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Streamline Sales and Use Tax Governing Board
Executive Director, Craig Johnson
100 Majestic Drive, Suite 400
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RE: Facts to support sanctions against the state of Nevada.

To Whom It May Concern:

I am writing this letter to formally file a petition against the State of Nevada for not being in compliance with the streamline sales tax agreement.

Facts

Nevada is a full member of streamline sales tax. The facts of this case have been well documented and the streamline sales tax governing board has failed to act in this matter. All of this set aside, and the fact that this board is failing to follow their own rules in an attempt to avoid issuing sanction against the state of Nevada is not acceptable. I personally will be the first to admit that I do not know all of the rules and regulations that streamline has adopted. This has been a good exercise for me to get to know this a lot better and I thank you for that opportunity. It is a real sad day when the board and committees do not know and understand their own rules and regulations and even more sad that they refuse to follow the rules that are set forth. The governing board has told the state of Nevada that they are in compliance with the Streamlined Sales and Use Tax Agreement (the agreement) and it is very clear at this point that they are not. They should know their own rules and definitions to be able to properly tell the state if they are in compliance or not and to accurately do so. Not one time in the almost 9 months that this has been going on has the rule of delivery ever been mentioned by any of the streamline members. Rule 327.4 clearly answers all of the necessary questions about delivery and transportation and handling especially if you answer the questions as it pertains to the fundamental purpose of the Streamlined Sales and Use Tax Agreement. This is defined very clearly in section 102 of the Streamlined Sales and Use Tax Agreement. When you look at the purpose of modernize sales and use tax administration to substantially reduce the burden of tax compliance and especially if you look at it in number section 102(C) it states uniformity of major tax base definitions. As you look at rule 327.4 it clearly defines what transportation, shipping and similar charges are and that is simply the movement of personal property or a service from possession of the seller to possession of the purchaser or the purchaser's designee. It also defines handling charges and other similar charges for preparing personal property or a service for delivery to a location designated by the purchaser of the personal

property or services. By allowing states to not follow this rule and definition undermines the entire streamline agreement and should not be tolerated. These violations have caused these taxpayers to lose over a million dollars in sales and customers.

Violations that support and require sanctions

The violations and support that require sanctions against the state of Nevada are as follows:

1. Transportation does not exist in the delivery of ready mixed concrete. Even though the state has stated that there is delivery in ready mix concrete, it is also stating that it is also taxable. The Attorney general of the state of Nevada has argued and repeatedly has denied that transportation takes place in the delivery of ready mixed concrete.

To support that there is transportation in ready mixed concrete there are two places that define that there is delivery. If you look at rule 327.4 transportation is defined as the movement of personal property or services from the possession by the seller to possession of the purchaser or the purchaser's designee. It is very clear that the ready mixed concrete is being moved from the seller's location to the designated place of delivery by the purchaser. This clearly without question taking place as the ready mix leaves the place of batching to the place of unloading at the purchaser's designated location. This meets this rule specifically and without question. Also this is being added to the agreement itself that transportation exists in the delivery of ready mixed concrete.

Conclusion is that of course there is transportation in ready mixed concrete and by the state stating that there is not is a direct violation of the rules and now the agreement of the streamline agreement and the state of Nevada has failed to correct this and in fact has stated that they cannot fix this matter. As such sanctions must be issued.

2. The state of Nevada is stating that handling is occurring during transportation and is therefore since the state of Nevada taxes handling charges that the transportation is also subject to tax.

To support this is a direct violation we need to look at rule 327.4. It is very clear in rule 327.4 that handling and similar charges are for the activities necessary for preparing personal property or services for delivery to location designated by the purchaser of the personal property or services. It is very clear that once you are delivering the personal property or services you are no longer preparing for delivery because you are actually doing the delivery. You simply cannot prepare for something while you are actually doing it.

Conclusion the state of Nevada is in direct violation of rule 327.4 and of the Streamlined Sales and Use Tax Agreement section 102(C) they are not uniformly applying the major tax base definitions correctly. The State of Nevada has failed to correct this and in fact has stated that they will not and cannot correct this problem and therefore are in violation of the rules and agreement and sanctions are required.

3. Purchase price and sales price. The purchase price and sales price of the agreement mean the same thing. The sales price is defined as follows:

“Sales price” applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

A. The seller's cost of the property sold;

B. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

D. Delivery charges;

E. Installation charges; and

F. Credit for any trade-in, as determined by state law.

Notwithstanding (B) above, a state may elect, by statute or administrative regulation, to exclude from sales price the following types of taxes, but only if that tax is separately stated on the invoice, bill of sale or similar document given to the purchaser:

- 1. Any or all state and local taxes on a retail sale that are imposed on the seller if the state statute authorizing or imposing the tax provides that the seller may, but is not required, to collect such tax from the consumer. If there is no state statute authorizing or imposing the local tax, the language in the local ordinance will determine if the local tax may, but is not required, to be collected from the consumer; and/or*
- 2. Tribal taxes on a retail sale that are imposed on the seller if the Tribal law authorizing or imposing the tax provides that the seller may, but is not required, to collect such tax from the consumer.*

Such tax exclusion from sales price shall be listed on the state's taxability matrix. The exclusion of a specific tax from sales price may not be based on the type of consumer or product sold.

States may exclude from "sales price" the amounts received for charges included in paragraphs (C) through (F) above, if they are separately stated on the invoice, billing, or similar document given to the purchaser. States may exclude from (C) above, "telecommunications nonrecurring" charges if they are separately stated on the invoice, billing, or similar documents. A state doing so must define "telecommunications nonrecurring charges" as follows:

It is clear that the states have the right to exclude delivery charges from the sales price. As such the state of Nevada has elected to exclude the transportation shipping and similar charges, etc. from the sales price, but has also elected to include the handling, crating, packing and other activities necessary to prepare the personal property for delivery. If you look at rule 327.4 and as stated above the preparation is subject to tax and this is agreed with while the movement of the personal property from possession of the seller to possession of the purchaser or purchaser's designee is not subject to tax. It is agreed that this separation of delivery charges is acceptable within the agreement. The problem is that the state of Nevada is including the preparation as part of the movement when in all reality this is not possible according to the rules. The state is also stating that the movement of the personal property is subject to tax and therefore is taxable which is in direct violation of the agreement and rules.

In conclusion the State of Nevada is in violation of the definitions of the agreement specifically the purchase price as defined and the sales price as defined and as indicated by their own sales and use tax matrix which they have approved and agreed to. The state of

Nevada has failed to correct this issue and in fact has stated that they cannot fix this violation and is therefore in violation of the rules and regulations and sanction are required.

Conclusion

It is not only proper but extremely important that the streamline sales tax executive committee do everything within their power to insure compliance with the states. If the states can simply make up how they will apply the definitions that they have adopted and can simply rename the definitions so they can apply the new name however they determine, then streamline sales tax act has huge issues. It is the responsibility of the executive director to apply the streamline sales tax agreement and rules fairly not only to the states but to the taxpayer. It is obvious that this executive director is not doing either. As such is failing in his duties. A taxpayer should not have to be penalized and pay tens of thousands of dollars to insure that the member states are compliant with the agreement and the rules. The executive director has been made aware of this for the past almost nine months and has failed to act in any way to resolve this matter. And in fact has caused a significant amount of grief by supporting the states non compliance. Streamline sales tax governing board and sub committees which is trying to simplify and make uniformity among the states in tax base definitions is failing because they are not willing to or unable to enforce their own rules and agreements. This is simply not acceptable and this taxpayer is in agreement that I do not support sanctions and every effort should be made to quickly try to remedy the violations. The state of Nevada is failing to do so and in fact stating that they cannot remedy the situation. When this occurs sanctions should not only be made but should be required. As such it is the hope that the sanctions against the state of Nevada be issued to bring them in compliance with the agreement and with the rules that they themselves have stated that they have adopted.

Sincerely,



Val Gibson