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Cari Beth Janssen

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(UN)HAPPY HOLIDAYS: THE TRUE MEANING OF SALES TAX “HOLIDAY” POLICY

Cari Beth Janssen *

INTRODUCTION

States are always looking for a practical way to earn additional revenue and balance government budgets. State lawmakers commonly resolve this problem by imposing taxes on the sale of goods and services. The imposition of sales taxes is considered an “equitable method” for maintaining the balance between the benefit that taxpayers receive from government spending and the amount of taxes that they pay for those benefits.¹ In taxing goods, the government assumes that personal consumption is the most appropriate representation of the amount of government services used by the same taxpayer.² However, politicians often feel forced to look for ways to combat the actual inequity that arises because of the constraints that sales taxes place on low-income taxpayers. A popular solution is for states to exempt from the sales tax a particular set of products that are considered important, such as medicine, thereby reducing the burden felt by low-income taxpayers when purchasing these goods.³ However, by exempting products, the tax base becomes smaller, thereby requiring a higher tax rate on other goods to make up

* J.D. Candidate, May 2012, Loyola University Chicago School of Law. I give many sincere thanks to my professor and mentor, Samuel Brunson, for his wisdom, guidance, and support.

¹ MICAH COHEN, JOSEPH HENCHMAN & MARK ROBYN, SALES TAX HOLIDAYS: POLITICALLY EXPEDIENT BUT POOR TAX POLICY 2 (Tax Foundation 2011), available at <http://www.taxfoundation.org/files/sr171.pdf>.

² *Id.*

³ See State Sales Tax Rates and Food & Drug Exemptions, FEDERATION OF TAX ADMINISTRATION, Jan. 12, 2012, available at <http://www.taxadmin.org/fta/rate/sales.pdf> (All states aside from Alaska, Delaware, Illinois, New Hampshire, and Oregon fully exempt prescription medications from sales tax).

the lost revenue.

Recently, lawmakers have begun trying to alleviate the obvious burden on low-income taxpayers by enacting tax policies popularly known as sales tax holidays.⁴ Many consumers are aware that these holidays, like exemptions, waive the sales tax for particular sets of goods, but only for a prescribed period of time. At first impression, the end result of eliminating the sales tax seems to be lower prices for consumers, additional consumer spending, and happy voters. But is this really the case?

First, this Note will discuss the history of sales taxation in the United States, exploring both the legislation that implements sales taxes in various states and the laws that suspend the collection of such taxes during holidays. Second, it will analyze the effects that tax-free weekend legislation has on both enacting states and their neighboring states, and it will focus not only on the pecuniary impact on retailers and consumers but also on non-economic consequences. Finally, it will give recommendations to state lawmakers on how to develop a new system to promote commerce that does not involve tax holidays or cause disruptions to their state's tax policy. It will analyze three popular methods with which to replace tax holiday implementation, investigate the merits and disadvantages of each policy, and conclude with a suggestion on which program state lawmakers should consider adopting.

I. USE AND WAIVER OF SALES TAXES THROUGHOUT HISTORY

A. History of Sales Taxes Within the United States

Unlike many countries, the United States does not impose a federal consumption tax on goods and services sold within its national borders.⁵ Conversely, numerous states use sales taxes for revenue-generating purposes. Under the Tenth Amendment of the United States Constitution, if a power is not specifically granted to

⁴ See COHEN, *supra* note 1.

⁵ Tax Rates Around the World, WORLD-WIDE TAX, <http://www.worldwide-tax.com/#partthree> (last visited Oct. 8, 2011); see also Determining Duty, UNITED STATES CUSTOMS AND BORDER PATROL, http://www.cbp.gov/xp/cgov/travel/vacation/kbyg/paying_duty.xml (last visited Feb. 26, 2012); The Law of Imposing Duties (A federal duty is imposed on some goods brought into the United States by citizens and aliens from outside the national borders. These duties, however, are beyond the scope of this Note, which will focus on national taxation on goods and services).

the federal government or precluded from the states, that power is reserved to the states.⁶ Therefore, states are free to impose tax on individuals using goods, or retailers providing goods, within the boundaries of that state because the Constitution does not limit the ability of a state to impose its own sales taxes.⁷ The Supreme Court has also upheld the states' right to impose a sales tax.⁸ Today, many states rely heavily on the revenue generated by sales taxes to compensate for state spending.⁹ In 2008, thirty-one states generated more than twenty percent of their tax revenue from the general sale of goods.¹⁰ Of those states, seven earned more than fifty percent of their tax revenue from the combined taxation of general sales and selective sales.¹¹

Legal scholars seem to debate hotly which states enacted the first broad-based sales tax.¹² Pennsylvania introduced the mercantile license tax in 1821.¹³ However, Kentucky first introduced the typical modern sales tax in response to the Great Depression when it levied a

⁶ U.S. CONST. amend. X.

⁷ See *Id.* (no restriction on the right to impose a sales tax is found anywhere in the Constitution; therefore, States are free to impose sales tax).

⁸ See *Madden v. Kentucky*, 309 U.S. 83, 91-92 (1940) (upholding a Kentucky bank deposit tax challenged on Fourteenth Amendment grounds because the use of banks was not "a privilege of national citizenship" and recognizing that as long as state policies were constitutional, "the power of the state over taxation is plenary"); *McGoldrick v. Berwind-White Coal Mining Co.*, 309 U.S. 33, 45 (1940) (*citing* *Gibbons v. Ogden*, 9 Wheat. 1, 187 (1825) (holding that states are within their constitutional powers to tax as long as the tax imposed does not interfere with commerce between states); *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 288-289 (1977) (holding that a tax on the "privilege of doing business" in a particular state, even if it is part of a multi-state transaction, is not a violation of the Commerce Clause).

⁹ RYAN FORSTER & KAIL PADGITT, WHERE DO STATE AND LOCAL GOVERNMENTS GET THEIR TAX REVENUE 4 (Tax Foundation 2010), available at <http://www.taxfoundation.org/files/ff242.pdf>.

¹⁰ *Id.*

¹¹ *Id.* See also State Government Tax Collections, U.S. CENSUS BUREAU, <http://www.census.gov/govs/statetax/definitions.html#s> (last visited Feb. 26, 2012) (according to the U.S. Census Bureau, general sales taxes are "taxes which are applicable . . . to all types of goods and services." In contrast, selective sales are "taxes imposed on sales of particular commodities or services . . . separately and apart from the application of general sales." Some examples of specific sales taxes include taxes on alcohol, amusements, insurance, and tobacco.).

¹² WILLIAM F. FOX, HISTORY AND ECONOMIC IMPACT OF THE SALES TAX (Jerry Janata ed., Institute for Professional in Taxation 2003), available at <http://cber.bus.utk.edu/staff/mnmecon338/foxipt.pdf>.

¹³ *Id.*

tax exclusively on retailers in 1930.¹⁴ In 1934, Kentucky replaced the tax with a flat tax of three percent.¹⁵ Also in 1930, Mississippi enacted a general sales tax.¹⁶ Presently, forty-five of the fifty states impose sales or use taxes on some or all goods consumed in that state.¹⁷ Each state imposes a different sales tax rate, but all are based on the sum of the state rate set by lawmakers and any municipal taxes levied by local jurisdictions (in states where this practice is allowed).¹⁸ Currently, the states with the lowest average combined state and local rates are "Hawaii (4.35%), Maine (5%), Virginia (5%), and Wisconsin (5.43%)."¹⁹ The states with the highest average combined rates are "Tennessee (9.43%), Arizona (9.12%), Louisiana (8.84%), Washington (8.79%), and Oklahoma (8.66%)."²⁰

In understanding the detrimental effects that sales tax holidays have on states' tax policies, it is important to have a working knowledge of the statutes that these holiday policies affect. For that, it is useful to look to four specific states – Texas, Illinois, Massachusetts, and New York – as examples of popular trends. An analysis of the policies in these four states encompasses not only an examination of four completely different sales tax systems, but it also serves as a great example, when viewed together, of the majority of sales tax systems in effect across the country. In addition, the holiday policies enacted by these four states make them particularly interesting, as they are either (i) representative of the varying approaches that states across the country take in regards to holidays and/or (ii) a historic originator of the sales tax holiday.

1. Texas

In 1961, Texas enacted its first sales tax, the Limited Sales and Use Tax, which took effect on September 1, 1961.²¹ The Limited Sales and Use Tax was the first tax of broad-based application in

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ SCOTT DRENKARD, RANKING STATE AND LOCAL SALES TAXES (Tax Foundation 2011), *available at* <http://www.taxfoundation.org/publications/show/27023.html>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Robert S. Calvert, *Sales Tax*, HANDBOOK OF TEXAS ONLINE, <http://www.tshaonline.org/handbook/online/articles/mpszr> (last visited Oct. 8, 2011).

Texas, and included nearly every consumer good and service such as motor vehicles, gasoline, and cigarettes, and exempted only a few specific items such as groceries, certain medicines, and certain services.²² Although the tax rate started at two percent, it increased to 6.25 percent by 1990.²³ Today, the current Limited Sales, Excise, and Use Tax in Texas holds the state sales tax to 6.25 percent for taxable items.²⁴ Taxable items include “tangible personal property and taxable services,”²⁵ including amusement services, personal services, debt collection, and security services.²⁶ Beginning in 1967, Texas authorized municipalities to collect up to an additional two percent in taxes through the Municipal Sales and Use Tax Act.²⁷

2. Illinois

Illinois enacted its first sales tax in 1933, at a temporary rate of two percent,²⁸ which was raised to three percent in 1935 and eventually made permanent.²⁹ Currently, Illinois administers one of the most complicated sales tax systems in the country. Four separate statutes govern Illinois sales taxes: the Retailers’ Occupation Tax (“ROT”),³⁰ the Use Tax (“UT”),³¹ the Service Occupation Tax (“SOT”),³² and the Service Use Tax (“SUT”).³³ The ROT and the SOT are both taxes imposed directly on “persons engaged in . . . business.”³⁴ With a few limited exceptions, the ROT taxes the retail

²² *Id.*; Limited Sales, Excise, and Use Tax, TEX TAX CODE ANN. § 151.301 (West 2011).

²³ Calvert, *supra* note 21.

²⁴ Limited Sales, Excise, and Use Tax, TEX TAX CODE ANN. § 151.051(b) (West 2011).

²⁵ Limited Sales, Excise, and Use Tax, TEX TAX CODE ANN. § 151.010 (West 2011).

²⁶ Limited Sales, Excise, and Use Tax, TEX TAX CODE ANN. § 151.0101(a) (West 2011).

²⁷ Calvert, *supra* note 21; Limited Sales, Excise, and Use Tax, TEX TAX CODE ANN. § 321.001 (West 2011); Limited Sales, Excise, and Use Tax, TEX TAX CODE ANN. § 321.101(f) (West 2011).

²⁸ COMMISSION ON GOVERNMENT FORECASTING AND ACCOUNTABILITY, SALES TAXES IN ILLINOIS 2 (May 2010), *available at* <http://www.ilga.gov/commission/cgfa2006/Upload/2010mayilsalestax.pdf>.

²⁹ *Id.*

³⁰ Retailers’ Occupation Tax Act, 35 ILL. COMP. STAT. 120/ (2011).

³¹ Use Tax, 35 ILL. COMP. STAT. 105/ (2011).

³² Service Occupation Tax, 35 ILL. COMP. STAT. 115/ (2011).

³³ Service Use Tax, 35 ILL. COMP. STAT. 110/ (2011).

³⁴ Retailers’ Occupation Tax Act, 35 ILL. COMP. STAT. 120/2 (2011); Service

sale of tangible personal property while the SOT taxes tangible property transferred because of the sale of a service.³⁵ In addition, the UT and the SUT impose taxes on the "privilege of using" tangible property in the state of Illinois.³⁶ The SUT taxes the use of real or tangible personal property acquired through the purchase of a service, and the UT taxes the use of tangible personal property bought at a retail establishment.³⁷ The consumer is supposed to pay any taxes owed under the UT and the SUT directly to a serviceman or retailer, but any portion of the taxes not paid at the time of purchase is due directly to the Department of Revenue from the consumer.³⁸ Therefore, retailers owe a tax directly to the Department of Revenue when consumers purchase a good or service, and they reimburse themselves for taxes paid by collecting a "use" tax from purchasers for the benefit of using that product or service.³⁹ Exemptions from these taxes include standard items typical of other tax exemptions such as food and leased property.⁴⁰

3. Massachusetts

Massachusetts adopted its first general sales tax in 1966.⁴¹ Massachusetts was one of the last states in the country to impose a sales tax.⁴² Initially, Massachusetts levied a thirty-three percent tax.⁴³

Occupation Tax, 35 ILL. COMP. STAT. 115/3 (2011).

³⁵ Retailers' Occupation Tax Act, 35 ILL. COMP. STAT. 120/2 (2011); Service Occupation Tax, 35 ILL. COMP. STAT. 115/3 (2011).

³⁶ Service Use Tax, 35 ILL. COMP. STAT. 110/3 (2011); Use Tax, 35 ILL. COMP. STAT. 105/3 (2011).

³⁷ Service Use Tax, 35 ILL. COMP. STAT. 110/3 (2011); Use Tax, 35 ILL. COMP. STAT. 105/3 (2011).

³⁸ Use Tax, 35 ILL. COMP. STAT. 105/3-45 (2011); Service Use Tax, 35 ILL. COMP. STAT. 110/3-40 (2011).

³⁹ ILL. DEP'T OF REVENUE, SALES AND USE TAXES (2011), *available at* <http://tax.illinois.gov/Businesses/TaxInformation/Sales/rot.htm>; Retailers' Occupation Tax Act, 35 ILL. COMP. STAT. 120/ (2011); Use Tax, 35 ILL. COMP. STAT. 105/ (2011); Service Occupation Tax, 35 ILL. COMP. STAT. 115/ (2011); Service Use Tax, 35 ILL. COMP. STAT. 110/ (2011).

⁴⁰ ILL. ADMIN. CODE tit. 86, § 130.120 (2010); *see also* Common Sales Tax Exemptions, 2004 PUB-104 (Ill. Dep't of Rev. 2010), *available at* <http://tax.illinois.gov/Publications/Pubs/Pub-104.pdf>.

⁴¹ NOAH BERGER & KURT WISE, UNDERSTANDING OUR TAX SYSTEM: A PRIMER FOR ACTIVE CITIZENS 31 (2010), *available at* www.massbudget.org/reports/pdf/Tax_Primer_83110.pdf.

⁴² Ted Nesi, *Mass. Sales Tax Rises to 6.25% Tomorrow*, PROVIDENCE BUS. NEWS, July, 31, 2009, *available at* <http://www.pbn.com/Mass-sales-tax-rises-to-625-tomorrow,43933>.

Today, Massachusetts sets its general sales tax rate at 6.25 percent, and legislators impose the tax directly on vendors' gross receipts of non-exempt property or services.⁴⁴ Massachusetts has not authorized municipalities to charge their own sales taxes, so the maximum rate across the state is 6.25 percent.⁴⁵ Massachusetts has a large number of familiar exemptions including but not limited to the sale of "food products for human consumption," most utilities, clothing items that are less than \$175, and medicines.⁴⁶

4. New York

New York enacted its first sales tax set at two percent in April of 1965.⁴⁷ Less than four years later, state lawmakers raised the tax to three percent.⁴⁸ New York increased the sales tax again in 1971, setting it at a rate of four percent, where it remained for three decades. In May of 2003, the legislature again raised the sales tax to 4.25 percent.⁴⁹ However, on May 31, 2005, state lawmakers allowed the quarter-point increase to expire, returning the sales tax to its long-time rate of four percent.⁵⁰ Today, New York imposes the four percent general sales tax on "the retail sale of tangible personal property" that is otherwise not exempt under the tax code.⁵¹ In addition, New York imposes a compensating use tax of four percent on most tangible property, unless the property has already been subject to the sales tax under §1105 of New York tax law.⁵² For the most part, New York exempts from the sales tax and compensating use tax expected products such as food for human consumption, medicine, newspapers, and periodicals.⁵³ However, some of the exemptions integrate directly into sales tax holiday policy, and, as a result, merit further discussion in the analysis of holiday policies

⁴³ *Id.*

⁴⁴ MASS. GEN. LAWS. Ch. 64H, § 2 (2009).

⁴⁵ Massachusetts Tax Rate and Exemptions 2010/2011, TAX-RATES.ORG (2011/2012), <http://www.tax-rates.org/Massachusetts/sales-tax> (last visited Feb. 5, 2012).

⁴⁶ MASS. GEN. LAWS. Ch. 64H, § 6(h), (i), (k), (l) (2009).

⁴⁷ Enactment and Effective Dates of Sales and Use Tax Rates, PUB 718-A (N.Y. Dep't. of Taxation and Finance 2011) [hereinafter *Publication 718-A*].

⁴⁸ *Id.*

⁴⁹ N.Y. Tax Law § 1105 (McKinney 2003); *Publication 718-A*, *supra* note 47.

⁵⁰ N.Y. Tax Law § 1105 (McKinney 2003); *Publication 718-A*, *supra* note 47.

⁵¹ N.Y. TAX LAW § 1105(a) (McKinney 2010).

⁵² N.Y. Tax Law § 1110 (McKinney 2005).

⁵³ N.Y. Tax Law § 1115 (McKinney 2011).

below.⁵⁴

B. History of Sales Tax Holidays

States have begun to promote commerce within their boundaries by offering tax holiday weekends. Essentially, holidays are a short period of time during which no collection of state sales taxes occurs for particular types of goods, usually school supplies, clothing, and specific electronics. The idea of sales tax holidays dates back to 1980 when Ohio and Michigan enacted tax holidays that suspended their sales taxes for automobile purchases.⁵⁵ However, the modern tax holiday trend was sparked when New York began offering a tax holiday for clothing in 1997.⁵⁶ The policy originated in an attempt to keep New York citizens from traveling to New Jersey and other neighboring states to buy goods at lower tax rates (and in some cases, tax-free).⁵⁷ During that week in January of 1997, most clothing items costing less than five hundred dollars were exempt from the state's four percent sales tax.⁵⁸ In addition, 54 out of 62 municipal counties suspended their local sales tax, and New York City suspended its four percent tax.⁵⁹ The Metropolitan Transit Authority also waived its quarter percent tax during the holiday.⁶⁰ The forecasted result of this first holiday was twenty million dollars in lost tax revenue.⁶¹ In 2006, New York eliminated its annual weeklong sales tax holiday, replacing it instead with a year-round exemption from the state sales tax for clothing and footwear that would have been tax-free during the sales tax holiday and cost less than \$110 per item.⁶² In 2010, however, New York repealed its year-round exemption in time for the Christmas season, as the state's

⁵⁴ *Id.*

⁵⁵ COHEN, *supra* note 1, at 3.

⁵⁶ *Id.*

⁵⁷ Adam J. Cole, Sales Tax Holidays: Timing Behavior and Tax Incidence, at 3 (2009) (unpublished Ph.D. dissertation, University of Michigan), http://deepblue.lib.umich.edu/bitstream/2027.42/63811/1/adamcol_1.pdf.

⁵⁸ Lisa W. Foderaro, *Stores Gear Up for Week of Tax Relief*, N.Y. TIMES, Jan. 18, 1997, <http://www.nytimes.com/1997/01/18/nyregion/stores-gear-up-for-week-of-tax-relief.html?src=pm>.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Sharon Linstedt, *Get Set for State's Sales-Tax Holiday Taxes to Be Cut on Most Apparel Week of Jan. 18*, BUFFALO NEWS, Jan. 5, 1997, at Business.

⁶² Year-Round Sales and Use Tax Exemption of Clothing, Footwear, and Items Used to Make or Repair Exempt Clothing, TSB-M-06(6)S (N.Y. State Dep't of Taxation and Finance March 26, 2006) [hereinafter *TSB Memo*].

budget deficit had reached the billions.⁶³ On April 1, 2011, New York reenacted the year-round holiday, but it set the price cap at \$55 instead of the \$110 at which it had been set previously.⁶⁴

After the “success” in New York, Florida and Texas adopted sales tax holidays in 1998 and 1999, respectively.⁶⁵ The actual number of states participating in tax holidays has fluctuated over the years.⁶⁶ As previously stated, the trend first began in New York in 1997, increased from seven states in 2000 to sixteen states by 2009, and finally peaked at nineteen states in 2010.⁶⁷ In 2011, seventeen states had at least two days of tax-free shopping.⁶⁸ As an example of the varying policies, Massachusetts enacted its first tax holiday in 2004, offering a one-day waiver of the state sales levy on “all non-business sales at retail . . . of tangible personal property” not exceeding \$2,500.⁶⁹ From 2005 to 2008, Massachusetts enacted an annual two-day waiver of its sales tax.⁷⁰ However, due to budget deficit concerns in 2009, Massachusetts cancelled its sales tax holiday and correspondingly increased its general sales tax.⁷¹

Additionally, Illinois also implemented a sales tax holiday in 2010.⁷² Despite being “literally bankrupt,” Illinois decided to appease voters by eliminating the five percent state sales tax for a week in August on goods such as low-cost clothing, shoes, and computers.⁷³

⁶³ Michael DeMasi, *No Joke: State Drops Sales Tax on Shoes, Clothes*, BUSINESS REVIEW (Apr. 1, 2011), http://www.bizjournals.com/albany/morning_call/2011/04/no-joke-state-drops-sales-tax-on.html.

⁶⁴ *Id.*

⁶⁵ Cole, *supra* note 57, at 6.

⁶⁶ Federation of Tax Administrators, *Sales Tax Holidays*, http://www.taxadmin.org/fta/rate/sales_holiday_2010.html (last visited Oct. 8, 2011) [hereinafter 2010 CHART]; Federation of Tax Administrators, *Sales Tax Holidays*, http://www.taxadmin.org/fta/rate/sales_holiday.html (last visited Oct. 8, 2011) [hereinafter 2011 CHART]; Martha T. Moore, *Sales Tax Holidays Spread to 18 States*, USA TODAY, Aug. 2, 2010, http://www.usatoday.com/money/industries/retail/2010-08-02-salestax02_ST_N.htm.

⁶⁷ Cole, *supra* note 57, at 5; 2010 CHART, *supra* note 66; Moore, *supra* note 66.

⁶⁸ 2011 CHART, *supra* note 66.

⁶⁹ 2003 Mass. Acts. ch. 141, §§ 55-59.

⁷⁰ 2005 Mass. Acts. ch. 52, §§ 1-5; 2006 Mass. Acts. ch. 204, §§ 1-7; 2007 Mass. Acts. ch. 81, §§ 1-6.

⁷¹ Cole, *supra* note 57, at 5.

⁷² ILL. DEPT. OF REV., INFORMATIONAL BULLETING: STATE SALES TAX HOLIDAY (2010).

⁷³ Ray Long, *Back to School Sales Tax Holiday Gaining Steam in Springfield*, CHICAGO TRIBUNE, May 6, 2010, http://newsblogs.chicagotribune.com/clout_st/20

Before the bill passed, lawmakers removed a clause that would have made the holiday an annual occurrence, making the 2010 tax exemption a one-time event.⁷⁴ Illinois lawmakers chose not to renew the sales tax holiday in 2011, which is not surprising considering the state had "\$8.7 billion in unpaid bills," according to Senator Toi Hutchinson.⁷⁵ As Hutchinson stated, "it just doesn't make sense."⁷⁶ In contrast, Texas, in spite of its deficits, recently enacted legislation that amended its tax code to include a sales tax holiday for 2012.⁷⁷

II. PROMISED AND ACTUAL RESULTS OF TAX-FREE WEEKENDS

States create confusion for the average consumer by continually eliminating and reinstating sales tax holidays and by regularly changing the timing and conditions of the holiday. Aside from the obvious confusion that results from states flipping back and forth on whether they will even hold sales tax holidays, the differences among the states and changes that occur from year to year in terms of the lengths, dates, exempted items, and price caps for sales tax holidays can become perplexing for the average consumer. In addition, proponents of sales tax holidays muddy the issue with over-inflated claims, including that the holidays provide savings for consumers, afford benefits to low-income consumers, and promote commerce and sales for in-state retailers.⁷⁸ With claims such as these, it is hard to understand why anyone would be against holiday policies. However, the empirical research does not support the claim that states see the economic benefits sought when they enact sales tax holidays.

There are four main reasons for the disparity between the planned and actual results of these holidays.⁷⁹ First, the idea of sales

10/05/back-to-school-sales-tax-holiday-gaining-steam-in-springfield.html; Sandra M. Jones, *Putting Illinois' First Sales Tax Holiday to Work*, CHICAGO TRIBUNE, Aug. 5, 2010, http://articles.chicagotribune.com/2010-08-05/business/ct-biz-0806-notebook-retail-20100805_1_tax-holiday-sales-tax-tax-relief.

⁷⁴ Long, *supra*, note 73; Jones, *supra*, note 73.

⁷⁵ Phil Kadner, *Illinois Can't Afford Another Tax Holiday*, SOUTHTOWN STAR, Aug. 4, 2011, <http://southtownstar.suntimes.com/6861409-522/kadner-illinois-cant-afford-another-tax-holiday.html>.

⁷⁶ *Id.*

⁷⁷ S.B. 1, 82nd Leg., 1st Sess. (Tx. 2011).

⁷⁸ See COHEN, *supra* note 1.

⁷⁹ See COHEN, *supra* note 1; Benjamin B. Boozer, Jr. & Keith S. Lowe, *Caveat Emptor: Sales Tax Holidays Are Not Necessarily as Advertised*, 9 INT'L J. OF BUS.

tax holidays misrepresents the amount a consumer will save by purchasing goods and services during a sales tax holiday period, thereby leading consumers to believe that they are saving more than they actually are (if they save at all).⁸⁰ Second, sales tax holidays inadvertently lead to discrimination across product types, consumer classes, and even, in some cases, timing of purchases.⁸¹ Third, enacting a sales tax holiday appears to be a complex gimmick that adds confusion to the tax system without leading to any actual economic growth.⁸² Finally, states that enact these policies unintentionally cause a burden on neighboring non-enacting states, which causes strain on interstate relations and possibly even dire economic consequences.⁸³

A. Result of Tax-Free Weekends on Enacting States

Holidays affect enacting states through several means, including misrepresentation of consumer savings; discrimination across consumer classes, products, and time; and the addition of complexity to the state tax policy.

1. Sales tax holidays mislead consumers with the promise of savings

The implied promise during sales tax holidays is that the net prices of exempted products will be less during the holiday than when sales taxes are imposed. However, the supposition that consumers actually save money during the holidays is questionable, and some economists have challenged this presumption.⁸⁴

Retailers do not have an incentive to offer additional sale prices or coupons during sales tax holidays as the expected influx of consumer spending alleviates the need for additional consumer incentives to spend.⁸⁵ The influx is real, since many consumers do

RESEARCH 2 (2009), available at <http://www.freepatentsonline.com/article/International-Journal-Business-Research/208535090.html>.

⁸⁰ See COHEN, *supra* note 1; Boozer, *supra* note 79.

⁸¹ See COHEN, *supra* note 1; Boozer, *supra* note 79.

⁸² See COHEN, *supra* note 1; Boozer, *supra* note 79.

⁸³ See COHEN, *supra* note 1; Boozer, *supra* note 79.

⁸⁴ Sheryl Nance-Nash, *The True Cost of Sales Tax Holidays*, DAILY FINANCE, (Aug. 12, 2011, 11:00 AM), <http://www.dailyfinance.com/2011/08/12/the-true-cost-of-state-sales-tax-holidays/>; see also Boozer, *supra*, note 79.

⁸⁵ Nance-Nash, *supra* note 84; Boozer, *supra* note 79; Richard R. Hawkins, *The Tax Cut a Mother Might Not Love: Short-Run Incidence and Temporary Sales*

actually respond to sales tax holidays, and retailers take advantage to the huge crowds by being less charitable with temporary sales and markdowns.⁸⁶ A reporter in North Carolina noted that during the 2009 sales tax holiday, sale prices at many retailers ended just before the start of the holiday.⁸⁷ For example, J.C. Penney offered an \$11 dollar discount on Levi jeans that ended the Tuesday before the holiday, meaning that unsuspecting consumers who waited actually would pay the full price of \$44 and would save only \$3 in taxes.⁸⁸ Granted, for retailers who continue their sales into the holidays, consumers do actually save a little bit of money by waiting.⁸⁹ However, even if a retailer does continue a sale, the retailer has an incentive to lower the amount by which it is discounting particular products (say, from twenty percent to ten percent), thereby absorbing the tax break at the "expense of the consumer."⁹⁰ Additionally, for popular exempt items, basic supply-and-demand concepts suggest that retailers might actually raise prices to prevent from running out of inventory.⁹¹

It is not a surprise that retailers are some of the largest supporters of sales tax holidays. Al Monroe, owner of a children's clothing store in Alton, Illinois, told a reporter, "I think we definitely noticed a little bump. We had a real good week during that period of time last year" (referring to the Illinois 2010 sales tax holiday).⁹² In 2008, retailers pushed for sales-tax exempt days, citing a report by

Tax Exemptions on Clothing, 17 STATE TAX NOTES 199, 201 (1999).

⁸⁶ Boozer, *supra* note 79; see also Trang Pham-Bui, *Shoppers Delight: Shop Without Paying Sales Taxes*, July 27, 2011 7:00 PM, <http://www.wlox.com/story/15160337/stores-offering-longer-hours-bonuses-for-sales-tax-holiday> (quoting store owner Robin Trosclair as stating, "[i]t was pretty much mass chaos. It was lots of people. We had two lines going on the whole time we're open" during the last two sales holidays in Mississippi); Carolyn Crist, *Stores Expect Influx of Shoppers for Sales-Tax Holiday*, GAINESVILLE TIMES, July 28, 2009, available at <http://www.gainesvilletimes.com/archives/21666/> (quoting a store stock clerk saying, "[t]his weekend each year is worse than Christmas.").

⁸⁷ Michael Handy, *Sales Tax Holidays Might Cost You More*, WECT TV-6 (Aug. 3, 2009, 12:18 PM), <http://www.wect.com/story/10838150/sales-tax-holiday-might-cost-you-more?redirected=true>.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Boozer, *supra* note 79.

⁹¹ COHEN, *supra* note 1, at 9.

⁹² Paul Schankman, *Illinois Businesses Can't Compete With Missouri Tax Holiday*, FOX2NOW.COM (Aug. 4, 2011, 8:55 PM), <http://www.fox2now.com/news/ktvi-missouri-tax-holiday-illinois-businesses-080411,0,3938199.story>.

the National Retail Federation that found that “82% of consumers favored a tax holiday, 83% would take advantage by making purchases, and 60% would make purchases they otherwise wouldn’t have made.”⁹³ However, the information provided also showed that additional discounts did not occur, and that consumers were supporting hypothetical benefits that they assumed they would receive but may not have.⁹⁴ According to David Brunori, a professor at George Washington University, retailers are profiting because they know that the influx of people means that they can raise prices, set inventory levels to manipulate supply-and-demand, and decrease staff to “maximize profit.”⁹⁵

2. Sales tax holidays discriminate across product classes, consumer classes, and time

a. Products

As previously mentioned, states not only differ on whether to implement sales tax holidays, but those states that do enact holidays differ substantially on which consumer goods are exempt. For example, of the seventeen 2011 sales holidays in various states, fifteen included clothing, ten did not tax school supplies, six excluded computer sales from the general sales tax, two did not tax firearm purchases, four exempted energy-star products, and up to three states exempted emergency-preparedness items.⁹⁶ In Massachusetts, restaurant owners are currently lobbying for a “prepared food” sales tax holiday.⁹⁷ During the first holiday enacted by New York, all

⁹³ Ann Zimmerman, *Retailers Want in on Stimulus Plan*, WALL ST. J., Dec. 24, 2008, available at <http://online.wsj.com/article/SB123007573825931553.html>.

⁹⁴ *Id.*; COHEN, *supra* note 1, at 8.

⁹⁵ *Tax Holidays Costly for State; Retailers Love It*, ROCKY MOUNTAIN TELEGRAM, Aug. 1, 2010 [hereinafter *Tax Holidays Costly*], available at <https://www.rockymounttelegram.com/news/ncwire/tax-holiday-costly-state-retailers-love-it-56083>.

⁹⁶ COHEN, *supra* note 1, at 3; 2011 CHART, *supra* note 66.

⁹⁷ S.B. 1528, 187th Gen. Ct. (Mass. 2011); see also Kendall Hatch, *Restaurants Seek Their Own Tax Holiday*, METROWEST DAILY NEWS, Feb. 7, 2011, available at <http://www.metrowestdailynews.com/lifestyle/food/x199971699/Restaurants-seek-their-own-tax-holiday> (Restaurateurs in Massachusetts have expressed irritation that the state government would give people incentives to buy goods from multi-million dollar companies (i.e. Best Buy) and not give a tax break to those wishing to eat locally. In addition, some owners relayed consumer confusion through stories of consumers “expecting to get the same deal they would see at a department store” during the sales tax holiday.).

clothing items related to running – shorts, shirts, shoes, tights, and jackets – were included in the state’s sales tax holiday.⁹⁸ However, consumers who were interested in other comparable activities, such as bicycling, would have to pay taxes on all the equipment needed including gloves and helmets.⁹⁹ As an additional example, swimsuits were exempt from taxation, but wet suits were not.¹⁰⁰

Sales tax holidays allow lawmakers to decide “economic winners and losers,” a function that should ordinarily be left to the free market.¹⁰¹ How does this happen? State lawmakers arbitrarily single out certain industries and products eligible for sales tax holidays. As a result, consumer spending is distorted because it encourages consumers to refrain from purchasing excluded items in the weeks before the holiday.¹⁰² For example, a 2009 study conducted by the University of Michigan suggested that thirty-seven to ninety percent of the increases in computer purchases directly resulted from timing shifts of those purchases over a thirty-week timeframe, depending on the price and type of computer product.¹⁰³ In addition, granting incentives to buy certain products reduces the efficiency of the market as consumers begin to make purchasing decisions based on taxation and not economics.¹⁰⁴

In an article by the Tax Foundation, the authors give an excellent example of this distortion in consumer decision-making.¹⁰⁵ While many states exempt backpacks as a school supply during sales tax holidays, a “comparably priced messenger-style bag” is not exempt, despite the fact that it may be used for the exact same purpose as, and in lieu of, a backpack.¹⁰⁶ As both items are priced similarly, the sales tax holiday unfairly pushes the student toward the backpack on which he or she will save money by not paying sales

⁹⁸ Linstedt, *supra* note 61; N.Y. TAX LAW § 1115(a)(30) (2011); *TSB Memo*, *supra* note 62.

⁹⁹ Linstedt, *supra* note 61; N.Y. TAX LAW § 1115(a)(30) (2011); *TSB Memo*, *supra* note 62.

¹⁰⁰ Linstedt, *supra* note 61; N.Y. TAX LAW § 1115(a)(30) (2011); *TSB Memo*, *supra* note 62.

¹⁰¹ Jonathan Williams, *Holiday Season “Tax Holidays” No Break from Tax Payers*, MYRTLE BEACH SUN NEWS, Nov. 23, 2006, <http://www.taxfoundation.org/research/show/2017.html>.

¹⁰² COHEN, *supra* note 1, at 8.

¹⁰³ Adam J. Cole, *Christmas in August: Prices and Quantities During Sales Tax Holidays* 3 (Univ. of Mich., Job Market Paper, 2009), available at http://sitemaker.umich.edu/adamjcole/files/adamjcole_job_market_paper.pdf.

¹⁰⁴ COHEN, *supra* note 1, at 8.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

tax.¹⁰⁷ Lawmakers have now influenced consumers to buy a product that is not only less suitable for her long-term subjective needs but also one that she objectively may not have purchased in the absence of a holiday.¹⁰⁸

Customers always face tradeoffs based on cost and benefit. However, sales tax holidays not only promote one product type over another, but consumers who would ordinarily only be faced with standard cost-benefit tradeoffs are now additionally influenced to purchase less expensive exempt goods, which are possibly of lesser quality than they might have preferred. How? Even if a general product class is exempt from tax (e.g. clothing), some goods in that class still may be taxable, as nearly all of the holiday-enacting states have set price caps for each particular set of goods. For example, in 2007, of the fifteen states that had holidays for clothing, fourteen had price caps ranging from \$50 to \$300 per item.¹⁰⁹ Additionally, of the ten states that held holidays for school supplies in 2007, state price caps ranged from \$10 to \$50 per item. Similarly, price caps varied state-by-state for computer sales and energy-efficient items.¹¹⁰ In 2011, Massachusetts was one of two states that imposed generous price caps, including all items of non-business tangible property that cost less than \$2,500.¹¹¹ However, the cap in Massachusetts only applied to items that were not “non-exempt,” which detracted from the non-discriminatory nature of the price cap.¹¹²

b. Customers and Time

Lawmakers pretend as if sales tax holidays help consumers who need it most.¹¹³ While on their faces holiday policies appear to

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Cole, *supra* note 57, at 9.

¹¹⁰ *Id.*

¹¹¹ See Press Release, Massachusetts Department of Revenue, TIR 11-7: Massachusetts Sales Tax Holiday Weekend (2011), available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2011-releases/tir-11-7.html>.

¹¹² *Id.*

¹¹³ See Lucas L. Johnson II, *Tennesseans Like Sales Tax Holiday Yet Use It Less*, ASSOCIATED PRESS (Aug. 4, 2011), available at <http://news.yahoo.com/tennesseans-sales-tax-holiday-yet-less-165403808.html> (quoting Tennessee Gov. Bill Haslam as saying that the sales tax holidays were “designed with Tennessee families in mind, providing savings for families.”); Mark Robyn, *Florida’s Sales Tax Holiday and Film Tax Credit Proposals Will Not Deliver on Exaggerated Promises*, THE TAX FOUNDATION (Feb. 17, 2010),

achieve this goal, in reality sales tax holidays actually discriminate among customers. For example, customers who shop during sales tax holidays are those who can afford to purchase on the dates that the government dictated for the holiday.¹¹⁴ Consumers who live in households surviving "paycheck-to-paycheck" only shop when there is money available, meaning that these households potentially are unable to take advantage of a particular sales tax holiday.¹¹⁵

Additionally, as the Tax Foundation notes, "a low-income elderly or childless couple" might not need the particular goods that the legislature included in the sales tax holiday, such as school supplies or sports equipment.¹¹⁶ These consumers are just as deserving of a tax break as those consumers who purchase exempt products. For these reasons, holiday policies that discriminate among products can also discriminate among classes of consumers.

Even seemingly minor discrepancies account for discrimination, albeit subtly. For example, during a weekend sales tax holiday, residents who are vacationing out of state or working weekends may not be able to participate.¹¹⁷ In addition, consumers who recognize religious holidays may not be able to partake in the tax holiday when the dates coincide with such holidays.¹¹⁸

3. Sales tax holidays cause expensive complexity to tax policy with little economic growth

a. Complexity

Sales tax holidays are complex and both consumers and retailers struggle to understand them. Sales tax holidays not only require consumers to decipher from legislation what goods are subject to tax and which products are exempt, but also to determine when and where the holiday applies.¹¹⁹ As mentioned, many states have very specific legislation. For example, consumers in Florida will

<http://www.taxfoundation.org/news/show/25850.html>.

¹¹⁴ Nance-Nash, *supra*, note 84 (quoting Matt Gardner, the executive director of the Institute on Taxation and Economic Policy).

¹¹⁵ *Id.*

¹¹⁶ COHEN, *supra* note 1, at 8.

¹¹⁷ Williams, *supra* note 101, at 1.

¹¹⁸ Joseph Henchman, *Tennessee Struggles to Schedule Tax Holiday*, THE TAX FOUNDATION (Mar. 4, 2008), <http://www.taxfoundation.org/blog/show/22981.html>.

¹¹⁹ Josh Barro, *New Jersey Republicans Propose Sales Tax Holiday*, THE TAX FOUNDATION (Oct. 14, 2008), www.taxfoundation.org/blog/show/23769.html.

pay sales tax on purchases in amusement parks, and Texas taxes customers purchasing “personal floatation devices.”¹²⁰

Retailers face similar problems particularly because they must reprogram their cash registers and computer systems to reflect the changes to tax policies.¹²¹ In addition, retailers with stores across the country (e.g. Wal-Mart, Target, and Kmart) must update cash registers to reflect whether state taxes and/or local taxes will be imposed in individual locations.¹²² In preparation for the Illinois sales tax holiday in 2010, many large retailers marked the products that were exempt from the state’s sales tax.¹²³ However, the amount of work required overwhelmed many independent retailers, who lacked the work force to track eligible items and were not well-equipped to handle the complex accounting obligations required by Illinois (including, for example, filing intricate sales tax return forms).¹²⁴

Adding complexity to the tax system creates conflict and uncertainty. In 2008, Tennessee lawmakers ran into problems every time they attempted to schedule a Spring sales tax holiday because none of the dates were acceptable.¹²⁵ The legislature originally scheduled the holiday for March but later rescheduled it for April.¹²⁶ After the change, religious leaders were upset because the holiday coincided with Easter weekend in the Catholic and Greek Orthodox Churches.¹²⁷ Creating uncertainty for consumers is usually not a positive economic move; for example, if lawmakers irregularly enact sales tax holidays – in products offered, length, and frequency – consumers will likely postpone large purchases in hopes that legislature will enact future holidays.¹²⁸

b. Economic Growth

Even though reducing tax revenue during state budgetary crises is hardly a good policy decision, states depend on sales tax holidays in order to promote economic growth in three ways. First,

¹²⁰ Kelli B. Grant, *More States Offer Sales Tax Relief*, SMARTMONEY (July 28, 2010), available at <http://www.smartmoney.com/spend/family-money/more-states-offer-sales-tax-relief/>.

¹²¹ Linsteadt, *supra* note 61.

¹²² *Id.*

¹²³ Jones, *supra* note 73.

¹²⁴ *Id.*

¹²⁵ Henchman, *supra* note 118.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Barro, *supra* note 119.

they hope the tax holidays will encourage consumers to buy exempt products.¹²⁹ Second, they hope to increase tax revenue by promoting the purchase of impulse items that are not exempt from taxation.¹³⁰ Finally, the state hopes that retailers will hire more employees to assist with the increased consumer demand, eventually growing the tax base.¹³¹ However, sales tax holidays substantively do not increase actual economic activity overall, but simply alter the timing of when such activity occurs.¹³² In a study conducted by the New York Department of Taxation and Finance in 1997, researchers found evidence that while clothing sales increased during the weeklong holiday, total clothing sales for the year remained the same compared to previous years.¹³³ Consumers simply waited until the holiday to purchase exempted goods, which decreased consumer sales at other times, in particular the weeks before the holiday.¹³⁴

Logically, impulse purchases occur whenever a consumer shops.¹³⁵ If consumers simply shift when they shop to correspond with sales tax holidays, the impulse purchases they make shift to that time.¹³⁶ In order for impulse purchases to increase tax revenue, more consumers would need to purchase more impulse goods during holiday time. However, because of the shift, the total tax revenue earned from the shifted impulse purchases during the holiday will not outweigh the lost tax revenue from the purchases of exempt items.¹³⁷

Another popular supporting argument is that sales tax holidays promote job creation. However, despite being overwhelmed dealing with customers and pricing issues, retailers have little incentive to hire new workers because temporary help positions cost businesses a lot of money in labor and training costs.¹³⁸ Thus, lawmakers lose sight of lasting job creation policies by trying to encourage retailers unsuccessfully to offer temporary employment

¹²⁹ Grant, *supra* note 120.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² COHEN, *supra* note 1, at 5.

¹³³ THE TEMPORARY CLOTHING EXEMPTION: ANALYSIS OF THE EFFECTS OF THE EXEMPTION ON CLOTHING SALES IN NEW YORK STATE, N.Y. STATE DEP'T OF TAXATION AND REVENUE (Nov. 1997), available at http://www.tax.ny.gov/pdf/stats/policy_special/clothing/1997/1997_temporary_clothing_exemption.pdf.

¹³⁴ *Id.*; COHEN, *supra* note 1, at 5.

¹³⁵ COHEN, *supra* note 1, at 5.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*; *Tax Holidays Costly*, *supra* note 95.

during sales tax holidays.

B. Result of Tax-Free Weekends on Neighboring States

States may not be able to justify enacting new sales tax holidays or may discontinue current sales tax holidays in light of recent budgetary difficulties. For example, after eight years, the District of Columbia canceled its sales tax holiday in 2009. The District of Columbia estimated that it would save approximately \$640,000 in tax revenue.¹³⁹ District tax officials purported that the scant evidence showing economic growth was not enough to make up for the costs.¹⁴⁰ Since the inception of tax holidays in 1999, estimates suggest that Texas's sales tax holidays have lost the state nearly \$442 million in tax revenue.¹⁴¹

Sales tax holidays not only affect enacting states but can also have a detrimental effect on neighboring states that choose not to enact such measures. Cross-border shopping should be, by far, the most important concern amongst these effects for lawmakers. Cross-border shopping occurs when residents of a higher-taxed state travel to a neighboring state with a lower sales tax in order to purchase goods.¹⁴² As discussed, New York enacted its first tax holiday to combat this exact problem, as consumers were traveling to neighboring states that had lower taxes on consumer goods.¹⁴³ Research shows that consumers will alter their purchase location in order to avoid higher taxes.¹⁴⁴ When consumers cross-border shop, states with higher sales taxes lose tax revenue and their government budget suffers.¹⁴⁵

Sales tax holidays incentivize consumers to purchase in-state, which alleviates the cross-border shopping issue but only for the brief duration of the holiday.¹⁴⁶ For higher-taxed states, lower-taxed

¹³⁹ Micah Cohen, *A True Cause for Celebration: DC Cancels Sales Tax Holiday*, THE TAX FOUNDATION (July 22, 2009), <http://www.taxfoundation.org/blog/show/24902.html>.

¹⁴⁰ COHEN, *supra* note 1, at 7.

¹⁴¹ Kimberly Leonard & Tony Romm, *Sales Tax Breaks Erode State Revenues*, STATELINE (Aug. 6, 2009), <http://www.stateline.org/live/details/story?contentId=416887>.

¹⁴² Mark Robyn, *Border Zone Cigarette Taxation: Arkansas's Novel Solution to the Border Shopping Problem*, THE TAX FOUNDATION (April 9, 2009), <http://www.taxfoundation.org/news/show/24599.html>.

¹⁴³ Cole, *supra* note 57, at 3.

¹⁴⁴ FOX, *supra* note 12, at 13.

¹⁴⁵ *Id.*

¹⁴⁶ COHEN, *supra* note 1, at 8.

neighboring states are available for consumers the rest of the year.¹⁴⁷

A creative solution that states have enacted to combat this problem is the imposition of year-round sales tax holidays. For example, in 2009, Arkansas enacted a policy that reduced the sales tax in border towns on cigarettes in order to keep consumers from crossing into Louisiana, Mississippi, and Missouri to purchase cigarettes.¹⁴⁸ Because the tax rate imposed was lower than neighboring states, it not only increased Arkansas's tax revenue but also reduced neighboring states' revenue slightly.¹⁴⁹

Use taxes are another solution available for non-enacting states to recover lost tax revenue. A use tax is a tax imposed on the privilege to use, store, or consume tangible property or services within a state, and it is usually the same rate as a sales tax.¹⁵⁰ Theoretically, when a buyer crosses back into a non-enacting state that imposes a use tax, there is a legal obligation for the consumer to pay the sales tax rate of the higher-taxed state.¹⁵¹ In other words, the same amount of tax burden is on goods purchased both in-state and out-of-state.¹⁵² However, use taxes are generally considered ineffective because compliance is much poorer than that of sales taxes.¹⁵³ Collection is nearly impossible when retailers are not required to collect the tax revenues at the point of sale.¹⁵⁴ Consumers are not necessarily avoiding use taxes in bad faith; many people just do not know that a use tax even exists.¹⁵⁵ In conclusion, solving not

¹⁴⁷ *Id.*

¹⁴⁸ 2009 Ark. Adv. Legis. Serv. 180 (LexisNexis).

¹⁴⁹ Robyn, *supra* note 142; *see also* H.B. 1204, 87th Leg.

¹⁵⁰ 67B AM. JUR. 2D *Sales and Use Taxes* § 134 (2011); *see also* State ex rel. Beeler, Schad and Diamond, P.C. v. Ritz Camera Ctrs., Inc., 878 N.E.2d 1152 (Ill. App. Ct. 1st Dist. 2007); Allied Collection Serv., Inc. v. Ind. Dep't of State Revenue, 899 N.E.2d 69 (Ind. Tax Ct. 2008); WMS Gaming, Inc. v. Dep't of Treasury, 733 N.W.2d 97 (Mich. Ct. App. 2007); Sparks Nugget, Inc. v. State ex rel. Dep't of Taxation, 179 P.3d 570 (Nev. 2008); United States v. New Mexico, 455 U.S. 720 (1982); Am. Tel. & Tel. Co. v. State Tax Assessor, 652 A.2d 107 (Me. 1995).

¹⁵¹ Robyn, *supra* note 142.

¹⁵² FOX, *supra* note 12, at 13.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ 67B AM. JUR. 2D *Sales and Use Taxes* § 225 (2011) ("Ignorance or mistake of law may justify relief from a penalty imposed for violation of a sales or use tax law such as where a taxpayer is mistaken as to the jurisdiction in which he or she is subject to tax. Under other circumstances, however, relief on this ground may not be justified such as where the taxpayer fails to establish that [he] reasonably should not have been expected to know that the tax was in effect.").

only the border-crossing problem but also the other issues arising from sales tax holidays requires more lasting, neutral, and simplistic tax policies.

III. FINDING ACTUAL TAX POLICY THAT WILL LAST

The after-effects (both economic and non-economic) of sales tax holiday policies on both the enacting and non-enacting states are simply not worth the trouble. However, if this is true, the question remains: why do state lawmakers love them so much? Sales tax holidays are a convenient and easy way for politicians to bolster their profiles because they cut taxes, even though the actual result is anything but remarkable. In addition, voter response is usually favorable because consumers do not know the truth of sales tax holidays, and retailers favor the profits they make during holidays. For there to be true reform of the sales tax system, state lawmakers must stop enacting trivial and gimmicky legislation and focus on systems and policies that will support long-term tax relief for every citizen.

A. Ideas for a possible new system that would be, ultimately, more beneficial to consumers and the industry

1. Reduction to the sales tax base and/or rate

As one reporter noted, “[i]f tax relief for consumers looks good for a few days, why not give it to them all year long?”¹⁵⁶ It would be more neutral and less distorting for the market to discontinue sales tax holidays and offer a reduced tax on all products year-round.¹⁵⁷ By broadening the sales tax base by taxing more goods and services, and coupling it with a reduction in the sales tax rates, states would be able to collect the amount in tax revenue that they desire while not discriminating among different products or consumers.¹⁵⁸ For example, Illinois imposes three tax rates – one for qualified medicines and foods, one for property that must be registered, and one for general personal tangible property.¹⁵⁹ If Illinois lowered its 6.25 percent tax rate on general items to three percent and began taxing exempt items, such as newspapers, at three

¹⁵⁶ Williams, *supra* note 101.

¹⁵⁷ COHEN, *supra* note 1, at 15.

¹⁵⁸ *Id.*

¹⁵⁹ Retailers' Occupation Tax Act, 35 ILL. COMP. STAT. 120/ (2011).

percent, the tax base would be broader.¹⁶⁰ Thus, Illinois could collect the same amount in tax revenue at a three percent rate as when the tax rate was higher for a more limited number of goods and services.¹⁶¹

If a state did not wish to broaden the tax base, but instead wanted to permanently cut the sales tax in a manner that was similar to how it would during a sales tax holiday, it makes more sense for it to decrease the overall general sales tax year-round by the amount it would ordinarily not collect on the days of the holiday (i.e. reduce the rate by 3/365ths).¹⁶² Programs similar to this would prevent a "Soviet-style state-directed price reduction on items selected by the state" while remaining neutral and not distorting the market.¹⁶³

Another option that is less popular but would achieve the same result is the elimination of the sales tax altogether. Alaska, Delaware, Montana, New Hampshire, and Oregon have adopted that stance and do not have a sales tax.¹⁶⁴ Obviously, this would be a drastic move. States necessarily would have to cut spending to help offset the resulting loss in tax revenues, and this hardly ever happens.¹⁶⁵ Therefore, it seems an unrealistic goal. In order for such a policy to be successful, taxes in other areas would have to increase immediately.¹⁶⁶ In this case, the obvious result would be that consumers would end up paying the same or a similar amount in taxes, but the burden would be shifted to another time or group, not incurred when consumers make purchases.

2. Streamlined Sales Tax

In 2000, certain states launched the Streamlined Sales Tax Project ("SSTP") in order to help simplify states' sales tax systems and to ease the administrative burden on both retailers and consumers.¹⁶⁷ SSTP purports to simplify sales tax systems by requiring all member states, for example, (i) to have uniform, common definitions for significant products within their tax base and

¹⁶⁰ ILL. ADMIN. CODE tit. 86, §§ 130.101, 130.120 (2010); Retailers' Occupation Tax Act, 35 ILL. COMP. STAT. 120/2-5 (2011).

¹⁶¹ *Id.*

¹⁶² Henchman, *supra* note 118.

¹⁶³ Richard R. Hawkins and John L. Mikesell, *Six Reasons to Hate Your Sales Tax Holiday*, STATE TAX NOTES 45-56 (2001); COHEN, *supra* note 1, at 15.

¹⁶⁴ COHEN, *supra* note 1, at 15.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ John A. Swain and Walter Hellerstein, *The Streamlined Sales Tax Project and the Local Sourcing Conundrum*, 104 J. TAX'N 230 (Apr. 2006).

uniform sourcing rules; (ii) to simplify the rate structure by adopting one rate and, in limited circumstances (like medicine), a second rate; and (iii) to administer the sales tax from one statewide location¹⁶⁸.

Initially, thirty-nine states were involved in the project.¹⁶⁹ The SSTP was a direct response by the states to growing concerns about taxation of Internet sales and the Supreme Court's rulings in *National Bella Hess* and *Quill*, both of which held that the variances in states' systems would make compliance with state taxation too complex and burdensome for out-of-state taxpayers who did not have a substantial nexus with the state jurisdiction.¹⁷⁰ The Streamlined Sales and Use Tax Agreement was adopted on November 12, 2002, became effective as of October 2005, and currently includes twenty-four states.¹⁷¹ A critical requirement of all member states is that lawmakers must unify the state and local sales taxes to coincide with the agreed upon rates and administer the taxes at the state level.¹⁷² However, because member states preserve their taxing authority, a member state may still impose a tax or exemption as long as it adheres to the provisions of Article III within the Agreement.¹⁷³

Despite its stated goal of fixing tax systems in order for states to be able to tax Internet sales (the validity of which is hotly debated)¹⁷⁴ and other interstate e-commerce issues, the Agreement

¹⁶⁸ Diane L. Hardt, Douglas L. Lindholm & Stephen P. B. Kranz, *A Lawmaker's Guide to the Streamlined Sales Tax Project*, 22 J. ST. TAX'N 1 (2003).

¹⁶⁹ Streamlined Sales and Use Tax Agreement (as amended May 19, 2011), Art. I, § 102 (stating that the "fundamental purpose" of the agreement is to "simplify and modernize sales and use tax administration in the member states in order to substantially reduce the burden of tax compliance.") available at <http://www.streamlinedsalestax.org/uploads/downloads/Archive/SSUTA/SSUTA%20As%20Amended%2005-19-11.pdf> (last visited Feb. 2, 2012); Hardt, *supra* note 168.

¹⁷⁰ Gregory R. Evans, *Separate But Taxed: A Rejection of the Streamlined Sales Tax Project Through a Commerce Clause and Federalist Analysis*, 56 AM. U. L. REV. 421, 432 (2006); see also *Nat'l Bella Hess v. Dept. of Rev. of Ill.*, 386 U.S. 753, 759-760 (1967); *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

¹⁷¹ Streamlined Sales and Use Tax Agreement, at Preamble; Swain, *supra* note 167; *Streamlined Sales Tax Governing Board*, STREAMLINEDSALESTAX.ORG, <http://www.streamlinedsalestax.org/index.php?page=About-Us>.

¹⁷² Swain, *supra* note 167, at 231.

¹⁷³ Streamlined Sales and Use Tax Agreement § 103; see also, Streamlined Sales and Use Tax Agreement Art. III (setting out the requirements of and rules governing member states).

¹⁷⁴ Evans, *supra* note 170, at 441-442 (arguing that the "substantial nexus" requirement of the Complete Auto test is not met and, therefore, taxing Internet sales is a violation of the Commerce Clause); see also *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 280 (1977) (holding that taxation of interstate commerce

also has the potential to fix the problems states have regarding sales taxes and interstate commerce – a task that is, in many states, currently left to sales tax holidays. By adopting the Agreement, lawmakers help to reduce many of the burdens that sales tax systems have on consumers and retailers. Implementing the goals of the Agreement would create immediate uniformity in state tax bases, definitions, rates, administration, sourcing rules, exemptions, tax returns, and consumer privacy.¹⁷⁵ However, in order for such a system to prosper, state governments would have to agree upon and adhere to those policies, which seems to create a makeshift race to the bottom. Even though the SSTP requires member states to have uniform definitions for goods and tax them at the same rate, the SSTP still allows states to enact taxes that conflict with this ideal.¹⁷⁶

Several instances of this problematic behavior have occurred in the past few years. For example, despite New Jersey's adoption of the Agreement, it circumvented the Agreement's definition of clothing and imposed a tax on articles made from fur.¹⁷⁷ The SSTP's members, on July 17, 2008, upheld the New Jersey statute, having previously allowed Minnesota to do exactly the same thing.¹⁷⁸ Another example of a state's blatant circumvention of the Agreement comes from Rhode Island. Currently, Rhode Island imposes a sales tax that conforms to the Agreement.¹⁷⁹ However, Rhode Island has proposed imposing a one percent tax on currently untaxed goods, such as clothing and newspapers. This proposal deliberately violates the terms of the Agreement, as the Agreement allows for special rates on specific goods only, including food, vehicles, and drugs.¹⁸⁰

by a state was constitutional only when the "tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State.").

¹⁷⁵ Streamlined Sales and Use Tax Agreement § 102; Hardt, *supra* note 168, at 2.

¹⁷⁶ Joseph Henchman, *Nearly 8,000 Sales Taxes and 2 Fur Taxes: Reasons Why the Streamlined Sales Tax Project Shouldn't be Quick to Declare Victory*, TAX FOUND. POLICY BLOG (July 28, 2008), <http://www.taxfoundation.org/blog/show/23423.html>.

¹⁷⁷ N.J. STAT. ANN. § 54:32B-28.1 (West 2011) (adopting the Streamlined Sales and Use Tax Agreement for New Jersey); N.J. STAT. ANN. § 54:32B-8.4 (West 2011) (exempting from the definition of clothing "fur clothing, clothing accessories or equipment, sport or recreational equipment, or protective equipment.").

¹⁷⁸ Henchman, *supra* note 176.

¹⁷⁹ R.I. GEN. LAWS ANN. § 44-18.1-9 (West 2011).

¹⁸⁰ 2011 H.B. 5894 § 4 (R.I. 2011); Mark Robyn, *The Streamlined Sales Tax*

Moreover, there is no fiscal incentive for states to adhere to the Agreement. For example, because it is a member state, Rhode Island receives approximately \$2,000,000 in voluntary sales tax collections each year, a figure that pales in comparison to the nearly \$90,000,000 the proposed one percent sales tax would generate annually.¹⁸¹ If states continue to “come and go” from the Agreement whenever fiscally convenient, the lasting sales tax reform that states seek will never occur.¹⁸²

Finally, to eliminate sales tax holidays, the Agreement would need to be amended. Currently, the Agreement allows member states to enact sales tax holidays if the state gives “sixty days notice.”¹⁸³ Allowing states to continue to enact sales tax holidays seems to sidestep the Agreement’s purpose of simplifying rate structures and creating uniform rules across all jurisdictions.

Currently, there are thousands of jurisdictions that impose sales taxes, and products of a similar nature are taxed at varying rates across all of those jurisdictions.¹⁸⁴ For effective tax policy to exist, states must agree and adhere to the plan laid out in the Agreement, which would require financial incentives. Until then, a streamlined sales tax will not benefit states looking to battle the cross-border shopping problem, ease the burden that regressive sales taxes put on low-income consumers or eliminate discrimination among products.

3. Earned Income Tax Credit and other types of targeted tax credits

Many believe that strong, targeted sales tax credits or Earned Income Tax Credit programs are the best tools to achieve greater fairness in tax policy.¹⁸⁵ Sales taxes tend to cause low-income households to pay more of their overall income in taxes than high-income families.¹⁸⁶ According to estimates made by the Institute on Taxation and Economic Policy (“ITEP”), while low-income families spend approximately three-quarters of the household income on

Project Can't Get No Respect, TAX FOUND. POLICY BLOG (Feb. 24, 2011), <http://www.taxfoundation.org/blog/show/27070.html>; *Streamlined Sales and Use Tax Agreement* § 308.

¹⁸¹ Robyn, *supra* note 142.

¹⁸² *Id.*

¹⁸³ *Streamlined Sales and Use Tax Agreement* § 322.

¹⁸⁴ Joseph Henchman, *Streamlined Sales Tax Board to Consider Defying Court Ruling*, TAX FOUND. POLICY BLOG (Nov. 3, 2010), <http://www.taxfoundation.org/blog/show/26827.html>.

¹⁸⁵ Nance-Nash, *supra* note 84.

¹⁸⁶ *Id.*

necessities, wealthy households use only about one-sixth of their disposable income on the same class of purchases.¹⁸⁷ In other words, while a six percent sales tax might only amount to a one percent income tax for a family in the highest tax bracket, the same six percent sales tax amounts to a 4.5 percent income tax for a low-income household.¹⁸⁸

a. Targeted sales tax credits

As the cost of most basic necessities is high, targeted sales-tax credits help compensate low-income families by giving households a flat dollar amount for each family member if the household meets certain income threshold standards.¹⁸⁹ Sales tax credits are favorable over sales tax exemptions, which many states have in place, for a number of reasons. First, credits can be targeted directly toward specific income classes and state residents while exemptions cannot; therefore, credits cost less to implement.¹⁹⁰ Second, since credits do not expand or contract the sales tax base, long-term tax revenue will remain more stable.¹⁹¹ Additionally, exemptions create administrative challenges for lawmakers and retailers because they require a way of distinguishing among goods that are exempt and those that are not, and credits do not involve these same challenges.

However, targeted sales-tax credits do have drawbacks. For example, sales tax credits create additional administrative burdens on consumer taxpayers.¹⁹² All eight states that provide sales tax relief in the form of a sales tax credit require taxpayers to file for the credit on their state income tax forms, and if the taxpayers are not aware of the credit or do not file income taxes, they cannot claim it.¹⁹³ For this system to remain neutral, money must be spent on an “effective outreach program,” which could be undesirable for some states as it

¹⁸⁷ Institute on Taxation and Economic Policy, *How Sales and Excise Taxes Work* (Aug. 2011), available at <http://www.itepnet.org/pdf/pb49salesex.pdf>.

¹⁸⁸ *Id.*

¹⁸⁹ Institute on Taxation and Economic Policy, *Rewarding Work Through Earned Income Tax Credits* 1 (Sept. 2011) [hereinafter *EITC*], available at <http://www.itepnet.org/pdf/pb15eitc.pdf>; Nance-Nash, *supra* note 84.

¹⁹⁰ Institute on Taxation and Economic Policy, *Options for Progressive Sales Tax Relief* 1 (July 2011), available at <http://www.itepnet.org/pdf/pb14crex.pdf> [hereinafter *OPTIONS*]; Institute on Taxation and Economic Policy, *How Can Indiana's Sales Tax Be Made Fairer* (2007), available at <http://www.ctj.org/indiana/ipb14.pdf>.

¹⁹¹ *Id.*

¹⁹² *Id.* at 2.

¹⁹³ *Id.*; Nance-Nash, *supra* note 84; *EITC*, *supra* note 189, at 1.

increases spending costs.¹⁹⁴ The ability of the low-income consumer to obtain the credit is necessary to such programs, and states treat it simply as a tax refund.¹⁹⁵ It allows a low-income taxpayer who has little income tax liability to use the credit to offset any substantial sales taxes incurred.¹⁹⁶ However, because of the many drawbacks of these Targeted Sales Tax Credits, the better option may be for states to rely on the Earned Income Tax Credit system.

b. Earned Income Tax Credits

Earned Income Tax Credits ("EITC"s) are different from targeted sales tax credits because they are directly related to the amount of income earned by a taxpayer.¹⁹⁷ The federal government enacted its EITC program in 1975 in order to provide low-income workers with targeted tax relief.¹⁹⁸ The EITC grants a credit (or refund) for individuals against the income tax imposed by Chapter 1 of the Internal Revenue Code in "an amount equal to the credit percentage" of earned income for the tax year as long as it does not exceed the limit.¹⁹⁹ In other words, for those taxpayers who earn less than the qualifying income level, the government determines the credit due by taking a percentage of the income earned in a year and refunding the taxpayer that amount.²⁰⁰ Currently, a taxpayer without children can earn a maximum credit of \$464, as long as his or her income does not exceed \$13,660.²⁰¹ For taxpayers with children, the tax code is more generous, offering a maximum tax credit of up to 45 percent of every dollar earned, up to \$12,780.²⁰² In addition, the federal credit is refundable, meaning that any amount of credit that exceeds an individual's tax liability returns directly to the taxpayer.²⁰³

Theoretically, the EITCs should be even more beneficial at the state level.²⁰⁴ Despite the large burden on low-income taxpayers created by regressive sales tax policies, refundable EITCs assist in

¹⁹⁴ *OPTIONS*, *supra* note 190, at 2; *EITC*, *supra* note 189, at 1.

¹⁹⁵ *EITC*, *supra* note 189, at 1; *see also* Sorenson v. Sec'y of the Treasury, 475 U.S. 851 (1986); *In re Trudeau*, 237 B.R. 803 (B.A.P. 10th Cir. 1999).

¹⁹⁶ *EITC*, *supra* note 189, at 2.

¹⁹⁷ *Id.*; Nance-Nash, *supra* note 84.

¹⁹⁸ *EITC*, *supra* note 189, at 2.

¹⁹⁹ I.R.C. § 32(a).

²⁰⁰ *Id.*

²⁰¹ *See* I.R.C. § 32(b).

²⁰² *See Id.*; *EITC*, *supra* note 189, at 2.

²⁰³ *EITC*, *supra* note 189, at 2.

²⁰⁴ *Id.*

alleviating economic inequity.²⁰⁵ All twenty-four states that have enacted a statewide EITC allow a taxpayer to calculate the amount of the credit by taking a percentage of the federal credit he or she would ordinarily receive.²⁰⁶ Because of this, the credit is easy for state taxpayers to calculate and claim.²⁰⁷

EITC systems seem easy enough to implement, but states vary greatly regarding certain factors, such as who is eligible, how much a taxpayer can receive, and how the credit may be used. For example, the District of Columbia allows a refundable credit of forty percent of the federal amount, but some states allow credits that are worth ten percent or less.²⁰⁸ In contrast, Delaware offers only a non-refundable EITC, meaning that the credit may only be used to offset income tax liability and cannot be used toward more burdensome taxes like sales taxes.²⁰⁹ In Wisconsin, family size is the biggest factor in determining EITC eligibility.²¹⁰ Despite these differences, a state EITC program can be successful if there is an aspect of refundability.²¹¹ Only if the credit is fully refundable will the credit actually alleviate the burden imposed on low-income taxpayers by regressive state sales taxes.²¹² In addition, because refunded credits can be used toward anything, they are more neutral than sales tax holidays and exemptions, which arbitrarily discriminate amongst products.

IV. CONCLUSION

Sales taxes have been a longstanding, viable revenue-generating tool for states, earning the states a significant amount of money annually. However, due to the regressive nature of sales taxes

²⁰⁵ *Id.*; see also CARL DAVIS, KELLY DAVIS, MATTHEW GARDNER, ROBERT S. MCINTYRE, JEFF MCLYNCH, ALLA SPAOZHNIKOVA, WHO PAYS? A DISTRIBUTIONAL ANALYSIS OF THE TAX SYSTEMS IN ALL 50 STATES, Institute of Taxation & Economic Policy, Third Edition (Nov. 2009), available at <http://www.itepnet.org/whopays3.pdf> (In 2007, low-income tax payers had to pay 10.9% of the income to state and local taxes, while the upper-class taxpayer had to pay only 5.2% of his income toward the same taxes, including sales tax.).

²⁰⁶ *EITC*, *supra* note 189, at 2.

²⁰⁷ *Id.*

²⁰⁸ D.C. CODE § 47-1806.04(f) (2012); *EITC*, *supra* note 189, at 2.

²⁰⁹ DEL. CODE ANN. tit. 30, § 1117(c) (2011); see also VA. CODE ANN. § 58.1-339.8C (2011); R.I. GEN. LAWS § 44-30-2.6(c)(2)(N) (2011) (Rhode Island EITC credits may be partially refundable); see also *EITC*, *supra* note 189, at 2.

²¹⁰ 2011 WIS. STAT. ANN. § 71.07(9e) (2011), amended in part by 2011 A.B. 40 (Wis. 2011).

²¹¹ *EITC*, *supra* note 189, at 2.

²¹² *Id.*

in general, low-income consumers often bear the brunt of the tax because they are spending a substantially greater proportion of their income in sales taxes than high-income taxpayers do.²¹³ For years, state lawmakers have been attempting to find ways to ease this burden. A popular, easy method of alleviating this burden is to offer periods of time during which the sales tax is waived on a particular set of goods, called "sales tax holidays." Many consumers believe this is an equitable solution, and they show their support at the voting booth. Retailers also support it and spend large amounts of money and time lobbying for additional days of holidays for multiple product types.

However, the truth behind sales tax holiday policy should not make consumers happy. In fact, sales tax holidays have a number of ill-effects on consumers, some of the most important being that (i) sales tax holidays do not save consumers any real money and the savings are actually passed to retailers; (ii) the government uses them to discriminate among products and encourage consumers to make purchasing decisions they ordinarily would not make; (iii) sales tax holiday policies add complexity to the tax system and make it difficult for consumers to know which goods are taxed and which are exempt; and (iv) the economic growth the politicians promise from enacting sales tax holidays is more hypothetical than a reality.²¹⁴

In addition to the added burden on consumers, sales tax holidays also present a problem for interstate relations as non-enacting states must now find creative ways to combat the cross-border shopping problem, including the implementation of use taxes. However, use taxes are relatively ineffective, as many consumers do not claim their purchases or remit tax payments.

Lawmakers must implement lasting tax policies that benefit consumers and do not strain interstate relations. One way to do this is to reduce the sales tax rate or eliminate it altogether, as it would be less distorting to the market to reduce the rate year-round rather than to offer a reduced rate only on a few days. In order to maintain revenue, the tax base would need to be broadened as the rate decreases. Nonetheless, lawmakers may not approve of this idea

²¹³ See Understanding Taxes, INTERNAL REVENUE SERVICE, <http://www.irs.gov/app/understandingTaxes/teacher/glossary.jsp#regressivetax> (defining "regressive tax" as a "tax that takes a larger percentage of income from low-income groups than from high-income groups."); Info Sheet 1: How Regressive Taxes Affect Different Income Levels, INTERNAL REVENUE SERVICE, http://www.irs.gov/app/understandingTaxes/whys/thm03/les02/media/is1_thm03_les02.pdf (offering basic examples of how regressive taxes work.).

²¹⁴ COHEN, *supra* note 1; Boozer, *supra* note 79.

because that would mean that consumers (who are also voters) would have to pay taxes for goods that are not currently taxed. Another option would be to eliminate the sales tax altogether, but that would require that the tax rate for something else (e.g. income) increase in order to maintain state tax revenue. Overall, while both possibilities prevent the distortion of the market and discrimination between consumers, neither is a probable option given the fiscal crises in many states.

A second policy alternative is the Streamlined Sales and Use Tax Agreement. While initially enacted to combat the problems associated with taxation of Internet sales across state lines, the Agreement could help implement long-lasting tax reform for intrastate sales, as it calls for simplified tax systems, uniform definitions and rates, and easier application of tax code. However, until all states adopt the Agreement and adhere to it, states have no incentive to lower tax rates and the cross border-shopping problem will remain. In addition, the Agreement still allows states to enact sales tax holidays, which detract from the intended goal of simplifying the sales tax system. While the Agreement could be a viable option, it is not the program that lawmakers should implement.

Finally, the last option is that of target sales tax credits or Earned Income Tax Credits. Targeted sales tax credits actually would target the class of consumers who were the intended beneficiaries of the original sales tax holiday schemes, allowing qualifying low-income taxpayers a credit for a flat dollar amount that they can use to offset their sales tax liability (so long as the credit is refundable). State tax revenue would become more stable than with the use of sales tax holidays or exemptions. However, this type of credit puts an administrative burden on the taxpayer that they would not originally have and, for this reason, it is not the best option for state lawmakers.

Having ruled out the other viable options, lawmakers should adopt the refundable Earned Income Tax Credit policy. While not a perfect system, as state lawmakers have less control and it requires some determination of how much income is credited, it is the best option for states looking to enact tax policy to help the targeted consumer class. Consumers would earn a credit depending on the amount of their income, which they could then use to offset their income tax liability and, in the event that the credit exceeds that liability, they would be reimbursed. By enacting this policy, state lawmakers will choose to endorse tax reform that is neutral, stable, simplistic, and promotes growth by easing the burden on low-income consumers.