitted.[4] This existing baseline should be kept in mind when discussing sales tax compliance costs.

Relevant Studies Have Shown Declining Costs

While sales tax compliance studies have different strengths and findings, the general trend is that costs have consistently and reliably decreased.

Twenty-four studies completed between 1956 and 1983 found the median cost of collection was 4.4 percent of sales tax collected. The primary factor affecting the cost of compliance was distinguishing between taxable and exempt items — a difficulty that only recently became easier to address with simplified and uniform definitions in many states and with integrated software solutions. Accordingly, a 1990 PwC study found a national average cost of compliance to be 3.48 percent of tax collected, and a 1993 survey found the average cost of compliance in all states was 3.18 percent of tax collected. This was a decrease of nearly one-third in sales tax collection costs, all occurring before much of the technological change discussed above.

The most comprehensive collection costs study was issued in 2006. The Joint Cost of Collection Study (JCCS) was sponsored by a public-private partnership among the Council On State Taxation, Federated Department Stores, the Federation of Tax Administrators, JCPenney, the Multistate Tax Commission, the NCSL, the National Retail Federation, RadioShack, the SSTP, and Walmart. The study was also conducted by PwC with assistance from the National Opinion Research Center at University of Chicago, Office of Tax Policy Research at University of Michigan, and B. Erard & Associates.[5]

The JCCS was conducted from September 2004 to April 2005, measuring cost of compliance for 2003. The respondents were classified into three sizes: small retailers ($150,000 to $1 million in annual

---

[4]*See* "The Cost of Tax Compliance," Tax Foundation (Sept. 11, 2014).

[5]*See* PwC, "Retail Sales Tax Compliance Costs: A National Estimate" (2006).

sales); medium-size retailers ($1 million to $10 million in annual sales); and large retailers (over $10 million in annual sales). Respondents predominately made sales in retail stores and not through catalogs or online, but — as the report explained — compliance costs are not materially different through these different distribution channels.

For all retailers, the weighted average gross compliance costs were 3.09 percent of sales tax collected. And for large retailers, compliance costs were 2.17 percent of sales tax collected. This represented another reduction in compliance costs since the 1990 PwC study, and is consistent with the view that improved software options for sales tax compliance have driven down those costs.

Interestingly, the JCCS found that nexus in multiple states did not necessarily result in higher compliance costs. In fact, costs decreased dramatically among retailers with nexus in multiple locations. This is likely due to the fact that costs are reduced by scale effects: Larger retailers spread similar fixed costs across a larger number of transactions, resulting in lower average costs of collection. But the outcome remains very telling for the question at hand. Proponents of the *Quill* rule frequently assert that the cost of filing in multiple jurisdictions is prohibitive, but it is only large retailers with nationwide businesses that are likely to need to file in multiple jurisdictions — especially if more states adopt de minimis exceptions that require hundreds of thousands of dollars of business in their jurisdictions before there is a collection obligation.

The JCCS suggests that even with the costs associated with multijurisdictional tax collection, it is actually likely that nationwide internet retailers will have much lower average sales tax compliance costs than small local retailers required to bear those costs under the existing rule. The JCCS found the cost for retailers collecting tax in only one state is 6.17 percent, compared with 1.94 percent for retailers filing in more than 10 states. Even if the *Quill* standard were abandoned, this cost disadvantage would quite likely remain on small local retailers with a physical presence where they make their predominant sales, rather than the other way around.

We also note that one major cost associated with sales tax collection in the JCCS is so-called

"interchange fees." This reflects the fact that credit card companies charge a fee on any amount paid using cards — which the seller pays — even though the tax portion of the transaction must be transferred in full to the state. The fee on the tax portion thus becomes a cost to the merchant. But recent legislation has reduced these fees, especially on the debit transactions that are common with small retailers, which should further reduce the sales tax compliance costs.

Another activity often cited as costly and potentially burdensome on retailers is the defense of state tax audits. In the JCCS, however, handling audits was rated as most costly by only 6 percent of respondents. In fact, 65 percent of respondents did not undergo any audits in 2003, and only 4 percent had more than five audits that year. It is important to recognize that states appropriately focus their audit activities on businesses that will likely result in positive audit collections. Small retailers with low remittance amounts are not likely to be audited by remote states because of the cost of the audit in relation to the likelihood of feasible audit assessments. The costs of audit defense for small remote sellers are very small. Moreover, for many states, the availability of CSPs minimizes and in some cases eliminates audit risk.

As an offset to collection costs, reimbursements are available to retailers who collect and remit sales taxes. A number of states offer a vendor discount to sellers for the timely remittance of the sales tax collected. This can be significant to some retailers. Thirty percent of JCCS respondents indicated that they earned more than $1,000 annually in vendor discounts, and smaller retailers may earn a higher percentage than larger retailers given that some states cap the discount. A second form of compensation is the cash float enjoyed by holding the sales tax collected before remittance to the states. Sales tax is generally due in the month following the period when the tax was collected or accrued. The float can be even greater for smaller retailers that may be required to remit taxes even less frequently (including quarterly, semiannually, or even annually), and the time-value of the money they hold can thus be quite valuable. In the JCCS, 72 percent of tax due was received before remittance, and 62 percent of respondents averaged more than 15 days between collection and remittance. Notably, both cost offsets are

generally unavailable for any other kind of tax with which businesses must comply.

Combined with the benefits of streamlined statutes and software automation, these allowances have lowered compliance costs substantially over the decades since *Quill*. The costs and complications of compliance are likely to drop further if *Quill* is overturned, increasing the incentive for new software providers and prompting more states to simplify their processes and certify software providers to ensure ready compliance.

This prediction is underscored by voluntary taxpayers' recent experience collecting sales taxes in remote jurisdictions. As part of the SSTP, many states provided collection software through their certified providers and other incentives so that sellers could collect and remit sales taxes with little or no out-of-pocket costs. States have a strong incentive to make collection easy and lower costs to promote maximum compliance. Much of the work is thus outsourced to the CSPs, and their availability to future sellers bodes well for a continuing decline in out-of-pocket costs to both local and remote taxpayers.

Discussion and Comparison of Compliance Costs

As noted, there are a number of factors that affect compliance costs, including the size of the sellers. The studies suggest, however, that some of the most significant factors resulting in compliance costs have been taxability determinations, tax calculation, and return preparation. Over the last 10 years, the growth of providers in the tax automation field has had a positive impact on reducing these costs. When *Quill* was decided, there were basically two providers with structured solutions that required each business to invest heavily in infrastructure. There are currently at least 33 providers of general sales and use tax automation solutions covering sales tax rates, sales tax calculation, address validation, sales tax return preparation, and exemption certificate management, most of which integrate directly with hundreds of different online shopping carts. (See the chart in the appendix.) Most providers offer software as a cloud or hosted solution, which reduces infrastructure and internal maintenance costs. Also, the functionality offered today includes taxability content that did not exist in 1992.

Pricing for sales tax automation solutions has also changed significantly. Prior solutions were priced on a one-size model, but modern solutions typically use the size of the company (by sales) as the primary factor to determine the price of the software, and providers using a cloud model have likewise adopted pricing based on usage. Sellers are charged a fee based on the number of transactions processed using the cloud solution. This ensures that, as is appropriate, compliance costs scale smoothly with the size of the market the seller reaches.

With more providers entering the market, supply and demand have evolved. As more sellers require sales tax automation solutions, the demand forces competition, with pricing and functionality adjusting as well. Retailers requiring more sophisticated solutions will have those options at a higher cost. But those needing basic functionality — the vast majority of online merchants who are selling only taxable tangible personal property — will have many options at many price points.

The options for sellers to prepare and remit tax returns and funds are also broad and decreasing in cost. Outsourcing is one option. Small sellers often engage a bookkeeping or accounting service to manage their financial affairs, and already outsource the other tax collection and remittance obligations they incur apart from remote sales taxes, such as payroll tax withholding. Preparation of sales and use tax returns is commonly included in their services.

And for sellers preparing their own sales tax returns, there are now software solutions that can accept various forms of data input (manual entry or file import) and generate signature-ready returns. These software options are typically available at the same cost, whether the seller needs to file in one or multiple jurisdictions.

Another activity found to significantly affect compliance costs is determining taxability of items sold. Comparing the level of effort of this activity from 1992 or even 2003 with today shows that the tools available today have dramatically reduced this effort. Information published and available online at no cost to sellers did not exist when the cost of compliance studies above were prepared or when *Quill* was decided. Streamlined sales tax states are required to provide — at no charge — tax rates, jurisdiction boundaries, and

taxability matrices. For the 24 participating states, this results in a significant decrease in costs. Non-streamlined states, although not required, have published much of the same information online. Also, many tax automation providers offer limited access to content — including tax rates and taxability — at no charge. All tax engine providers include, at a minimum, tax rates and boundary information as part of their solution. Most solutions also include taxability of products and services.

Although these tools reduce the cost of researching and maintaining product taxability determinations, there is obviously still a cost to sellers — whether online or Main Street stores — in mapping their products and services to the appropriate tax rules. It is beyond dispute, however, that the overall cost from this effort has been reduced dramatically.

Based on the foregoing, the current costs of collecting sales and use taxes in multiple jurisdictions are likely to be quite moderate, commensurate with the size of the business involved, and no more burdensome on businesses than costs they already face for other taxes. Indeed, the costs are somewhat offset by vendor compensation and the monetary value of the float — benefits that exist for essentially no other taxes that businesses pay or collect. The greatest cost and risk that sellers face is assessing whether they have sales tax nexus and the scope and nature of their collection obligations. This cost is endemic to the current regime, and if anything will fall away if the *Quill* rule is changed. Ironically, the existing rules for establishing nexus are very complicated; we expect that without *Quill*, most states would have economic nexus tests based on relatively large ($100,000 or more in sales per state) amounts of business in the state that would be easily assessed with readily available and reasonably priced automated software. Accordingly, the compliance costs of earnest tax filers would remain similar — and perhaps even fall — if *Quill* is overturned.

Summary and Conclusion

Since *Quill* was decided in 1992, the sales tax automation field has undergone a revolution matching the revolution in networked computing. Not only has functionality within the automation systems changed, but so has the level and ease of

integration. Tax content, including taxability rules, is now standard in the tax engines. In 1992 little if any of this functionality and content existed. The number of providers has improved quality and the menu of options available while reducing both price and compliance costs. And the transparency and simplicity that many states have worked to develop since has likewise made the process enormously easier than it was even a decade ago. Governments are working in conjunction with the private sector to better understand not only taxpayer business models, but also taxpayers' compliance challenges. We expect this to continue.

Every company needs to comply with tax laws, which is typically not a trivial or costless endeavor. But these burdens are common: They include licensing, employment rules and taxes, pricing rules, importation issues, and a host of regulatory obligations and taxes. Given modern developments and tools for automated compliance, even if a sales tax applied to every individual sale in every jurisdiction, however small (which is wildly unlikely), robust sales tax compliance would still be reasonably possible for all businesses at prices commensurate with their other regulatory obligations. From the perspective of the cost and complexity of compliance, there is certainly no reason to distinguish between sales taxes and other taxes, or between remote and local sellers. Accordingly, insofar as it attempts to respond to the possible burdens on interstate businesses, the *Quill* rule no longer reflects the real-world conditions those businesses face, given the available tools for remote sellers to collect applicable sales taxes.

Resources

Remote Transactions Parity Act of 2017 (H.R. 2193).

Marketplace Fairness Act of 2017 (S. 976).

No Regulation Without Representation Act of 2017 (H.R. 2887).

Streamlined Sales and Use Tax Agreement, adopted Nov. 12, 2002, and amended through May 11, 2017.

The Tax Foundation, "State and Local Sales Tax Rates 2017" (Jan. 31, 2017).

PwC, "Retail Sales Tax Compliance Costs: A National Estimate Volume One: Main Report Prepared for Joint Cost of Collection Study" (Apr. 7, 2006).

Appendix — Sales and Use Tax Automation Solutions[a]

Solution	Website	Description of Offerings	Applications Can Interface With	Number of Applications Can Interface With
AccurateTax	https://www.accuratetax.com	E-commerce sales tax software (manages addresses, rates, exemptions, sales tax holidays, and product-specific tax rates); sales tax rates; and sales tax reports.	Shopping carts, including Ability Commerce, Interspire, Magento, Miva, Opencart, osCommerce, and Zen Cart.	7
Avalara (includes EZtax)	http://www.avalara.com	Calculation packages, sales and use tax filing services, address validation, exemption and resale certificate management; software as a service; sales tax rates; AvaTax for communications services; returns for companies in the communications industry; CertCapture; sales tax compliance services; 1099 reporting; and sales tax reporting.	Salesforce, Magenta by One Pica, Netsuite Oneworld, Netsuite Basic, Quickbooks, Quickbooks Online, Sage 100, Dynamics GP, Prestashop, Epicor, and more (view at https://www.avalara.com/integrations).	300+
BNA	http://www.bnasoftware.com	Forms, rate lookup tables, automated tax liability calculation, and automatic rate update.		
CCH	https://www.cchgroup.com https://www.cchgroup.com/roles/corporations/indirect-tax/software/sales-tax-office	Forms, research tools and publications, calculation package, rates, returns package, and software as a service.	Microsoft Dynamics® AX or GP	
Corptax	http://www.corptax.com	Return preparation software with historical and current sales and use tax information, rate and form calculation, and automatic rate update.		
CyberSource	http://www.cybersource.com/products/payment_processing/global_tax_calculation	Tax calculation	See https://www.cybersource.com/developers/integration_methods	

Appendix — Sales and Use Tax Automation Solutions[a] *(Continued)*

Solution	Website	Description of Offerings	Applications Can Interface With	Number of Applications Can Interface With
DMA	https://www.dmainc.com	Various tax calculation tools to supplement calculation engines, sales tax compliance services, audit management and defense, managed compliance agreements with state tax agencies, nexus studies and VDAs, overpayment review, training, and GST/HST registry lookup.	See https://www.dmainc.com/services/tax-technology. Its tax technology professionals are experienced within all current and legacy tax engines, including AvaTax; CCH STO and SureTax; ONESOURCE Indirect Tax; Sovos SUT & TWE; and Vertex L, Q, and O Series. Also, its business system's functional and technical skill set includes SAP, JD Edwards, Oracle, and other major ERP systems.	5 are listed but can do more (see note to the left).
E-Doc Solutions	http://edocsolutions.com	Sales tax exemption certificate product		
Electronic Tax Systems	http://www.etaxsys.com	Exemption management, tax calculation.		
Exactor	http://www.exactor.com	Calculation packages, rates, exemption certificate management, returns, address verification, VAT compliance, and sales tax transaction tracking.	See http://www.exactor.com/how-its-done/connecting-to-the-exactor-system. Examples mentioned: Magento, Commerce Kickstart, Pinnacle Cart, QuickBooks, Microsoft Dynamics AX, NetSuite, Microsoft Dynamics AX POS, QuickBooks POS, Millennium POS, PayPal, Authorize.net, and First Data.	32 are listed as examples but may do more.
GruntWorx	http://www.gruntworx.com/products	Gathering, organizing, and populating client tax data into tax preparation software applications.		

Appendix — Sales and Use Tax Automation Solutions[a] *(Continued)*

Solution	Website	Description of Offerings	Applications Can Interface With	Number of Applications Can Interface With
Informatica	https://www.informatica.com	Tax calculation package and address verification.		
Kamp Data Dynamic Zip	https://www.kampdata.com	Creates and maintains tax setup records for U.S. and Canadian sales and use taxes; provides purchase/use tax accrual in the payables and POP modules, automatic entry of city and state based on the ZIP Code, automatic selection of the tax schedule ID based on the address, as well as many utilities to facilitate the management of sales and use taxes.		
KPMG	https://home.kpmg.com/us/en/home/services/tax/indirect-taxes.html	Web-based tax compliance application to provide sales, use, and excise tax compliance services including hosted tax calculation.		
Paramount Software	http://www.paramountsoftware.com/products/sales-tax	Calculation, return filing, rates.		
Pitney Bowes	http://www.pitneybowes.com/us/shipping-and-mailing/address-management-and-tracking-software.html	Address validation		
Ryan	www.ryan.com	Automated tax compliance services		
Sales Tax Manager	https://www.salestaxmanager.com	Automated reporting and remittance of state and local sales taxes in Louisiana and Mississippi.		
The Sales Tax Clearinghouse	http://www.thestc.com	Forms, rate lookup tables, desktop sales tax calculations; TaxCalc software, and Sales Tax Calculator.		

Appendix — Sales and Use Tax Automation Solutions[a] *(Continued)*

Solution	Website	Description of Offerings	Applications Can Interface With	Number of Applications Can Interface With
Second Decimal (acquired by Ryan)	http://www.second decimal.com	Integrated suite of workflow, tax calculation, and certificate management software products; rate lookup and monitoring; and forms.		
Service Objects	https://www.service objects.com	Address validation		
Sovos (Taxware)	http://sovos.com	Calculation package, rates, returns package, hosted solutions — software as a service; and VAT compliance.	SAP, Oracle E-Business Suite, Oracle Siebel, Oracle ATG, JD Edwards, Peoplesoft, Microsoft Dynamics Great Plains, Microsoft Dynamics NAV, Microsoft Dynamics AX, Microsoft Dynamics SL, IBM Websphere/ Smarter Commerce, Quickbooks, Intacct, Lawson M3, Infor SX Enterprise, Infor Syteline, and In House (custom software).	
Superform Service (acquired by BNA)	http://www.stf.com	Calculating forms (income, sales and use, withholding, and others).		
TaxCloud	https://taxcloud.net	Calculation packages for U.S. and international, rates, exemption certificate management, file sales tax returns, sales tax reporting software, address verification, calculate, and file VAT taxes in over 80 countries.	Integrates with over 60 e-commerce platforms. See https:// taxcloud.net/ #partners.	79 listed on website.
Taxify (division of Sovos)	https://taxify.co	Rates, automated filing and remittance, and reporting.	Shopify, Bigcommerce, Xero, Magento, Amazon, eBay, Square, Quickbooks, WooCommerce, and Paypal.	10

Appendix — Sales and Use Tax Automation Solutions[a] *(Continued)*

Solution	Website	Description of Offerings	Applications Can Interface With	Number of Applications Can Interface With
TaxJar	http://www.taxjar.com	Sales tax reporting and filing for online retailers.	Amazon, eBay, Woocommerce, Magento, Shopify, Square, PayPal, Stripe, BigCommerce, Etsy, and ecwid.	12
Taxometry	http://www.taxometry.com/	Tax calculation, compliance, reporting, and data storage.		
Tax Data Systems (acquired by Thomson Reuters)	https://tax.thomson reuters.com/products/ brands/onesource/ indirect-tax/rates	Rate databases		
Tax Technology Services (acquired by Avalara)	https:// certcapture.avalara.com	CertCapture, certificate tracking software and service.		
Thomson Reuters/ OneSource (including Sabrix)	https:// tax.thomsonreuters.com/ products/brands/onesource/ indirect-tax	Tax calculation package, rates, rules, audit database, exemption certificate management, research tools, forms, rate lookup tables, automatic rate update, and address validation.	Concur Invoice, JD Edwards EnterpriseOne, Magento, Microsoft Dynamics 365 for Operations, Microsoft Dynamics AX, Microsoft Dynamics GP, NetSuite, Oracle E-Business Suite, SAP Ariba, SAP Business Suite, and others. See https:// tax.thomsonreuters.co m/products/brands/ onesource/indirect-tax/erp-integration.	10 are listed but can do more.
U.S. Postal Service	https://www.usps.com/ nationalpremier accounts/manageprocess andaddress.htm	Address validation		

Appendix — Sales and Use Tax Automation Solutions[a] *(Continued)*

Solution	Website	Description of Offerings	Applications Can Interface With	Number of Applications Can Interface With
Vertex Inc.	http://www.vertexinc.com	Calculation package, rates, returns package, outsourced compliance, reference/research books, exemption certificate manager, address validation, and consumer use tax. Note that they offer Vertex SMB — a cloud-based sales tax solution (http://www.vertexsmb.com/features).	SAP, Oracle, Microsoft Dynamics, Infor, and others. See http://www.vertexinc.com/partners/application-partners	36 listed.
Vertex SMB	https://www.vertexsmb.com	Calculation package, returns package, consumer use tax, and compliance service.	Magento, Microsoft Dynamics 365 for Operations, Microsoft Dynamics AX, Microsoft Dynamics CRM, Microsoft Dynamics GP, NetSuite ERP and OneWorld, NetSuite SuiteCommerce, Oracle ERP Cloud, QuickBooks Desktop, QuickBooks Online, Sage 100, Sage 300, SAP Business ByDesign, SAP Hybris, SAP S/4HANA Cloud, and others. See https://www.vertexsmb.com/connectors.	15 are listed but can do more.

[a]Vendors include those with broad based offerings and information is based on public information. Specific functionality, interfaces and number of applications with interfaces could vary.

∎

Diane Yetter
YETTER
diane@yettertax.com
(312) 701-1800