October 8, 2015

AMCS, LLC
P.O. Box 974
Lehi, UT 84043
(801) 427-5938

Streamline Sales and Use Tax Governing Board
Executive Director, Craig Johnson
100 Majestic Drive, Suite 400
Westby, WI 54667

RE: Facts to support compliance issues and maximum sanctions against the state of Nevada.

To Whom It May Concern:

I am writing this letter to formally voice the opinion that Nevada is out of compliance and has deliberately violated the agreement and rules that the State of Nevada has agreed to follow and has willfully agreed to become in compliance with, while the entire time taking every effort to stay out of compliance with the agreements that it has signed. In addition, Nevada is deliberately singling out certain taxpayers and refusing to allow them any relief, even as the State becomes compliant. Singling out certain taxpayers creates an unfair advantage in their industry and that is the worst violation that any state can inflict. As such, it is this person's opinion that the maximum sanctions be brought against the State of Nevada until it takes every effort to become in compliance with all taxpayers.

Facts

Nevada is a full member of streamline sales tax. The facts of this case have been well documented and the Governing Board has all the documents that support this compliance issue. It is agreed that the State of Nevada's laws and regulations are within the parameters of the Streamline Agreement, however, the State of Nevada is not complying with its own laws and regulations as it deals with the transportation issues. The term transportation has been asked to be defined and put into the agreement, but this recommendation was not accepted. As such, the Governing Board's rules need to be applied in determining transportation issues. This rule states as follows:

> ***Rule 327.4 – Delivery Charges***
> ***A. "Delivery charges"*** *is defined in Part I of the Library of Definitions, conjunctively with the definitions of "sales price" and "purchase price." "Sales price" and "purchase price" include "delivery charges" unless a member state elects to exclude all delivery charges from the computation of sales and purchase price. A member state may choose to exclude from the computation of "sales price" and "purchase price" of all personal property and services other than direct mail any of the following components of delivery charges, if the charges are separately stated on an invoice or similar billing document given to the purchaser:*

1. handling, crating, packing, preparation for mailing or delivery, and similar charges for activities necessary for preparing personal property or a service for delivery to a location designated by the purchaser of the personal property or service; or
2. transportation, shipping, postage, and similar charges for movement of personal property or a service from possession by the seller to possession by the purchaser or the purchaser's designee.

Since there is no indication that the State of Nevada is out of compliance as it comes to Direct Mail, then that issue was excluded from the rule above and is not being addressed. However, it is very clear that the State of Nevada is clearly and willfully out of compliance as it comes to delivery of personal property or services. The State of Nevada has issued a private letter ruling to at least two companies that clearly state that there is no transportation that takes place in the delivery of ready mixed concrete to the purchaser. This is a clear violation of rule 327.4. Clearly there has to be movement of the ready mix to move it from the seller's location to the designated place of delivery by the purchaser. The State of Nevada is stating that handling takes place, so only handling is taking place and not transportation. This again is not in compliance with rule 327.4. It is very clear that handling is a defined step that is preparing the property for delivery to a location designated by the purchaser. Transportation is for movement of the personal property from possession by the seller to possession by the purchaser. As such there is no limitation placed on transportation other than movement has to take place for the purpose of possession changing from the seller to the purchaser. As such, there cannot be handling taking place once the personal property starts the movement for possession to be exchanged. It is impossible to prepare something for movement when the actual movement has begun. As such, the State of Nevada is in violation of the rules of the Streamline Sales and Use Tax Act.

The State of Nevada's representative to streamline has asked that a new advisory opinion be asked for to assist in resolving this matter. A new advisory opinion has been asked for as requested and this advisory opinion has been denied and it was indicated that a new one could not be asked for. As such, even if administratively, the State of Nevada does come into compliance, it will still be out of compliance because of the two advisory opinion letters it issued that are out of compliance because those taxpayers are going to have to comply with those out of compliance advisory opinion letters until such time as the State of Nevada issues new ones. As such, if the State of Nevada does come into compliance with other taxpayers, these two companies will still have to comply with the out of compliance advisory opinion letters thus damaging these companies even further. This should never be allowed or accepted, yet this is clearly the approach Nevada is taking.

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 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 takes 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.

In conclusion, the State of Nevada is out of compliance by refusing to state that transportation takes place in the delivery of ready mix concrete. It is also in violation by stating to the taxpayers that it will not correct the advisory opinion previously issued. As such, sanctions must be issued.

2. The State of Nevada is stating that handling is occurring during transportation making it subject to tax.

   To support that this is a direct violation, 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 a 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.

   In 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). It is 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. The Nevada Sales and Use Tax Matrix clearly states that handling, crating, packing, preparation for mailing or delivery, and similar charges for activities necessary for preparing personal property or a service for delivery to a location designated by the purchaser of the personal property or service is subject to tax. The Nevada Sales and Use Tax Matrix also clearly states that transportation, shipping, postage, and similar charges for movement of personal property or a service from possession by the seller to possession by the purchaser or the purchaser's designee is not subject to tax. The Nevada law supports this as well. The Nevada Department of Taxation is somehow interpreting the term handling to include the actual movement of the personal property and therefore the movement of the personal property is subject to tax. It is very clear that the preparation of the personal property and the actual movement of the personal property are two separate and distinct issues and in no way can be combined into one as the state of Nevada is doing and is therefore in direct violation of the agreement and the rules.

   In conclusion, the State of Nevada is in violation of the definitions of the agreement and the agreement itself. Specifically, the purchase price as defined and the sales price as defined and as indicated by its own sales and use tax matrix which the State of Nevada has approved and agreed to. The State of Nevada has failed to correct this issue even though it has been made aware of it and in fact is taking every measure possible to avoid remedying this violation. As such, the Nevada Department of Taxation is fully aware of the violation and is refusing to correct the violation and is, therefore, in violation of the rules and regulations and sanctions are required.

4. 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 its 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 sanctions are required.

5. The State of Nevada's laws are in compliance with the streamline agreement and with the rules of the agreement. The employees of the Department of Taxation as well as the Attorney General of the State of Nevada, are making the State of Nevada out of compliance. If you look at the laws of the State of Nevada and if you look at rule 327.4, you should be able to substitute the words "movement of personal property or a service from possession by the seller to possession by the purchaser or the purchaser's designee." For the word transportation and it still should have the same meaning. In the codes and regulations of the State of Nevada, you can do this and it clearly has the same meaning. However, the Department of Taxation and the Attorney General of the State of Nevada are not taking that approach. Instead, they are restricting the term transportation to exclude the movement of property. This is in direct violation of the rules of the streamline agreement. The State of Nevada is trying to exclude certain types of transportation vehicles by claiming that they are not transporting goods as it is being moved from the possession of the seller to possession of the purchaser. The State is not even being consistent in this made up claim. In other words, agitator trucks that carry cement are being treated differently than agitator trucks that carry petroleum products. Nowhere in the rules or the streamline agreement does it allow the transportation by different transportation equipment to be treated differently. This is simply not permissible and as such, the State of Nevada is out of compliance.

   In conclusion, the State of Nevada is heading into a situation which is so morally wrong and should never be allowed or tolerated by any governing board or anyone in authority. Until the State of Nevada issues a corrected private letter ruling to those companies it is currently forcing to be out of compliance, then the State of Nevada is out of compliance in the most morally and ethically wrong way possible. Nevada is knowingly doing this and should face the most severe sanctions.

6. The State of Nevada is quickly moving to a scenario where they are going to single out specific taxpayers and force them to be taxed differently from other companies in the same industry. This should never be tolerated.

   In conclusion, the State of Nevada is in violation of the definitions of the agreement. Specifically, the taxation of transportation charges as defined in the Streamline agreement and rules. The State of Nevada has failed to correct this issue and in fact is doing everything they can to continue to fight against compliance on this issue. The State of Nevada has made recommendations to certain taxpayers that if they would follow through with those recommendations the State would then make responses in compliance. The State of Nevada has failed on every one of those recommendations it has made to bring them into compliance after the taxpayer met those recommendations. The State is willfully in violation and continues to be out of compliance by resisting to make changes to become compliant. As such, there is really no choice but to issue strong sanctions against Nevada.

7. The Nevada Department of Taxation Commissioners has stated that it is not relevant that the decisions that they make are compliant with the streamline agreement and as such, willingly rule contrary to the agreement. The commissioners are knowingly disregarding the Streamline Agreement and this makes it more difficult to bring the State of Nevada into compliance. It is clear and has been made known to them that they are not in compliance and because they have disregarded the Streamline Agreement it makes it more difficult for not only the State of Nevada, but also to uniformly bring the taxpayers of the State of

Nevada into compliance. This is a clear ethical and moral violation of the contractual agreement the State of Nevada has entered into.

In conclusion, since this is a willful disregard of the streamline agreement, this should not be tolerated by the Streamline Executive Committees and swift and severe sanctions should be mandated as this is a blatant disregard for the contractual agreements entered into. It clearly undermines the entire premise of the streamline agreement in that each participating state will monitor itself and stay in compliance and will voluntarily correct issues that arise when it is out of compliance. The State of Nevada is not willing to do this. It wants to participate in the voluntary collection of sales and use taxes, but is not willing to comply with the streamline agreement. The benefits of complying with the agreement should not be given to those that do not comply and as such the revenue stream generated by the voluntary collection of sales and use taxes should not be given to the states that willfully disregard the agreement. This is not an issue that needs to be addressed by the legislative body since the laws that are in place meet the requirements of the streamline agreement. This is simply the Nevada Department of Taxation refusing to comply with the laws of the State and the Streamline Agreement and further refusing to comply with them even after being notified that it is out of compliance and continuing to fight for the issues that are making the State out of compliance. This can be fixed quickly by the State of Nevada, but it has failed to take any steps to become compliant. As such, bad behavior and willful disregard for the underlying rules and agreements that the State of Nevada has voluntarily agreed to comply with should not be rewarded by allowing the revenue stream to continue to flow to the State in the same manner as those states that do try to be in compliance. As such, the voluntary collection of sales and use taxes should be suspended until the State of Nevada is in complete compliance regarding this issue.

Conclusion

It is not only proper, but extremely important, that the Streamline Sales and Use Tax Executive Committee do everything within its 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 simply rename the definitions and apply the new name however they determine, then the Streamline Sales Tax Act has huge issues that cannot be resolved and their entire purpose has failed. 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. This is an extremely hard thing to do since only the states are serving on their committees. There is no one to keep this in check and like its predecessors', it will fail over time. 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, which is happening in this case. The executive director has been made aware of this for the past almost nine months and has failed to convince the State of Nevada to become in compliance or to enforce any failed attempt to move the state into compliance. The State of Nevada has said that they are moving toward compliance and yet has failed to take the appropriate steps to do so. In fact, it has taken every step possible to enforce the non compliance issues on the taxpayers causing a significant amount of grief and financial loss by supporting the states non compliance. The 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 it is not willing to, or is unable to, enforce its own rules and agreements. This is simply not acceptable and it appears that the only reasonable solution is to enforce the maximum amount of sanctions possible upon the State of Nevada until such time as they sincerely take the steps necessary to become in compliance with all taxpayers. 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. Being rewarded by allowing the revenue stream that the Streamline Sales and Use Tax Act generates for the State of Nevada should not be allowed and the State of Nevada should not be rewarded for its willful disregard for the rules and of the streamline agreement in which it voluntarily agreed to comply

with. Compliance must be maintained with all taxpayers and not simply used to single out a few taxpayers and force them to be noncompliant. 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 rules that it claims to have adopted.

Sincerely,

Val Gibson