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I concur with the final report. The explosion in electronic commerce has brought to a boil a tax conflict that had been simmering for decades. Forty-five state sales tax systems, different in structure and application, are based on the location of *where* property is sold or consumed, and all evolved from a time when commerce was principally local. As commerce became more interstate in nature, states strained to push their tax systems beyond their borders to out-of-state businesses. Electronic commerce is inherently global, and buyers and sellers connect without regard to geographical distance or political boundaries. The continuing push by state and local governments to expand their tax reach beyond their borders threatens electronic sellers with a myriad of confusing and often contradictory laws.

The constitution empowers Congress to prevent parochial state interests from impeding the growth of interstate commerce. To date, the question of whether a business has sufficient activity or "nexus" with a state to warrant that state imposing a tax or collection obligation has been left to the courts. The U.S. Supreme Court in *Quill Corp. v. Heitkamp*, 504 U.S. 298 (1992), reaffirmed that a business must have "physical presence" in a state before a duty to collect taxes on sales into that state arises. The *Quill* court also noted that it was Congress' responsibility under the commerce clause to ultimately define the activities that constitute nexus. Consistent with this historical charge, I proposed to the Commission that Congress adopt a Uniform Jurisdictional Standard (UJS) to clearly define when an out-of-state business is obligated to collect and remit sales and use taxes or pay business activity taxes to a state.

Requiring a business to have a "physical presence" before a state can impose tax obligations ensures that e-commerce will not be stymied by states heaping on unique and burdensome taxation on those who have no presence in their state. Unnecessary litigation over nexus has clogged our courts and redirected business resources to non-productive activities. Hence, the UJS proposes federal legislation that would establish a uniform nexus standard based on "substantial physical presence" and identifies those activities which do not constitute such a presence. Among the safe harbors are:

- the solicitation of orders or contracts which are approved outside the state and are fulfilled from a point outside the state;
- the presence or use of intangible property in a state (e.g. web pages);
- the use of the Internet to create or maintain a World Wide Web site accessible by persons in such state;
- the use of an Internet service provider to maintain or take and process orders via a web page or site on a computer that is physically located in such state;

- the use of any service provider for transmission of communications, whether by cable, satellite, radio, telecommunications or other similar system;
- the affiliation with a person located in the state, unless the person is an “agent” and the activities of the agent constitute a substantial physical presence; and
- the use of an unaffiliated representative or independent contractor in such state for the purpose of performing warranty or repair services.

This standard is not new or without precedent. Thirty years ago when states abused their authority in trying to subject interstate businesses to income taxes, Congress acted to define nexus for income taxes purposes (Public Law 86-272). Since the adoption of 86-272, needless litigation over aggressive state income tax nexus theories have all but come to an end. Nor is the UJS radical. All of the above listed provisions are *existing law and practice* in many states, including my state, California.

Those who urge Congress and this Commission to do nothing argue that a uniform jurisdictional standard is unfair to in-state businesses and that protecting citizens from being taxed in states in which they have no physical presence will drain state and local coffers of revenue. Both claims are demonstrably false.

The uneven playing field is best answered by asking whether the states propose imposing the same collection and remittance obligations upon their own local businesses that they propose to impose on out-of-state businesses. Of course, the answer is no. No one has yet suggested that local merchants subject their business activities to the taxing authority of where each of their customers resides; yet, this is exactly what the states are proposing to impose on electronic commerce. Moreover, my proposal does not exempt goods sold over the Internet from taxation but only prevents states from exporting their unfair tax collection burdens to businesses located outside their boundaries.

There is no evidence of a fiscal crisis caused by the growth of electronic commerce, only hysterical conjecture by the spending lobby. These dire warning calls ignore the reality that much of electronic commerce is generally non-taxable services and intangibles (such as airline tickets and stock trades). Of the amount that is taxable, 80 percent constitutes business-to-business transactions subject to tax and are identified when the business is under audit. Of the remaining transactions, those which are large consumer items (cars, boats, airplanes) will be discovered at the time of registration. Other transactions between businesses and consumers will be collected because of pre-existing nexus of the seller. It bears noting that in California, where Internet purchases are probably the most numerous, sales tax collections are at an all-time high and the state has record budget surpluses.

This debate over extending state and local jurisdiction to tax beyond their borders raises the very concerns our Founding Fathers had when they drafted the commerce clause. Just as the states of the original Confederation attempted to use their powers to gain economic advantage over other states to the detriment of the nation, so will states today. Fortunately, our Founding Fathers were wise to the states' parochial nature and empowered Congress to act in the interests of the nation. The Uniform Jurisdictional Standard asks Congress to fulfill that goal and protect interstate commerce from the states' unquenchable thirst for more taxes.

For the above reasons, I strongly support the final Commission report and believe it serves the interest of all Americans and the 7.5 million Californians I represent.

With best regards,

A handwritten signature in black ink that reads "Dean F. Andal". The signature is fluid and cursive, with a large initial "D" and "A".

DEAN F. ANDAL  
Chairman, Board of Equalization  
Member, Franchise Tax Board