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STATE SALES AND USE TAXES—VARIATIONS, EXEMPTIONS, AND THE AVIATION INDUSTRY

ROBERT C. WHITE

STATE SALES AND USE TAXES—REASONS FOR CONCERN

The reliance of state and local governments on sales and use taxes as a major revenue source has increased dramatically in the last forty years.¹ Prior to the 1930's the states depended almost totally on the property tax to meet fiscal requirements.² Less than forty years later, 16.4% of the total state and federal revenues in the nation were generated by state general sales taxes, which produced over 14.2 billion dollars in one year alone.³ The relative importance of sales and use taxes as a source of funding for state-provided services can only increase as reliance on the property tax declines. To provide the increased funding, either the tax rate must rise, or the tax base must broaden. Opting for the latter approach, states have extended the reach of their taxes on non-residents at the same time that constitutional restrictions on taxation of interstate commerce have been interpreted more narrowly by the United States Supreme Court.⁴ This state action has resulted in a lack of uniform taxation, which is significant in view of the pervasiveness of state sales and use taxes in every facet of manufacturing and marketing.⁵ Air carriers and aircraft manufacturers are faced with a multitude of state sales and use tax laws which have different effects as to accounting and reporting procedures, the incurrence of tax liabilities for sales of goods or services, the responsibilities of serving as tax collectors for the states, and the application of exemptions. The granting of specific sales and use tax exemptions to various elements of the aviation industry is com-

¹ See text accompanying notes 9-12 infra.
² See note 9 infra.
³ ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, STATE-LOCAL FINANCES: SIGNIFICANT FEATURES AND SUGGESTED LEGISLATION 4 (1972).
⁴ See text accompanying notes 63-110 infra.
⁵ See text accompanying notes 131-172 infra.
mon although the different types of aviation-related exemptions defy generalization.

This comment explores the nature of sales and use taxes, including the difficulties in distinguishing those taxes from other types of taxation, the relaxation of historically strict limitations on applying state sales and use taxes on interstate businesses, the problem of lack of uniformity in application of the taxes, and the proposals which have been made to deal with that problem. In addition, a listing of statutory exemptions specifically applicable to the aircraft manufacturing and air carrier industries is provided in tabular form. Accounting and reporting procedures are not tabulated, as they are available in forms suitable for quick reference in other publications. Decisions among jurisdictions do not reveal comprehensive principles of general applicability, and are usually limited to their own sets of facts under specific statutes, so the source of law is primarily statutory.

THE DEVELOPMENT AND NATURE OF SALES AND USE TAXES

There was no strong development of the sales tax until the Depression years. Sharp declines in real property values and the resulting loss of revenues from property taxes led state and local governments to turn to the retail sales tax as a substitute source of income. Originally enacted as temporary emergency measures, these taxes were found to provide a steady and reliable source of income and were retained as additional, rather than alternative revenue sources to state property taxes.

* See table following text infra.

* [1978] STATE TAX HANDBOOK (CCH); STATE & LOCAL TAXES (BNA); STATE TAX CASE REP. (CCH); ALL STATE SALES TAX REP. (CCH).

* See Dane, Movable Property in Interstate Commerce: How it is Subject to Sales & Use Taxes, 48 J. Tax. 176 (1978).


* D. MORGAN, supra note 9, at 8; W. LESTER, COMPARISON OF STATE REVENUE SYSTEMS 223 (1948); Brabson, supra note 10, at 148, 154.

* TAX FOUNDATION, INC., supra note 10, at 10. See N.M. STAT. ANN. §§ 72-16A-1 to -34 (Supp. 1975) (general excise tax to replace emergency sales tax
The current anti-tax sentiment has been directed primarily against property taxes. Sales taxes possess a higher political appeal to state legislators than property taxes. Consequently, it is to be expected that state reliance on sales tax revenues will continue to increase relative to reliance on property tax revenues, and that the tax base will broaden as states and municipalities face increased fiscal pressures. The effect of base-broadening can be analyzed only with a view to the revenue sources. An estimated fifteen to twenty-five per cent of total sales tax revenue is paid directly by the business sector of the economy.

That businessmen express concern over the prospect of increasing sales tax rates and bases is hardly surprising, considering the possibility that business will be required to assume an unequal share of the resulting tax burden.

in support of schools). As a result of the expansion and attractiveness of the sales tax, over 98% of the nation's population reside in states with some form of that levy. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, supra note 3, at 4, 355 (1972).


D. Morgan, supra note 9, at 14; Stocker, supra note 15, at 37, 42.

Tax Foundation, Inc., supra note 10, at 9, 18-19. “The broad public interest would be advanced by generally freeing business decisions from most tax considerations.” Id. at 20; Peters, supra note 15; Siska, An Appraisal from One Business Viewpoint, Tax Institute of America Symposium: Business Taxes
Identification of sales taxes is not always an easy matter. Taxes may be classified under diverse and overlapping labels. One traditional categorization labels a tax as either an income tax, a property tax, or an excise tax. This scheme identifies taxes roughly according to the subject of taxation, but does not address the manner in which levies are assessed.

Excise taxes are said to be privilege taxes, while property taxes are said to be ad valorem taxes. Strictly speaking, however, any tax based on a fraction of the value of the subject of taxation is assessed in an ad valorem manner. A privilege tax is levied against participation in any activity which the taxing authority has determined to be a privilege. Thus, both the purchase of vital sustenance and earning the income with which to purchase it may be taxable as privileges under an excise tax. The former, however, may be sales tax, and the latter an income tax, both being assessed according to the value of the exercise of a privilege, which may be viewed as the subject of taxation.

The direct/indirect classification has been used to separate excise taxes from other forms of taxation. This distinction may be of some assistance in determining which taxpayer among several has the principal obligation to pay the assessment, or in evaluating the impact of a tax upon the subject of taxation, but to one who

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22 Id.
26 See W. Lester, supra note 11, at 226; Joint Committee of the American Bar Association et al., supra note 15, at 78, 79.
pays an identifiable sum to the state there is no such thing as an indirect tax.

Registration fees and franchise taxes are similar to excise taxes, since they are levied against privileges of participating in specific state-controlled conduct. However, if they are assessed according to the value of the thing to be registered, or the anticipated profitability of the franchise, they are similar either to ad valorem property taxes or to income taxes.

The confusion associated with placing a state tax into a particular category is compounded by the legal consequences which historically have accompanied the labels. A state property tax levied against land owned by the United States and used as a residence would violate the supremacy clause of the United States Constitution. The same revenue may be produced from the same source, however, if the assessment is called a privilege tax and is levied against the use of the land as a residence.

Sales and use taxes are universally accepted to be forms of excise taxes. They are levied against the transfer of property, the transfer of ownership rights to property, or the use incidental to such a transfer. The measure of the assessment may be based upon the gross receipts of a vendor, the gross proceeds to a provider of services, or the value of the property which is transferred. Transfer of only limited types of property may give rise to the tax liability under specific sales taxes, or alternatively, the bulk of all conceivable property and services may be addressed by a general sales tax. For convenience and identification, a sales or use tax may be distinguished from an income tax according to the economic activity which gives rise to tax liability. A sales tax may be viewed as a levy imposed for withdrawing goods and services from society,

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29 Id.
30 Id.; see Simet & Lynn, supra note 25, at 53, 56.
31 United States v. County of Fresno, 429 U.S. 452, 463-64 (1977); see U.S. Const. art. VI, cl. 2.
32 See 429 U.S. at 463-64.
35 Id. at 8.
36 See id.
while an income tax is imposed for making a contribution. As distinguished from a property tax, it may be said generally that a single event gives rise to a sales tax, and therefore it is non-recurring, while a property tax is periodically levied on the owner of specific property so long as that ownership continues.

The burden of a sales tax includes compliance costs to business, enforcement costs to taxing agencies, and price costs to purchasers. Furthermore, at least some element of either a pyramid effect, or the multiple taxation of a single exchange is inherent in the administration of sales taxes. Compliance costs include those administrative expenses which are placed on businesses in order to track sales, purchases, exemptions, and the like in order to collect and remit to the state the proper amount of the tax. If a company makes sales in more than one state, compliance costs multiply because of variations as to the measurement of the tax base, the exemptions granted, and the reach of the state's taxing power over nonresidents. Enforcement costs include the costs to the state in administering the tax, identifying recalcitrants, and promulgating rules and guidelines. If the tax is to be levied against a nonresident taxpayer, enforcement costs increase because of the greater likelihood of tax avoidance.

37 See J. Maxwell, supra note 9, at 93; Blaydon & Gilford, supra note 10, at 1051, 1084. One would do well to question whether this is strictly true, except in a purely inelastic market. As elasticity increases, the producer bears a correspondingly higher portion of the burden, and at least some degree of the tax liability will result from his contribution of goods and services to society. See generally C. Kindleberger, International Economics 11 n.1, 105-09, 112 (1968) (analogy to tariffs); P. Samuelson, Economics 371-75 (7th ed. 1967) (microeconomic effect); C. Allen, Elementary Mathematics of Price Theory 13-16 (1962); I. Lyons & M. Symelman, Economic Analysis of the Firm: Theory & Practice 39-49, 119-35 (1966).

38 See generally Barrett, supra note 34, at 5, 8. This distinction breaks down somewhat in the area of use taxes which are applied to leased property, especially where the amount of the tax is a proportion of the value of the leasehold. In that event, payment of the use tax becomes periodic, and closely resembles a recurring ad valorem tax on real property.


40 Id. at 636-38; Joint Committee of the American Bar Association et al., supra note 15, at 78. See N. Jacoby, Retail Sales Taxation: Relation to Business and Consumers, and Administrative Problems 8 (1938); Tax Foundation, Inc., supra note 10, at 37; see also J. Maxwell, supra note 9, at 118.


42 Tax Foundation, Inc., supra note 10, at 37.
Some degree of a pyramid effect is unavoidable with sales taxation. If all sales are taxed, then a manufacturer who purchases raw materials, component parts, and manufacturing equipment will pay a sales tax on each item purchased. The tax paid will be reflected in the price of his manufactured product, which will then have an additional tax levied upon its increased price. Likewise, a distributor would pay the sales tax to a manufacturer or jobber, and an additional sales tax would be imposed upon every sale to the ultimate customer. To avoid this problem of multiple taxation on successive sales of a single item, all states levy their sales taxes only against retail sales. To avoid the problem of pyramiding taxes onto each other during the manufacturing process, states have taken two approaches. The direct use approach excludes the reach of the sales tax from items which are used in the manufacturing process. Although this would include most heavy machinery found in assembly lines, office and housekeeping supplies are generally not exempted. The component parts, or integration approach exempts items which are integrated during the manufacturing process into larger assemblies intended for resale. The two approaches are not mutually exclusive. Arkansas, for example, has a general direct use exemption, and also taxes airplanes and “navigation instruments . . . becoming a part of flight aircraft” on a different basis than the general sales tax.

Use taxes are employed by all states that have sales taxes in order to prevent evasion of the sales tax, to equalize the burdens on interstate and intrastate transactions, and to expand the reach of the sales tax beyond state boundaries. The use tax is comple-

40 D. Morgan, supra note 9, at 7; Tax Foundation, Inc., supra note 10, at 24; see Beaman, Paying Taxes to Other States: State & Local Taxation of Non-resident Businesses 13-5 (1963).
41 D. Morgan, supra note 9, at 7; Joint Committee of the American Bar Association et al., supra note 15, at 79; see Tax Foundation, Inc., supra note 10, at 25.
42 D. Morgan, supra note 9, at 25; Tax Foundation, Inc., supra note 10, at 25; Joint Committee of the American Bar Association et al., supra note 15, at 78.
43 D. Morgan, supra note 9, at 25.
44 Id.; Joint Committee of the American Bar Association et al., supra note 15, at 78, 79.
46 Id. § 84-3105.1(D).
47 Id. See id. at § 84-1903.
Use taxes are imposed upon the exercise of incidents of ownership of property that was not subject to the sales tax at the time of its acquisition. Sales taxes are effectively limited in their reach to transfers of property which occur within the taxing jurisdiction. This means that in cases where title and possession both change hands outside a state, and the new owner then transports the goods into the state for use there, the sales tax has been avoided. The result is discrimination against intrastate sales in favor of interstate sales, with a resulting impact on state revenues and business activity in the taxing state. The effect is most visible close to boundaries between states that have different rates of taxation. To compensate for such discrepancies in the tax burdens, all states with sales taxes have enacted compensating use taxes. The subject of such taxation is not the exchange of property, but rather it is the subsequent in-state use, storage, consumption, or other exercise of ownership over the property subsequent to the exchange. Typically, the tax is assessed against the nonresident seller, who has the obligation to collect it from the resident purchaser, although most statutes provide for payment directly by the user to the state as an alternative method of collection. Fundamental constitutional issues arise in the former

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51 State v. Natco Corp., 265 Ala. 184, 90 So. 2d 385 (1956); N.D. CENT. CODE § 57-40.2-04 (Supp. 1977); N. JACOBY, supra note 40, at 123, 147; Barrett, supra note 34, at 5, 9, 20.

52 See, e.g., Md. ANN. CODE art. 81, §§ 375(a), 375(b) (1975 & Supp. 1978).

53 This is true because they are privilege taxes levied against the privilege of making a transaction within the state. See notes 33-36 supra.

54 See Barrett, supra note 34, at 5, 9.

55 Id.

56 Id. See N. JACOBY, supra note 40, at 147-57.


58 See, e.g., LA. REV. STAT. ANN. § 305(5) (West 1970):

It is, however, the intention of this Chapter to levy a tax on the sale at retail, the use, the consumption, the distribution, and the storage to be used or consumed in this state, of tangible personal property after it has come to rest in this state and has become a part of the mass of property within this state.


59 See, e.g., Md. ANN. CODE art. 81, § 380 (1975); N.D. CENT. CODE § 57-40.2-07.3 (1972).

60 See, e.g., ME. REV. STAT. tit. 36, § 1951 (Supp. 1973) (liability on user
context as to the state's jurisdiction to levy and enforce a tax on a nonresident and in the latter context as to the state's ability to tax articles of interstate commerce.

LIMITATIONS ON STATE TAXATION OF INTERSTATE COMMERCE

Constitutional Limitations

The fourteenth amendment prohibits states from taxing persons, including corporations, in a manner which denies the taxpayer equal protection or due process under the law. Phrased differently, a state must have potential jurisdiction over a taxpayer in order to enforce a sales or use tax. In the case of sales taxes, jurisdiction is readily apparent. The tax is levied on transactions which occur within the taxing state, a factor which the United States Supreme Court has found to be determinative of the state's authority to tax:

The Federal Constitution, apart from the specific grant to the Federal Government of the exclusive power to levy certain limited classes of taxes and to regulate interstate and foreign commerce, leaves the states unrestricted in their power to tax those domiciled within them, so long as the tax is imposed on property within the state, or on privileges enjoyed there, and is not so palpably arbitrary or unreasonable as to infringe on the Fourteenth Amendment.

A state's jurisdiction to levy a use tax on an out-of-state seller, and to require him to collect and remit the proceeds of the sale to

until proof of payment to seller); Md. Ann. Code art. 81, § 383 (1975) (liability on seller, collectible from user if user has not paid seller); N.D. Cent. Code § 57-40.2-07.6 (1972) (user must pay state if he has not paid retailer).


See Peters, supra note 15.

Although jurisdictional requirements clearly encompass more than the fourteenth amendment (for instance a state cannot levy a tax on the federal government under the supremacy clause, or on interstate commerce where prohibited by Congress), the majority of authors use "state jurisdiction to tax nonresidents" to mean the existence of a sufficient relationship between the taxpayer and the state to justify imposition of the tax. See generally H.R. Rep. No. 565, 89th Cong., 1st Sess. 636 (1965); S. Rep. No. 2524, reprinted in [1959] U.S. Code Cong. & Ad. News 2548, 2550-51, 2556-57; J. Maxwell, supra note 9, at 88-91.

the taxing state is not so obvious. Under the current United States Supreme Court doctrine as expressed in *Complete Auto Transit, Inc. v. Brady*, a state may enforce such a tax consistently with due process requirements if the taxpayer has a sufficient nexus with the state. In *Complete Auto* a Michigan corporation was in the business of transporting trucks within Mississippi as they arrived from Michigan. The Court found the taxpayer's activity sufficient to make the Michigan corporation amenable to a use tax apportioned according to the transportation performed within the state. Subsequently, in *National Geographic Society v. California Board of Equalization* the Court determined that there was a sufficient nexus between the out-of-state Society and the state of California to justify imposition of a use tax to be collected by the taxpayer. The tax was levied on gross receipts obtained by mail-order sales to California residents. The only in-state representatives of National Geographic occupied two offices and conducted activities totally unrelated to the mail-order sales. In upholding the tax, the Court relied heavily on the fact that there was no danger that the taxpayer would be subjected to multiple taxation from other states on the transactions made with California residents, and that the burden on the taxpayer was merely an administrative one to collect the taxes from the subscribers.

The nexus requirement is an echo of the minimum contacts jurisdictional test which has been applied to ad valorem property taxes levied on businesses engaged in interstate transportation. Under that doctrine a transportation company could become subject to imposition of a state ad valorem property tax levied against its rolling stock only if it had sufficient minimum contacts with the state. Eighteen landings per day at various airports in Nebraska constituted sufficient minimum contacts to subject an air-

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66 *Id.* at 277. Of course, the commerce clause must not be violated, even if there is a jurisdictional nexus. See text accompanying notes 94-99 infra.
67 430 U.S. at 289.
69 *Id.*
70 *Id.* at 558.
line carrier to the state property tax in *Braniff Airways, Inc. v. Nebraska Board of Equalization.*

Constitutional limitations on state use taxation under the commerce clause have been relaxed greatly by the *Complete Auto* analysis. Early in the twentieth century state taxes levied against businesses engaged in interstate commerce were evaluated under a directness-of-burdens analysis. Property taxes were upheld as an indirect burden on interstate commerce, while gross receipts taxes were held to be an unconstitutional direct burden. In 1938, following the widespread emergence of state sales and use taxes, the Court began to move away from this analysis in favor of an approach designed to eliminate state discrimination against interstate commerce. Under this multiplicity-of-burdens approach, statutes which subjected a corporation to tax liability in more than one jurisdiction were determined to be discriminatory and were struck down. A state could save its statute by means of a formula which would apportion the tax fairly, according to the services provided by the state. In regard to domiciliary interstate corporations, no apportionment was necessary to subject all of a corporation’s property to a recurring ad valorem tax, since there was no danger of the same tax being levied by a jurisdiction other than the state of domicile.

The multiplicity-of-burdens test was short-lived. Deciding the 1944 case of *Freeman v. Hewit,* the Supreme Court held that a gross receipts tax on a state resident for sales occurring out of the state was unconstitutional as a direct burden on interstate commerce. *Freeman* has been cited both as a case representative of

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78 See note 76 *supra;* Note, 76 W. Va. L. Rev. 380, 384 (1974); see also Western Livestock, Inc. v. Bureau of Revenue, 303 U.S. 250 (1938).
80 329 U.S. 249 (1946).
the multiplicity-of-burdens test and as the beginning of an oscillation back to the directness-of-burdens test. In any event, the return did occur, and with predictably formalistic results. The decision in *Spector Motor Services, Inc. v. O'Connor* coupled the directness-of-burdens test with the announcement that a statute which imposed a tax on the privilege of doing interstate business would be violative of the commerce clause. Such a tax was struck down in the case known as *Railway Express I* in which Virginia had levied a gross receipts tax on a railroad engaged in interstate commerce. The commonwealth rewrote the measure as a property tax levied against the value of the rolling stock, but the amount and the source of revenue remained unchanged. When the tax resurfaced in *Railway Express II* it was upheld, the Court again basing its decision on the *Spector* analysis.

The multiplicity-of-burdens test for discrimination against interstate commerce was retained for state net income taxes. In *Northwestern States Portland Cement Co. v. Minnesota* the Supreme Court issued a clear statement that fairly apportioned state income taxes levied against foreign corporations would be upheld, provided that a sufficient nexus existed between the corporation and the state. The congressional reaction was to enact Pub. L. No. 86-272 which established minimum jurisdictional standards for state imposition of a net income tax. Congress also commissioned a joint subcommittee of the judiciary to study all forms of state taxation on interstate commerce.

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84 340 U.S. 602 (1951).
85 Id.
88 Id.
90 Id. at 452.
91 77 Stat. 437 (codified at 15 U.S.C. §§ 381 to 384 (1976)).
92 Id. § 381. See notes 173-184 and accompanying text infra.
Complete Auto Transit, Inc. v. Brady rejected Spector and placed state use taxes on the same constitutional footing as income taxes on nonresident taxpayers by the Court's application of its approach taken in Northwestern States to a use tax based on gross receipts. In addition to the jurisdictional nexus requirement, Complete Auto set out three criteria relating to interstate commerce and state taxation of nonresidents. It was determined that use taxes would not violate the commerce clause if the following were met: (1) they did not discriminate against interstate commerce; (2) the assessments were fairly apportioned to the amount of business conducted in the state; and (3) there existed a fair relation between the tax and state-provided services.

In addition to being limited by the due process clause and the commerce clause, state taxation of nonresidents may be limited by the privileges and immunities clause. The only case squarely on point is Crandall v. Nevada, in which a state tax of one dollar per person was levied against those desiring to exit the state by public or private carriers. The Supreme Court found interstate travel to be a privilege of United States citizenship, and the tax upon the privilege was voided as burdening the exercise of that fundamental constitutional right. Although Crandall was decided prior to the enactment of the fourteenth amendment, the subsequently decided Slaughterhouse Cases indicated that the right to freedom of interstate travel was included within the amendment's privilege and immunities clause, and thus protected from

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95 Peters, supra note 15.
97 See notes 63-67 and accompanying text supra.
98 430 U.S. at 277-79, 287.
99 Id.
100 U.S. CONST. amend. XIV, § 1, cl. 1 provides, in pertinent part: "All persons born or naturalized in the United States . . . are citizens of the United States . . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . ."
101 73 U.S. (6 Wall.) 35 (1868).
102 Id.
103 83 U.S. (16 Wall.) 36 (1873).
state infringement. In the years since Crandall, the right to travel has become associated with the first amendment right to freedom of association, with fundamental liberty under the due process clause, and with the commerce clause. In Evansville-Vanderburgh Airport Authority District v. Delta Air Lines a tax of one dollar per person was levied on all outbound passengers using a municipal airport. The tax was upheld and Crandall was distinguished on the ground that the Vanderburgh tax was for the use of state-provided facilities, whereas the Crandall tax applied to both public and private transporters. It is at least arguable that Crandall has been overruled. Sales to the federal government, of course, are not reached by state sales or use taxes, and Congress may act pursuant to its enumerated powers to prohibit state sales and use taxes on articles of interstate commerce.

Congressionally Imposed Limitations

There is no comprehensive congressional action dealing with the arena of state sales and use taxes. The only comprehensive measure dealing with any area of state taxation is Pub. L. No. 86-272. It was intended to be a temporary measure and was enacted in response to the Supreme Court's decision in Northwestern States Portland Cement Co. v. Minnesota. As noted previously, the statute affects only state net income taxes, and does not address sales or use taxes. Although the measure was intended to identify specific acts which would give rise to the jurisdictional nexus, there is some indication that states have

104 See id. at 79; U.S. CONST. amend. XIV, § 1.
107 Id. at 714.
108 Id. (Douglas, J., dissenting).
110 This is exactly what Congress did in reaction to Evansville-Vanderburgh. See generally 49 U.S.C. § 1513 (1976).
111 See text accompanying notes 173-234 infra.
114 See Reese, supra note 14.
seized upon the statutory language to deny taxing jurisdiction to sister states, thereby increasing their own revenues.\textsuperscript{116} Numerous bills have been introduced to deal with sales and use taxation, to define jurisdictional nexus, and to provide comprehensive schemes of sales and use taxation on a national level.\textsuperscript{116} With the exception of the current attempt of the Ninety-sixth Congress,\textsuperscript{117} all the bills have died in committee.

**State Imposed Limitations**

States have limited the reach of their sales and use taxes in a number of ways through their courts and legislatures. State courts may construe nexus requirements more restrictively than the United States Supreme Court. Maryland appears to have done this in *W. R. Grace & Co. v. Comptroller.*\textsuperscript{118} The state supreme court determined that an airplane flown into Maryland, hangared there, and flown totally in interstate commerce was not amenable to state taxation under the commerce clause of the United States Constitution.\textsuperscript{119} The case is probably an aberration, and other states have reached the opposite conclusion under similar facts.\textsuperscript{120}

The statutory definition of a sale limits the reach of a sales tax. If a sale is considered in the buyer's state to be the transfer of possession, and in the seller's state to be a transfer of title, then the sales tax may be avoided by accepting delivery on a consignment basis in the seller's state, with title to vest in the buyer upon his return home with the property.\textsuperscript{121} The same thing could be accomplished under the Uniform Commercial Code by purchasing free on board, place of shipment.\textsuperscript{122} The folly of this scheme is


\textsuperscript{118} 255 Md. 550, 258 A.2d 740 (1969); see Dane, supra note 8, at 177.

\textsuperscript{119} 258 A.2d at 743.

\textsuperscript{120} See, e.g., Management Servs., Inc. v. Spradling, 547 S.W.2d 466 (Mo. 1977); American Airlines, Inc. v. State Bd. of Equalization, 216 Cal. App. 2d 180, 30 Cal. Rptr. 590 (1963); see generally Dane, supra note 8, at 177.

\textsuperscript{121} See Barrett, supra note 34, at 13-14.

\textsuperscript{122} U.C.C. § 2-401(2)(a) provides:

Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with
that the compensating use tax in the buyer's state will impose the
same tax as the sales tax would have imposed, had the exchange
of possession taken place in the buyer's state.\textsuperscript{123} Additionally, the
use tax in the seller's state could apply to delivery on consign-
ment, even though title were retained in the seller as a security
interest until the property had left the seller's state.\textsuperscript{124}

The most common manner for states to limit their sales and
use taxes is in granting exemptions. It is important that exemptions
be clearly identified in the statutory scheme, because the burden of
proving entitlement to relief under specific exemptions is on the
taxpayer.\textsuperscript{125} The state's power to select items for specific exemptions
is almost absolute,\textsuperscript{126} and they usually reflect political decisions to
achieve socially desirable goals through manipulation of the eco-
nomic effects of taxation.\textsuperscript{127} Sales taxes long have been thought to
be regressive—that is, the lower one's expendable income is, the
greater is the portion of that income which is absorbed by payment
of the tax.\textsuperscript{128} Therefore, commonly exempted items include food,
medical supplies, and other items considered to be basic necessities

Reference to the physical delivery of the goods . . .
(a) if the contract requires or authorizes the seller to send the
goods to the buyer but does not require him to deliver them at
destination, title passes to the buyer at the time and place of
shipment . . . .

U.C.C. § 2-319(1)(a) provides in pertinent part:
(1) Unless otherwise agreed the term F.O.B. (which means "free
on board") at a named place, even though used only in connection
with the stated price, is a delivery term under which
(a) when the term is F.O.B. the place of shipment, the seller
must at that place ship the goods in the manner provided in this
Article . . . . and bear the expense and risk of putting them into the
possession of the carrier . . . .

\textsuperscript{123} See Barrett, supra note 34, at 14.

\textsuperscript{124} See, e.g., ME. REV. STAT. ANN. tit. 36, § 1752(11) (1978); MD. ANN.
Code art. 81, § 372(d) (1975); N.M. STAT. ANN. § 72-16A-3F (Supp. 1965).

\textsuperscript{125} See, e.g., ME. REV. STAT. ANN. tit. 36, § 1752(11) (1978); MD. ANN.
Code art. 81, § 372(d) (1975); N.M. STAT. ANN. § 72-16A-3F (Supp. 1965).

\textsuperscript{126} See, e.g., ME. REV. STAT. ANN. tit. 36, § 1752(11) (1978); MD. ANN.
Code art. 81, § 372(d) (1975); N.M. STAT. ANN. § 72-16A-3F (Supp. 1965).

\textsuperscript{127} See, e.g., ME. REV. STAT. ANN. tit. 36, § 1752(11) (1978); MD. ANN.
Code art. 81, § 372(d) (1975); N.M. STAT. ANN. § 72-16A-3F (Supp. 1965).

\textsuperscript{128} See Barrett, supra note 34, at 14.

\textsuperscript{129} See 3 J. SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION § 66.01 (4th
ed. 1974); see Brundidge Milling Co. v. State, 45 Ala. App. 208, 228 So. 2d
475 (1969); Peters, Several State Supreme Court Cases Increase Tax

\textsuperscript{130} International Harvester Co. v. Wisconsin Dep't of Taxation, 322 U.S. 435
(1944); Lawrence v. State Tax Comm'n, 286 U.S. 276 (1932).

\textsuperscript{131} See J. MAXWELL, supra note 9, at 96 (noting increase in administrative
costs caused by exemptions).

\textsuperscript{132} See id.; TAX FOUNDATION, INC., supra note 10, at 29, 33.
of life. Often, however, exemptions are granted under the general sales or use tax only to be levied again as specific excises.

**The Problem of Variance Among the States**

Most characteristic of state sales and use taxation is the lack of uniformity among the states. Although some attempts have been made to attain a degree of uniformity in the application of state taxes, particularly in the area of interstate audits, their success has been minimal. One of the factors contributing to the lack of effective national action is the deference shown to states' sovereignty in the area of sales and use taxation.

The greatest variance among state sales and use taxes is in the determination of which items are subject to the tax and which items are exempt. The manner in which statutory exemptions are drafted may affect the allocation of the burden of proof in specific controversies. While taxing statutes are construed in favor of the taxpayer, and against the taxing authority, the opposite is true of exemptions. An illustrative contrast is provided by the Maryland case *W. R. Grace & Co. v. Comptroller*, the Washington case *Pope & Talbot, Inc. v. Department of Revenue*, and the Tennessee case of *Federal Express Corp. v. Woods*. All three cases involved application of a state use tax to aircraft used principally in interstate travel. *W. R. Grace* was decided primarily on federal constitutional grounds. The Maryland court determined that the commerce clause prevented imposition of the state use tax on an airplane based in the state because the only local activity in which the plane was used was part of longer interstate flight. As an alternative basis for its decision, the court determined that the

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129 E.g., ME. REV. STAT. ANN. tit. 36, § 1760 (1978) (food); IOWA CODE ANN. § 422.45(12) (1979) (food); id. § 422.45(13) (drugs); IND. CODE ANN. § 6-2-1-39(b)(2) (Supp. 1978) (wrapping materials).


131 Peters, supra note 125, at 176; see Brundidge Milling Co. v. State, 45 Ala. App. 208, 228 So. 2d 475 (1969); 3 J. SUTHERLAND, supra note 125, at §§ 66.01, 66.09. But cf. ME. REV. STAT. ANN. § 1763 (1978) (taxpayer must show non-liability—no distinction between imposition clause and exemptions).


134 569 S.W.2d 408 (Tenn. 1978).

135 258 A.2d at 747.
word "storage" as contained in the use tax statute connoted removal from service, and the Maryland-based aircraft, although hangared in the state, had never been removed from service since its importation. Therefore, the court reasoned that the use tax did not reach the privilege of hangaring the craft in the state.

Pope & Talbot presented a situation similar to that in W. R. Grace. An airplane was hangared in Oregon, but was flown occasionally on intrastate trips within Washington, remaining there overnight. The principal use of the plane was to transport executives between Washington and Oregon. After the Washington use tax was assessed against the corporate owners, they sought relief on the theory that the assessment violated the commerce clause. The state supreme court declined to reach the constitutional issue, holding that the levy was not encompassed within the assessment provisions of the taxing statute. That provision contained an exclusion from taxation "with respect to the use of any article of tangible personal property purchased . . . outside this state until the transportation of such article has finally ended. . . ."

Neither Tennessee's definition of "use" nor its statute which imposes a use tax contains language similar to that in the Washington statute. Tennessee does provide a separately detailed exemption from its tax, however, for repair parts used for "aircraft [which] are used exclusively in interstate or international commerce." In Federal Express the full use tax on repair parts was assessed against an air cargo carrier, despite the fact that it flew exclusively interstate routes. The fact that successive intra-

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187 258 A.2d at 747.
188 Id.
189 Id. at 253.
190 Id. See TENN. CODE ANN. § 67-3002(h) (1976).
191 Id. § 67-3003 (Supp. 1978).
193 569 S.W.2d 408 (Tenn. 1978).
194 Id. at 409.
state cargo pick-ups and deliveries were completed as part of
those interstate routes was held sufficient to deny the corporation
the benefit of the exemption.\textsuperscript{150}

From a review of these three cases it is apparent that the loca-
tion of a statute's excluding provisions—whether they are in the
assessment portion or listed as exemptions—can be significant in
determining a taxpayer's liability. This is especially evident in
view of the susceptibility of Tennessee's exemption\textsuperscript{151} to an alterna-
tive, more lenient interpretation which would have resulted in
nonliability for the air carrier in \textit{Federal Express}.\textsuperscript{153} The com-
parison also brings into focus a problem which confronts business-
men who conduct operations spanning state boundaries. In order
to take advantage of a statutory exclusion from taxation of a
particular activity, not only must the businessman become inti-
mately familiar with the exclusionary language in more than one
statute,\textsuperscript{152} but also he must predict the probable judicial interpreta-
tions of the language in more than one state, basing his prediction
in part on the location of the language within the taxing statute.

Even a cursory perusal of statutory exemptions to state sales
and use taxes reveals the magnitude of the task as it confronts
purchasers, sellers, users, and owners of aircraft and aircraft
equipment. The Arkansas use tax does not extend to aircraft which
were brought into the state for refurbishing, conversion, or modi-
fication, so long as the process does not require more than sixty
days.\textsuperscript{154} The exclusion applies as well to aircraft repair parts and
navigational equipment.\textsuperscript{155} The sales tax does apply to the materials
used in refurbishing.\textsuperscript{156} A separate tax of three per cent of the gross
purchase price is imposed on airplanes and "navigational instru-
ments used directly in or becoming part of flight aircraft ... in regu-

\textsuperscript{150} \textit{Id.} at 409, 410-11.
\textsuperscript{151} TENN. CODE ANN. § 67-3012(7) (Supp. 1978).
\textsuperscript{152} \textit{See} 569 S.W.2d at 410 (Fones, J., dissenting).
\textsuperscript{153} \textit{See generally} H.R. REP. No. 565, 89th Cong., 1st Sess. 672, 673 (1965);
Dane, supra note 8, at 176-79; Nelson & Johnson, \textit{New Method for Keeping
Track of State Income Tax Liability or Refunds}, 20 TAX. FOR ACCOUNTANTS 36
(Jan. 1978); MacCrate, \textit{The Retail Sales and Use Tax "Plague"}, 32 BULL.
NAT'L TAX A. 179, 179-80 (1947).
\textsuperscript{154} ARK. STAT. ANN. § 84-3105(a) (Supp. 1977).
\textsuperscript{155} \textit{Id.}
\textsuperscript{156} \textit{Id.}
lar scheduled intrastate or interstate common carrier transportation.\textsuperscript{157} Another separate sales tax based on gross proceeds is imposed on the service of aircraft repair.\textsuperscript{158} Georgia exempts from its use tax aircraft and repair parts for aircraft owned by authorized common carriers used principally to cross the borders to the state to transport passengers or cargo.\textsuperscript{159} Additionally, the state exempts transportation made "in connection with"\textsuperscript{160} interstate commerce.\textsuperscript{161} Connecticut exempts sales of aircraft to certified interstate air carriers\textsuperscript{162} but generally imposes its use tax on casual sales of aircraft,\textsuperscript{163} and also levies a specific "Air Carrier Tax" under a provision apart from its general sales tax.\textsuperscript{164}

Greater harmony among states is found in their exclusions designed to prevent multiple taxation and pyramiding of taxes as products progress through stages of manufacture and resale.\textsuperscript{165} In this regard, aircraft manufacturers are not different from those in other industries, in that they need to be aware of whether the applicable statutes follow a direct use exemption or a component part exemption. While most sales tax statutes include a relatively clear statement of the general approach followed by the particular state,\textsuperscript{166} other states have so particularized their exemptions that the two approaches have become merged, with the approaches varying according to the particular product being taxed.\textsuperscript{167} In that circumstance, manufacturers also face the alternatives of com-

\textsuperscript{157}Id. § 84-3105.1(D).
\textsuperscript{158}Id. § 84-1903(c)(3).
\textsuperscript{159}GA. CODE ANN. § 92-3402aC(2)(q) (Supp. 1978).
\textsuperscript{160}Id. § 92-3403aC(2)(j) (Supp. 1978).
\textsuperscript{161}Id. § 92-1501a (1974).
\textsuperscript{162}CONN. GEN. STAT. § 12-412(t) (1979).
\textsuperscript{163}Id. § 12-431 (1979). Cf. ME. REV. STAT. ANN. tit. 36, § 1764 (1965).
\textsuperscript{164}CONN. GEN. STAT. § 12-243 (1979).
\textsuperscript{165}See text at notes 42-50 supra.
\textsuperscript{166}See, e.g., ILL. ANN. STAT. ch. 120, § 439.2 (Smith-Hurd Supp. 1978): "Use . . . does not mean the physical incorporation of tangible personal property, to the extent not first subjected to a use for which it was purchased, as an ingredient or constituent, into another tangible personal property (a) which is sold in the regular course of business . . . ."
plying with the requirements of the specific exemption, or facing unexpected tax liability.168

The lack of uniformity among states in all areas of taxation has long been a source of objections from businessmen, state tax administrators, congressmen, and the bar. Faced with differing rates, assessments, exemptions, and administrative requirements, businesses engaged in interstate commerce often incur the expense of complicated accounting procedures, and multiple reporting and audit requirements.169 This expense is in addition to the burden of staying abreast of the substantive tax laws in every jurisdiction in which the business operates, which itself is a considerable task.170 In fact, it has been suggested that state autonomy in the area of taxation necessarily discriminates against interstate commerce because wholly intrastate enterprises need not be concerned with the expense of multiple administrative, legislative, and judicial regulation.171 The impact of the burden is not limited to a few giant multinational corporations, but rather extends to the vast majority of all businesses in the country.172

Recognizing the problem of state taxation variance, and viewing the cause as a lack of uniformly defined state jurisdiction to tax nonresident taxpayers, the United States Supreme Court has called repeatedly for congressional action to establish a single jurisdictional standard applicable to every state.173 The Congress,

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168 See generally J. Martin, TACKLING THE CONFLICTS IN TAXATION 1 (March 1, 1935) (address to the American Legislator's Association and the Council of State Governments—monograph).


172 See H.R. REP. No. 1480, 88th Cong., 2d Sess. 80-81, 90 (1964); see also H.R. REP. No. 69 (to accompany H.R. 2158), 90th Cong., 1st Sess. 4 (1967).

173 H.R. REP. No. 1480, 88th Cong., 2d Sess. 12-14 (1964); Celler, The De-
however, declined to act for 170 years. When action was taken, it was in response to *Northwestern States Portland Cement Co. v. Minnesota* in which the Court allowed state imposition of an apportioned income tax on a nonresident business. Two results flowed from the congressional reaction. The first was the 1959 enactment of Pub. L. No. 86-272 which established specific criteria for a business to meet in order to have a sufficient nexus with a state to be subject to its jurisdiction for state income tax purposes. The second result was that a congressional study was commissioned to conduct an exhaustive review of all state taxation of interstate commerce, and to recommend legislation to resolve problems caused by non-uniform statutes. Almost four years later the four volume report was published, spanning two sessions of Congress. The recommended action was not limited to jurisdictional matters, which was the primary thrust of Pub. L. No. 86-272. On the contrary, the report urged adoption of a national scheme of taxation, including sales and use taxation, with centralized auditing and other administration, to replace state sales and use taxes on interstate commerce.

The interests of the respective states had not lain fallow during the period in which the study was taking place. In fact, prior to any congressional consideration of the matter, both the bar and many state tax administrators had begun to call for uniformity in state taxation. In the area of state income taxes, the only broadly based support for uniform legislation was a move for the


176 *See id.*


acceptance of the Uniform Division of Income for Tax Purposes Act. That legislation, in states which have enacted it, has not been wholly successful. Born in the name of state sovereignty, and dedicated to resist federal preemption of state taxation, the Multistate Tax Compact was promulgated. The purposes of the Compact, which has been enacted by nineteen states, are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.
2. Promote uniformity or compatibility in significant components of tax systems.
3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.
4. Avoid duplicative taxation.

To accomplish its purposes, the Compact provides for apportionment of income among states according to a three-factor formula, a credit for use taxes paid to other states, availability

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185 Multistate Tax Comm'n, The Multistate Tax Compact (circa 1968) (pamphlet); "The Compact is the states' answer to Federal control of state taxing policies and programs." Id. at 1; "It is increasingly apparent that the state-controlled and state-operated Multistate Tax Commission stands as the sole alternative to an ultimate federal takeover [of state taxation of interstate businesses]." Multistate Tax Newsletter, Aug. 1972, No. 32 at 5, col. 2.
187 Multistate Tax Compact, art. I.
188 Id., art. IV, § 9. The tripartite computation applies only to allocation of state income taxes.
189 Id., art. V, § 1.
of interstate audits, resolution of disputes through an arbitration panel, and adoption of uniform regulations by a commission composed of representatives from the adopting states. The Compact does not, however, contain any jurisdictional definition of nexus for the purpose of taxation of nonresidents, a deficiency which Congress has attempted repeatedly to correct through federal legislation.

Since the 1965 publication of Congress' study on state taxation, a multitude of bills has been introduced to provide uniform state taxation of interstate commerce. The report's immediate progeny was H.R. 11,798, which failed to pass the House in 1966. The bill was reintroduced in 1968 as H.R. 2158 and passed the House, but died in the Senate Finance Committee. The bill dropped the proposal for centralized sales and use tax administration on the national level, and proposed a statutory definition of the jurisdictional nexus requirement to be applied to state sales and use taxes. To achieve uniformity, the bill would have denied states the jurisdiction:

(2) to require a person to collect a sales or use tax with respect to a sale of tangible personal property unless the person has a business location in the State or regularly makes household deliveries in the State; or

(3) to impose a gross receipts tax with respect to a sale of tangible personal property unless the seller has a business location in the State.

Proponents of the measure argued that this limitation was nothing more than an acknowledgement of realistic limitations on a

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100 Id., art. VIII.
101 Id., art. IX.
102 Id., arts. VI, VII (states free to reject regulations).
103 See Multistate Tax Compact, art. VII; Celler, supra note 173, at 399.
104 See note 116 supra, and accompanying text.
106 An identical bill was also submitted, but failed to pass the House. See H.R. 16,491, 89th Cong., 2d Sess. (1966).
108 The bill was reported with amendments from the House Judiciary Committee, but was not reported out of the Senate Finance Committee. See H.R. Rep. No. 69, 90th Cong., 1st Sess. (1967) (to accompany H.R. 2158).
109 See Celler, supra note 173, at 393.
state's ability to enforce its tax against nonresidents. Furthermore, where states did enforce the collection of use taxes by nonresidents, it was felt that varying degrees and exercises of prosecutorial discretion created inequities among business taxpayers. The single jurisdictional standard was intended, according to its apologists, to eliminate the inequities, which was to result in increased voluntary compliance with state taxes, which, in turn, was to lead to a swelling of the public coffers.

That states are severely constrained by practicalities of enforcement from requiring nonresident sellers to collect and remit use taxes is a facially suspect proposition. In the first instance, the zeal with which states pursue such taxpayers is readily apparent merely from the proliferation of case law on the subject. It may be presumed as axiomatic that no businessman would incur the expenses of protracted legal battles over assessment of taxes if he believed that the levies could not be executed. Nor would state tax administrators be likely to pursue judgment-proof taxpayers so long as they operate on a budget which is determined according to the amount of revenue they produce for the state. Taxpayers who own tangible property in the taxing state jeopardize their continued ownership by refusal to pay taxes. Other methods of enforcement available to a state include reciprocal enforcement agreements with other states, establishment of extraterritorial...
state field tax offices, including tax auditors,\textsuperscript{308} and arbitration under the Multistate Tax Compact.\textsuperscript{309} Arbitration under the Compact is limited, however, and applies only to matters concerning apportionment of state income taxes.\textsuperscript{310}

The other objective of H.R. 2158, voluntary compliance with state use taxes from multistate businesses,\textsuperscript{311} thereby reducing inequities of selective enforcement,\textsuperscript{312} has been echoed by businessmen and state tax administrators.\textsuperscript{313} Agreement on the best means to achieve the objective, however, has not been reached.\textsuperscript{314} In the absence of a definite jurisdictional standard, it is unlikely that the Multistate Tax Compact can achieve this goal.\textsuperscript{315} Nor can a uniform definition of jurisdiction enacted by Congress achieve it,

\textsuperscript{308}See Celler, supra note 173, at 389; Willis Report, supra note 180, at 637, 729, 1127.

\textsuperscript{309}See Multistate Tax Compact, art. IX. Another coercive means of collecting the taxes is to deny state benefits to taxpayers who are remiss in their remittances. A South Carolina statute, for example, provides that "No action, either in law or equity, on a sale or transaction subject to a tax imposed by this chapter, may be had in the State by any nonresident seller, unless it be affirmatively shown that the provisions of this chapter have been fully complied with." S.C. Code § 12-35-1450 (1977).

\textsuperscript{310}Johnson, Current Interstate Tax Arbitration Opportunities, Revenue Administration 1969—37th Conference of the Nat'l Association of Tax Admins. 50 (1969). See Multistate Tax Compact, art. IX.

\textsuperscript{311}See Willis Report, supra note 180, at 637, 729, 1127; Celler, supra note 173, at 389.

\textsuperscript{312}See note 202 supra.


\textsuperscript{314}"In our view State solutions are much to be preferred to federal legislation, principally on the grounds of Federal-State comity. Federal legislation would unavoidably interfere with well-established jurisdictional rules in State and local taxation." 1970 Transportation Hearing, supra note 169, at 5 (statement of William G. Colman);

I do not expect to see uniformity in the tax laws of the states, in fact I don't believe we should have total uniformity. I believe that each state has the right to tax in the manner that it thinks best for the people of its state. But, wouldn't it be nice if all those states that exempt food from sales tax, agreed on what constituted food.

Rosenblum, Sales Tax Administrative Problems from the Business Viewpoint, 70 NTA-TIA Proceedings 38 (1977); Glaser, supra note 170 (objection to congressionally established "business location" test for any state tax jurisdiction); Barrett, supra note 34, at 26-27 (favoring congressional action); Boren, supra note 183, at 608 (favoring congressional action).

\textsuperscript{315}See generally Celler, supra note 173, at 389.
if that definition is uniformly vague. This criticism, which has been leveled at the income tax jurisdictional standard in Pub. L. No. 86-272\(^{216}\) is applicable to any standard which is enforceable in more than one jurisdiction, and which is susceptible to more than one interpretation.\(^{217}\) Congress has contributed to the perpetuation of this problem through the Tax Injunction Act.\(^{218}\) This statute denies United States District Courts the authority to “enjoin, suspend or restrain the assessment . . . of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.”\(^{219}\) The effect of the statute is to require disputes over state taxation to be resolved in a state forum rather than a federal forum.\(^{220}\) The statute applies to use taxes,\(^{221}\) and prevents exercise of federal jurisdiction over state tax disputes even though federal constitutional issues are present, so long as the state provides an adequate remedy for the taxpayer.\(^{222}\) Therefore, courts of different states construing identical or similar statutory language are likely to arrive at different conclusions as to a taxpayer’s liability for use taxes.\(^{223}\) Nonetheless, and despite the defeat of H.R. 2158,\(^{224}\) the primary thrust of subsequent congressional action has been to propose a uniform state jurisdictional standard.

During the Ninety-fifth Congress three bills were introduced to provide such a standard.\(^{225}\) One of these merely would have re-


\(^{217}\) See generally Dane, supra note 8; Pratt, How to Use Federal Courts to Enjoin the Collection of State and Local Taxes, 46 J. TAX. 178, 178-81 (1977).


\(^{220}\) See Pratt, supra note 217, at 178-80.


\(^{223}\) See Dane, supra note 8.

\(^{224}\) See note 198 supra.

moved tax immunity from municipal airports, clearing the way for state and local "transaction taxes" on the facilities. The other two bills, one of which was introduced in the Senate and the other in the House, would have wreaked major reforms in state sales and use taxation. The House bill contained a uniform jurisdictional standard identical to its ancestor of the Ninetieth Congress, H.R. 2158. The standard was not to have been applicable to interstate air carriers, however, since the bill excluded from its coverage most businesses engaged in "[t]ransportation for hire of property or passengers, including the rendering by the transporter of services incidental to such transportation." The Senate bill was to provide guidelines to federal claims courts in resolving state tax disputes. Its jurisdictional standards were identical to those in the House bill, except in regard to gross receipts taxes. Under the Senate’s proposal, gross receipts taxes would have been allowed against nonresident businesses only if the sale were “solicited directly through a business office of the seller in the State." The inclusion of the solicitation requirement would subject the bill to the same criticism as Pub. L. No. 86-272, which also uses solicitation as the requirement for exercise of state income tax jurisdiction over nonresidents, except for the distinguishing feature of the Senate proposal, that the Federal Claims Court was to have jurisdiction to hear the disputes. It was, however, the proposed jurisdiction by a federal court over state taxing statutes which caused the American Bar Association to oppose the bill as an unwarranted infringement on state powers.

The Ninety-fourth Congress saw the introduction of eight bills dealing with the unification of state taxing measures, and the

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240 Id. at § 101; see H.R. 2158, 90th Cong., 2d Sess. § 101 (1968).
243 Id. at 8; see A.B.A. Section of Taxation, Report of the Committee on State and Local Taxes, 31 Tax Law. 982 (1978).
245 See S. 2173, 95th Cong., 1st Sess. § 401 (1977); Talich, supra note 61.
246 A.B.A. Section of Taxation, supra note 232.
death of seven of them in committee.\footnote{234} The survivor was enacted as part of the Railroad Revitalization and Regulatory Reform Act\footnote{235} and prohibited discriminatory property taxation against railroads.\footnote{236} A similar flurry of proposals and absence of enactments occurred during the Ninety-third Congress. One Senate bill would have granted congressional permission for states to enter the Multi-state Tax Compact.\footnote{239} Counterpoised to that proposal was another House bill which addressed uniform standards of state taxing jurisdiction.\footnote{240} The provisions of the House bill were similar to its Ninetieth Congress predecessor, H.R. 2158,\footnote{241} and to its Ninety-fifth Congress progeny, H.R. 669.\footnote{243} Congressional permission for states to enter the Compact was not forthcoming, as the Senate proposal did not pass. The proponents of a nationally uniform state jurisdictional standard were antagonistic toward the advocates of the Compact, which they perceived as a usurpation of federal authority.\footnote{245} The validity of their concern remained unsettled until 1978 when the United States Supreme Court upheld the constitutionality of the Compact in \textit{United States Steel Corp. v. Multistate Tax Commission}.\footnote{247} The Court specifically found that

\begin{footnotes}
\item[230] H.R. 15,694, 94th Cong., 2d Sess. (1976) (to establish a committee to study the reduction of state and local dependence on property taxes); H.R. 10,979, 94th Cong., 2d Sess. (1976) (to prevent state tax discrimination against railroads and to declare certain taxation activities to be undue burdens on interstate commerce as applied to railroads); S. 3374, 94th Cong., 2d Sess. (1976) (to allocate income of air carrier employees based on flight time over state); S. 3162, 94th Cong., 1st Sess. (1975) (same as S. 3374); H.R. 2004, H.R. 3584, 94th Cong., 1st Sess. (1975) (to limit state and local income taxation of non-residents); H.R. 1748, 94th Cong., 1st Sess. (1975) (to exempt federal employees from income taxation by states other than the employee's state of residence); H.R. 1043, 94th Cong., 1st Sess. (1975) (same as H.R. 2004 and H.R. 3548, but also to allocate income to state where earned). All died except H.R. 10,979. See note 232 \textit{supra}.


\item[244] See, \textit{e.g.}, Celler, \textit{supra} note 173, at 399.

\item[247] 434 U.S. 452 (1978).
\end{footnotes}
the Compact did not enhance state power in a manner which encroached on federal supremacy.\textsuperscript{246}

Although the dissent in \textit{United States Steel} urged that to uphold the constitutionality of the Compact would preclude Congress from countermanding its provisions,\textsuperscript{248} the majority specifically denied that such an effect would result.\textsuperscript{247} If the Court had held that an appropriate enactment of legislation under the commerce power could not override the Compact, it would have accomplished something which congressional proponents of bills authorizing the Compact had been unable to do since its inception. On the other hand, if the Court had determined that the Compact violated the constitutional prohibition against states' entering agreements without congressional approval,\textsuperscript{248} it would have invalidated the only serious steps which have been taken to solve the burden on interstate commerce which results from the lack of uniform state taxation. The opponents of the Compact would have received a victory, granted by the judiciary, which has not been obtainable through the political process. By upholding the Compact, while simultaneously affirming the ultimate authority of Congress to alter, to modify, or to reject it, the Court left responsibility for action in this area squarely on the legislative branch. The Court thus refused to resolve the conflict between state sovereignty and the need for uniform taxation, implicitly calling on Congress to assume responsibility for balancing the respective interests and arriving at a solution.

\section*{Conclusions}

As the importance of sales and use taxes to state governments increases, and tax bases are broadened, there is a valid concern within the business sector that its share of the burden of taxation will increase. The need for broader tax bases, combined with a permissive trend of the Supreme Court toward taxation of interstate commerce will continue to lead states to extend their jurisdiction over nonresidents in order to increase revenues,\textsuperscript{249} and

\textsuperscript{246} Id. at 472.
\textsuperscript{248} Id. at 493 (White, J., dissenting).
\textsuperscript{247} Id. at 480 n.3.
\textsuperscript{248} U.S. 	extit{Constr.} art. I, § 10, cl. 3.
\textsuperscript{249} Peters, \textit{supra} note 15; "It will be interesting to see how ingenious states,
"[u]nder the present posture of the law, the odds are stacked heavily in favor of state sales and use taxation of multistate transactions." The resulting tax liability of nonresident businesses will accentuate the need for a uniform system of taxation, which will be impossible to achieve so long as the states act individually. Although the Multistate Tax Compact is the only significant effort toward unification in the area of sales and use taxes, its absence of a jurisdictional standard and its reliance on voluntary enactment by the states hamper its effectiveness.

The trend of the judiciary toward a narrow reading of the commerce clause reflects a movement toward a single constitutional standard against which to measure the validity of all types of state taxation which affect interstate commerce. That the standard is expressed in expansive language highlights the need for statutory establishment of jurisdictional taxation standards. The decreased importance of categorization and labeling as bases for determining the legality of a levy reflects an economically realistic view of taxation in general. It also indicates an institutional view that it is the role of the legislative branch to balance the interests of state sovereignty over state taxation against the costs to interstate commerce of lack of uniform taxation. The decision in United States Steel Corp. v. Multistate Tax Commission stands as a clear statement that this type of weighing of interests must be done by the Congress and not by the judiciary. Although the conflict is far from resolved, the balance tilts in favor of congressional action to define minimum jurisdictional standards for state

and particularly local taxing jurisdictions, will be in concocting various privileges upon which to tax interstate commerce." Id. at 307.

Barrett, supra note 34, at 27.


Id. at 486 (White, J., dissenting); "Indeed, the history of the Congress and the Compact is a chronicle of jealous attempts of one to close out the efforts of the other." Id. "A hostile stalemate characterizes the present position of the parties." Id. at 488. See Multistate Tax Newsletter, Aug. 1972, No. 32 at 5: Many tax administrators have maintained that the federal government would allow the states to go their own way in administering their own taxes regardless of whether or not the states worked to eliminate compliance burdens and to improve uniformity among their state statutes. It should be increasingly clear that Congress will not continue lightly to countenance existing diversity either of legislation or of administration with respect to state taxation of multistate business.
taxation of nonresidents, and to do so with great specificity, in view of the limited potential for the Multistate Tax Compact to achieve any meaningful uniformity.

The greatest area of variance in state sales and use taxes is also the area in which states may exercise the greatest power, and that is in granting specific exemptions from their taxing statutes. The vast majority of states grant some form of exemption to certain aviation activities, but from a broad perspective they follow no discernible pattern. There is no indication that the states will relinquish their exercise of local discretion in this area, nor that Congress would consider requiring them to do so. It falls upon members of the industry to stay abreast of the host of specific exemptions in order to make proper use of them.
KEY TO TABLE OF
COMPARATIVE STATE TAX PROVISIONS

I. Mult. Comp.: Signatory to the Multistate Tax Compact.

II. Sales Basis
   A. Passage of title determines place of sale.
   B. Exchange of possession determines place of sale.
   A.,B. Place of sale may be considered either as place of title passage or place of exchange.

III. Use Basis
   A. Separate statutory statement of nexus.
   B. No separate statutory statement of nexus.
   C. Other—see footnotes.

IV. Apportionment
   A. Separate statutory formula.
   B. Credit for sales/use tax paid to another state.
   C. Credit for sales/use tax paid to a state that grants reciprocal credit.
   D. Other basis for apportionment.

V. Exemptions
   A. Specifically applicable to aircraft.
   B. Exemptions applicable to manufacturers.
   C. Exemptions applicable to carriers and other users.
   D. General transportation exemptions including aircraft.
   E. General transportation exemptions excluding aircraft.
   F. Statutory incorporation of constitutional limitations.
   G. Other—see footnotes.

VI. Miscellaneous
   A. Specific taxes, not codified under general sales or use taxes, not including general property taxes, specifically applicable to aviation.
   B. Direct use approach to avoid pyramiding.
   C. Integration/component part approach to avoid pyramiding.
### TABLE OF COMPARATIVE STATE TAX PROVISIONS

<table>
<thead>
<tr>
<th>State</th>
<th>I. Mult. Comp.</th>
<th>II. Sales Basis</th>
<th>III. Use Basis</th>
<th>IV. Apportionment</th>
<th>V. Exemptions</th>
<th>VI. Misc.</th>
</tr>
</thead>
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<td>D, E, F</td>
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<td>B</td>
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<td>A, F</td>
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</tr>
</tbody>
</table>

**ALABAMA**


3. **ALA. CODE** § 40-21-61 (1975) (apportionment for express companies according to miles travelled).

4. *Id.* § 40-23-4(8). Gross receipts from sales of transportation are exempt, if the "rates and charges . . . are customarily fixed and determined by the public service commission of Alabama or like regulatory bodies." *Id.*


6. *Id.* § 40-23-4(17).

7. *Id.* § 40-23-1(a)(6).

**ARIZONA**


2. *Id.* § 42-1409.A.2.

3. *Id.* §§ 42-1312.01.A.6 (exemption for airplanes, navigational equipment, communication equipment and accessories sold to certified carrier for intrastate, interstate, or foreign commerce), 42-1312.01.B.1 (exemption does not include expendable property).

4. *Id.* § 42-1409.A.3.

5. *Id.* § 42-705 (separate tax in lieu of ad valorem property tax on airline companies).

ARKANSAS

1 Ark. Stat. Ann. § 84-4101 (Supp. 1977). The audit provisions of the Multistate Tax Compact were not enacted. Id. § 84-4106.

2 Id. §§ 84-1902(c), 84-3104(f) (1947 & Supp. 1977).

3 No credit provisions are statutorily set out other than those found in the Multistate Tax Compact. Id. § 84-4101 (Supp. 1977).

4 Id. § 84-3105(a). An exclusion is found in the tax imposition clause for aircraft and aircraft equipment, and tangible personal property leased to aircraft companies brought into the state solely for "refurbishing, conversion or modification" if it is not intended for use within the state, and is not left in the state more than sixty days—but if the intended use subsequent to storage is outside the state, the sixty day limitation for the exemption does not apply. Id. Apparently the exclusion was added to the statute as a result of a state court decision in Skelton v. Federal Express Corp., 531 S.W.2d 941 (Ark. 1976) in which an interstate cargo carrier was held liable for the use tax for repair parts brought into the state, and applied to an aircraft which was also brought into the state solely for the purpose of installing equipment to meet interstate air transportation safety requirements. See generally Ark. Stat. Ann. § 84-3105(a) (Supp. 1977).


CALIFORNIA


2 Id. § 6006 (West Supp. 1979).

3 Id. § 6406 (West 1970).

4 Id. § 6283 (West Supp. 1979).

5 Id. § 6366.1 (West 1970) (airplanes and navigational instruments belonging to common carriers taxed on the basis of gross purchase price, unlike general sales tax levy).

7 Id. § 84-3106(D)(2).
<table>
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<tr>
<th>State</th>
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<th>V. Exemptions</th>
<th>VI. Misc.</th>
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<td>C^8</td>
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</table>

**COLORADO**


*Id. § 39-26-102(10) (Supp. 1979).

2 Id. § 39-26-203(1)(k) (1973).

3 Id. § 39-26-203 (Supp. 1979) (trailers, trucks, and mobile homes purchased for use outside the state).


5 Id. § 41-2-101 (1973) (registration and taxation of aircraft).

6 Id. § 39-26-102(20).

**CONNECTICUT**


2 Id. § 12-407(15).

3 Id. § 12-430(5).

4 Id. § 12-412(t) (certified air carriers using their craft in interstate commerce).

5 Id.

6 Id. § 12-412(a).

7 Id. § 12-431 (casual sale not ordinarily reached by use tax—casual sales of aircraft specifically taxable).

8 Id. § 12-243 (Air Carriers Tax).

**DISTRICT OF COLUMBIA**


2 Id. § 47-2701.8.

3 Id. § 47-2706(c) (West 1968).

4 Id. § 47-2605(j) (West Supp. 1978-1979) (food sales to passengers).

5 Id. §§ 47-2701.1(b)(1), 47-2701.1(b)(5) (transportation not a "sale"—exemption for property "in or upon or as part of" any aircraft in interstate use).

6 Id. § 47-2701.1(b)(4) (sales to common carrier of repair parts).

7 Id. § 47-2706(c) (West 1968).

8 Id. § 47-2601.14(a).
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</table>

**FLORIDA**

1 The Multistate Tax Compact was repealed in 1976. 1976 Fla. Laws ch. 76-199, § 1.

2 See FLA. STAT. ANN. § 212.02(2)(a) (West Supp. 1979).

3 Id. § 212.08(9); id. § 212.08(8)(a) (ratio of miles travelled as basis of apportionment, if carrier is regulated by federal authorities).

4 Id. § 212.08(11) (specific credit applicable to aircraft sold to purchaser out of state by seller domiciled in state—use tax credit for tax paid to purchaser's state).

5 Id. §§ 212.08(7)(n) (West 1971), 212.08(11) (West Supp. 1979).

6 Id. § 212.08(7)(n) (West Supp. 1979) (manufacture of aircraft and repair parts for sale in another state not taxed).

7 See L. B. Smith Aircraft Corp. v. Green, 94 So. 2d 832 (Fla. 1957) (aircraft repair parts not exempt when applied in state to interstate carrier's aircraft).

8 See FLA. STAT. ANN. §§ 212.02(3)(c) (West Supp. 1979), 212.08(4) (West 1971).

9 Id. § 212.08(5)(b) (West Supp. 1979) (capital machinery for new or expanding business).

**GEORGIA**

1 See GA. CODE ANN. § 92-3403aB (Supp. 1979).

2 Id. §§ 92-121 (1974) (jurisdictional definition for general taxing authority of the state), 92-122 (property owned by resident, located out of state and subject to foreign tax not reachable by Georgia tax).

3 Id. § 92-3412a (Supp. 1979).

4 Id. § 92-3403aC(2)(q) (exemption for aircraft and repair parts for aircraft owned by authorized common carriers used principally to cross the borders to the state to transport passengers or cargo).

5 Id. § 92-3403aC(2)(p).

6 Id. § 92-3403aC(2)(p) (transportation made in connection with interstate commerce).

7 Id. § 92-1501a (1974) (specific property tax on certain aircraft equipment).

8 Id. § 92-3403aC(2)(m).

**HAWAII**

1 See HAWAI. REV. STAT. § 255-1 (1976).


3 Id. §§ 237-21 (source of income), 238-3 (use tax).

4 Id. § 237-24(20) (food to interstate common carrier passengers and crews).

5 Id. § 238-1(4) (interstate vessel owners).

6 Id. § 239-5 (public service company tax law).

7 Id. § 237-4(2), 238-2(l).
<table>
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<td>C⁹ D⁹</td>
<td>B¹⁰ C¹¹</td>
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</table>

IDAHO

² Id. § 63-3612.
³ Id. § 63-3621(1).
⁴ Id. § 63-3622(a) (Supp. 1979).
⁵ Id. § 63-3616(c) (1976). “Use” does not include keeping property for transfer outside the state, or for incorporating the property into other property to be transferred outside the state. Id.
⁶ Id. § 63-3622(d) (Supp. 1979).

ILLINOIS

¹ The Multistate Tax Compact was repealed in 1975. 1975 Ill. Laws 79-639, ch. 120, § 440.
³ Id. ch. 120, § 439.3.
⁴ Id.
⁵ Id. ch. 120, § 441. (included as limitation on imposition clause rather than exemption).
⁶ Id. ch. 120, §§ 439.2, 440.

INDIANA

² Id. §§ 6-2-1-44, 6-2-1-47 (Burns 1978) (dealing with out-of-state seller’s responsibilities for collection).
³ Id. § 6-2-1-38(q) (Burns Supp. 1978) (isolated sales of registered aircraft specifically considered retail sales and therefore subject to tax).
⁴ Id. § 6-2-1-45(b) (Burns 1978)
⁵ Id. § 6-2-1-38(q) (Burns Supp. 1978).
⁶ Id. § 6-2-1-39(b)(25) (non-registered aircraft for transportation to another state and use outside Indiana).
⁷ Id. § 6-2-1-39(b)(4) (Burns 1978). Exemption for “[t]he sale, storage, use, or other consumption in this state of tangible personal property or service which is directly used or consumed in the rendering of public transportation of persons or property.” Id.
⁸ Id. § 6-2-1-7(q) (Burns Supp. 1978) (interstate truck transportation).
⁹ Id. § 6-2-1-7.
¹⁰ Id. § 6-2-1-39(b)(6).
¹¹ Id. § 6-2-1-39(b)(11).
Iowa

2 Id. § 423.2 (1971). Use tax is "applicable where services are rendered, furnished, or performed in this state, or where the product of such service is used in this state." Id.
3 Id. § 423.25.
5 Id. § 422.45(1).
6 Id. §§ 324.82, 328.42, 330A.15, 422.112.
7 Id. §§ 422.42(3), 423.1(1)(a) (1971).

Kansas

2 Id. § 79-3602(c) (Supp. 1978).
3 Id. §§ 79-3704(c), 79-3705 (1977).
4 Id. § 79-3606(g) (1977 & Supp. 1978) (sales of aircraft, aircraft repair and replacement parts for use in interstate or foreign commerce).
5 Id. § 79-3606(k) (non-registered aircraft for immediate export).
6 Id. § 79-3603(f) (Supp. 1978) (railroad and other public utility movable stock for use directly in interstate commerce).
7 Id. § 79-3602(1).

Kentucky

1 See Ky. Rev. Stat. § 139.120 (1971).
2 Id. § 139.510 (limit on amount of credit of $1,000).
3 Id. § 139.480(1) (Supp. 1978) (rolling stock exemption).
4 Id. § 139.470.
5 Id. §§ 139.170, 139.480(8).

Louisiana

2 Id. § 47:306.1 (option for interstate transportation dealers to apportion under a mileage formula).
3 Id. § 47:305.21A (West Supp. 1979). "The sales and use taxes imposed by the state of Louisiana . . . shall not apply to purchases of airplane equipment, airplane parts, and airplanes of any commuter airline domiciled in the state of Louisiana." Id.
4 Id. § 47:305(5) (West 1970) ("nor is it the intention of this chapter to levy a tax on bona fide interstate commerce").
5 Id. § 47:301(10) (West Supp. 1979).
<table>
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<tr>
<th>State</th>
<th>I. Mult. Comp.</th>
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</table>

**Maine**

² Id. § 1862.
³ Id. § 1760.27 (aircraft sales for immediate transportation out of state).
⁴ Id. § 1765 (isolated sales exemption).
⁵ Id. § 1760.
⁶ Id. §§ 1480-1491.
⁷ Id. § 1760.31 (“direct use” exemption for new equipment).
⁸ Id. §§ 1752.11, 1752.16.

**Maryland**

² Id. § 374A (Supp. 1978) (establishing minimum degree of “storage” which gives rise to use tax).
³ Id. § 375(c) (1957).
⁴ Id. § 326(gg) (Supp. 1978) (exempting sales of aircraft and repair parts for aircraft “which will be used principally in the movement of passengers or freight or both, in interstate and foreign commerce”).
⁵ Id. § 326(n) (1957) (exempting sales of transportation services).
⁶ Id. § 326(f).
⁷ Id. § 324(f)(iii) (Supp. 1978).

**Massachusetts**

⁵ Id. § 6(a).
⁶ Id. § 6(c) (casual sales exemption not applicable to aircraft).
⁷ Id. §§ 6(r), 1(12)(b).
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<th>State</th>
<th>I. Mult. Comp. Basis</th>
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</table>

**MICHIGAN**

2. Id. § 205.51.
3. Id. § 205.54a(g) (Supp. 1979-1980).
4. Id. § 205.94a(e), 205.94(1) (1967).

**MINNESOTA**

2. Id. § 297A.24.
3. Id. §§ 297A.25(1)(m), 297A.25(1)(t) (exemption of air flight equipment taxable under separate ad valorem tax—exemption on sales to licensed aircraft dealers).
4. Id. § 297A.25(1)(1) (rolling stock exemption).
5. Id. § 297A.25(1)(c).
6. Id. §§ 297A.25(1)(k), 297A.255.

**MISSISSIPPI**

2. Id. §§ 27-67-3(k), 27-67-11 (1972) (minimum contacts to require collection of tax, but not a comprehensive statement of limitations on state's taxing power).
3. Id. § 27-67-7.
4. Id. §§ 27-65-17(a)(3) to 27-65-7(a)(8), 27-65-29(d)(2) (exemptions for vessels and rolling stock).
5. Id. § 27-65-29 (Supp. 1978).
6. Id. § 27-65-17 (tax rate on aircraft transactions different than other transactions).
7. Id. § 27-65-23 (5% gross income tax on aviation repair).
8. Id. §§ 27-35-701 to 27-35-711 (1972) (separate ad valorem property tax applicable exclusively to airline company aircraft).
<table>
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<td>C⁶</td>
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</tbody>
</table>

MISSOURI

² Id. § 144.010 (Vernon 1976).
³ Id. § 144.040.2 (exemption for sales of aircraft “for storage or for use in interstate commerce” if purchaser is certified by CAB).
⁴ Id. § 144.020.1(7) (separate rate of taxation for sales of intrastate aviation tickets).
⁵ Id. § 144.030.3(2) (replacement parts and component parts of aircraft, and rolling stock used as common carriers).
⁶ Id. § 144.030.3(4) (new and expanding industries).

NEBRASKA

² Id. § 77-2702(8).
³ Id. § 77-2704(4) (Supp. 1978).
⁴ Id. § 77-2704(3)(a) (aircraft repair parts brought into state for incorporation into common carriers).
⁵ Id. § 77-2704(1)(a).
⁶ Id. § 77-2702(11)(a) (1976).

NEVADA

² Id. § 372.060.
⁵ Id. § 372.080 (property which is to be incorporated into other tangible personal property “to be transported outside the state and thereafter used solely outside the state”).
<table>
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<tr>
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<td>C⁹</td>
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</tbody>
</table>

**NEW JERSEY**

² Id. § 54:32B-11(b).
³ Id. § 54:32B-8(h) (sales of airplane fuel to airlines).
⁴ Id. § 54:32B-8(k) (transportation of persons or property).
⁵ Id. § 54:32B-11.
⁶ Id. §§ 54:32B-8(1), 54:32B-8(bb).
⁷ Id. § 54:32B-8(j).
⁸ Id. § 54:32B-8(m)(1) (deleted by 1970 N.J. Laws ch. 7, § 5; re-enacted by 1977 N.J. Laws ch. 18, § 1).

**NEW MEXICO**

² Id. § 72-16A-10 (for collection duty, but not general liability).
³ Id. § 72-16A-16.
⁴ Id. § 72-16A-14.10 (deduction for transactions in interstate commerce).
⁵ Id. § 72-16A-14.27 (exempting “transportation of passengers or property for hire in interstate commerce under the regulations or authorization of any agency of the United States”).
⁶ Id. § 72-16A-14.11A (exempting receipts from interstate transportation, and from intrastate transportation and service “reasonably necessary” to interstate transportation).
⁷ Id. § 72-16A-12.18.
⁸ Id. § 72-16A-14.10.
⁹ Id. § 72-16A-14.1.
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</table>

**New York**

¹ See N.Y. Tax Law § 1101(b)(5) (McKinney 1975).
² Id. § 1118(7)(a).
³ Id. § 1105(c)(3) (McKinney Supp. 1978). The imposition clause of the tax for installation and service of tangible personal property excludes aircraft maintenance and repair parts for "commercial aircraft primarily engaged in intrastate, interstate or foreign commerce." Id.

⁴ Id. § 1115(a)(21) (commercial aircraft, repair parts and flight simulators).
⁵ Id. § 3 (McKinney 1966) (corporations exclusively engaged in operation of aircraft in foreign commerce exempted from taxes on earnings, capital stock and franchises).
⁶ Id. § 1115(a)(8) (McKinney 1975).
⁷ Id. § 183 (McKinney Supp. 1978) (franchise tax on transportation corporation).
⁸ Id. § 1115(c) (McKinney 1975) (gas, electricity, etc.).
⁹ Id. § 1118(4).

**North Carolina**

² Id. §§ 105-164.3(10), 105-164.8.
³ Id. § 105-164.6(4).
⁴ Id. § 105-164.4(1) (Supp. 1977) (different tax rate on sale of aircraft in imposition clause, with limit of credit set at $120).
⁵ Id. § 105-164.14 (detailed statutory apportionment scheme based on mileage).
⁶ Id. § 105-164.13(8) (1972).

**North Dakota**

² Id. § 57-39.2-01.2.
³ Id. § 57-40.2-11.
⁴ Id. § 57-39.2-04.2 (Supp. 1977) (transportation of persons or property provided by common carrier).
⁵ Id. § 57-40.2-04.5 (1972) (rolling stock exemption).
⁶ Id. § 57-39.2-04.1.
⁷ Id. § 57-39.2-01.3 (Supp. 1977).
<table>
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<th>VI. Misc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ohio</td>
<td>No A,B' A²</td>
<td>B³</td>
<td>D' E' F'</td>
<td>C'</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Okla.</td>
<td>No A,B' A²</td>
<td>C³</td>
<td>B',C' G²</td>
<td>B' C'</td>
<td></td>
<td></td>
</tr>
<tr>
<td>R.I.</td>
<td>No A,B' B</td>
<td>B³</td>
<td>E' F' G²</td>
<td>B' C'</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Ohio

1 See Ohio Rev. Code Ann. § 5739.01(B) (Page Supp. 1978).
2 Id. § 5741.01(H) (Page 1973).
3 Id. § 5741.02(C)(5) (Page Supp. 1978).
4 Id. § 5739.02(B)(11) (exempts sales of transportation of persons or property).
5 Id. § 5739.02(B)(14) (Page 1973) (ships and vessels in interstate commerce).
6 Id. § 5739.02(B)(10) (Page Supp. 1978).
7 Id. § 5739.01(E)(2).

Oklahoma

2 Id. § 1407 (West Supp. 1978).
3 Id. § 1404(c) (West 1966).
4 Id. § 1404(g) (exempts “any article of tangible personal property used or to be used by commercial airlines”).
5 See In re Woods Corp., 531 P.2d 1381 (Okla. 1975) (shipment of plane into state, purchaser to use it exclusively in interstate commerce—taxable moment upon delivery and prior to departure).
7 Id. § 1305(o 2).

Rhode Island

2 Id. § 44-18-30.A.
5 Id. § 44-3-3(20) (exemption from ad valorem property tax on aircraft on which registration fee has been paid).
6 Id. §§ 44-18-20(a) to 44-18-20(w) (Supp. 1979) (certain casual sales of aircraft and other property not included within tax imposition section).
7 Id. § 44-18-30.W (Supp. 1979).
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<tbody>
<tr>
<td>S.C.</td>
<td>No</td>
<td>A¹</td>
<td>A²</td>
<td>C⁴</td>
<td>E⁴ F⁵</td>
<td>B, C⁸</td>
</tr>
<tr>
<td>S.D.</td>
<td>Yes¹</td>
<td>B¹</td>
<td>B</td>
<td>C³</td>
<td>D⁴ E³</td>
<td>A¹ A²</td>
</tr>
<tr>
<td>Tenn.</td>
<td>No</td>
<td>A, B³</td>
<td>B</td>
<td>B²</td>
<td>C⁴ A, B, C⁸</td>
<td>B, C⁸</td>
</tr>
</tbody>
</table>

**SOUTH CAROLINA**

² Id. § 12-35-80 (definition of retailer maintaining place of business within this state). *But see id.* § 12-35-810 (imposing the use tax "regardless of whether the retailer is or is not engaged in business in this State"); *see also id.* § 12-35-830 (nexus criteria to obtain retail license).
³ Id. § 12-35-810.
⁴ Id. § 12-35-550.
⁵ Id. § 12-35-550(1).
⁶ Id. § 12-35-110.

**SOUTH DAKOTA**

² Id. § 10-45-1(7) (1969).
³ Id. §§ 10-46-6.1, 10-46-34.1 (Supp. 1978).
⁴ Id. § 10-45-12 (1969) (exempting sales of transportation).
⁵ Id. § 10-46-10.
⁶ Id. §§ 10-45-9, 10-46-7.
⁷ Id. §§ 10-29-1 to 10-29-17 (1969 & Supp. 1978) (separate taxation provisions for airline flight property).
⁸ Id. § 10-45-3.1 (Supp. 1978) (tax on sale of aircraft used for agricultural spraying).

**TENNESSEE**

² Id. § 67-3008 (1976).
³ Id. §§ 67-3002(c)1, 67-3007 (1976 & Supp. 1978).
⁴ Id. § 67-3012(7) (Supp. 1978).
⁵ Id. § 67-3012(7) (exemption for parts, accessories and supplies used by commercial air carriers who perform no intrastate services); *see also* Federal Express Corp. v. Woods, 569 S.W.2d 408 (Tenn. 1978) (interstate carrier not within exemption for performing even de minimis intrastate business).
⁶ Id. §§ 67-3012(8), 67-3012(a)(3) (Supp. 1978).
⁷ Id. § 67-3002(i) (1976) (casual sales of aircraft specifically included in tax imposition clause).
⁸ Id. § 67-3002(c)(2) (Supp. 1978).
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<tr>
<td>Tex.</td>
<td>Yes¹ A,B²</td>
<td>B C³</td>
<td>A⁴ C⁶ E⁴ F⁷ G⁸</td>
<td>C⁹</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Utah</td>
<td>Yes¹ A,B²</td>
<td>B B³</td>
<td>D⁴ F⁸</td>
<td>C⁹</td>
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</tr>
<tr>
<td>Va.</td>
<td>No A,B¹</td>
<td>B B³</td>
<td>C⁹ A,C⁴ E⁴ G⁶,⁷</td>
<td>A⁸ C⁹</td>
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</tbody>
</table>

**Texas**


² *See Tex. Tax Code Ann.* tit. 122A, art. 20.01(G) (Vernon 1969); *id.* art. 20.01(K)(1)(a).

³ *Id.* art. 20.04(J).

⁴ *Id.* art. 20.04(Q) (Vernon Supp. 1978).

⁵ *Id.* art. 20.04(G) (Vernon 1969).

⁶ *Id.* art. 20.04(P) (Vernon Supp. 1978).

⁷ *Id.* art. 20.04(C) (Vernon 1969).

⁸ *Id.* art. 20.04(G)(3)(d) (exemption for repair parts for any "self-propelled vehicle which is a licensed and certified common carrier of persons or property").

⁹ *Id.* art. 20.04(E).

**Utah**


² *Id.* § 59-15-2(b).


⁴ *Id.* § 59-15-4(b)(1) (exemption for intrastate movement of freight).

⁵ *Id.* § 59-15-6(1) (Supp. 1979); *id.* § 59-16-4(b) (1974).

**Virginia**

¹ *See Va. Code* § 58-441.2(b) (Supp. 1979).

² *Id.* § 58-441.8 (1974).

³ *Id.* § 58-441.6(i) (Supp. 1979).

⁴ *Id.* § 58-441.6(v) (exemption for sale or lease of property to airline providing interstate common carrier service).

⁵ *Id.* § 58-441.6(t).

⁶ *Id.* § 58-441.6(x) (exemption for aircraft taxed under Virginia Aircraft Sales and Use Tax).

⁷ *Id.* § 58-685.31 (exemption from separate Virginia Aircraft Sales and Use Tax available to certified air carriers).

⁸ *Id.* §§ 58-685.27 to 58-685.38 (Virginia Aircraft Sales and Use Tax).

⁹ *Id.* § 58-441.6.
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<tbody>
<tr>
<td>Wash.</td>
<td>Yes(^1)</td>
<td>A,B(^2)</td>
<td>B(^3)</td>
<td>A,C(^4)</td>
<td></td>
<td>A'C(^5)</td>
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<tr>
<td>W. Va.</td>
<td>No</td>
<td>A,B(^1)</td>
<td>B(^4)</td>
<td>C(^6)</td>
<td>A'B(^5)</td>
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</tr>
<tr>
<td>Wisc.</td>
<td>No</td>
<td>A,B(^1)</td>
<td>A(^7)</td>
<td>B(^8)</td>
<td>A,C(^4)</td>
<td>B(^9)</td>
</tr>
</tbody>
</table>

**WASHINGTON**

\(^1\) Wash. Rev. Code Ann. § 82.56.010 (Supp. 1979).
\(^2\) Id. §§ 82.04.040, 82.08.010(4) (1962 & Supp. 1979).
\(^3\) Id. § 82.12.035 (Supp. 1979).
\(^4\) Id. §§ 82.08.030(11), 82.12.030(4) (sales of airplanes for use in transporting persons and property for hire in interstate commerce or for conducting commercial deep sea fishing).
\(^5\) Id. § 82.08.030(10) (sale of property to common carrier by air, rail or water in interstate or foreign commerce).
\(^6\) Id. §§ 82.08.030(4), 82.12.030(5).
\(^7\) Id. § 82.48.020 (aircraft excise tax).
\(^8\) Id. § 82.04.050.

**WEST VIRGINIA**

\(^2\) There is no separate statutory provision to prevent multistate taxation.
\(^3\) Id. § 11-15A-3.3 (exemption for use of "[t]angible personal property, the gross receipts from the sale of which are derived from the sale of machinery, supplies, and materials to . . . persons engaged in the business of . . . transportation").
\(^4\) Id. §§ 11-12A-1 to 11-12A-22 (Annual Tax on Incomes of Certain Carriers).
\(^5\) Id. § 11-15-9(8), -9(9).

**WISCONSIN**

\(^2\) Id. § 77.53(3) (collection responsibilities).
\(^3\) Id. § 77.53(16).
\(^4\) Id. § 77.54(5)(a) (aircraft, including accessories, sold to persons who use them as certified or licensed carriers in interstate commerce).
\(^5\) Id. §§ 77.54(11)—77.54(13).
\(^6\) Id. § 77.54(1).
\(^7\) Id. § 77.54(6)(a).
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</thead>
<tbody>
<tr>
<td>Wyo.</td>
<td>No</td>
<td>A, B</td>
<td>B</td>
<td>D</td>
<td>C&lt;sup&gt;4,4&lt;/sup&gt;</td>
<td>C&lt;sup&gt;7&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

**Wyoming**

2. No credit provisions for taxes paid to other states.
3. Id. § 39-6-405(a)(iv) (exempting interstate transportation).
4. Id. § 39-6-505(a)(x) (exempting aircraft purchased by certified air carriers).
5. Id. §§ 39-6-405(a)(xv), 39-6-505(a)(iii).
6. Id. § 39-6-404(a)(iv) (imposition of tax only upon intrastate transportation of freight and passengers).
7. Id. §§ 39-6-405(a)(i), 39-6-505(a)(viii).