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March 29, 2010

Mr. Scott Peterson  
Executive Director  
Streamlined Sales Tax Governing Board  
4205 Hillsboro Pike  
Hobbs Building, Suite 305  
Nashville, Tennessee 37215-3339

**Re: Public Comment OPPOSED to AM10001, definition of bottled water**

Dear Mr. Peterson:

The Streamlined Sales Tax Governing Board has been petitioned by five states (Kansas, Kentucky, Michigan, Tennessee and Washington) to amend the Streamlined Sales and Use Tax Agreement (SSUTA) to add a definition for bottled water and to give states the option to exclude bottled water from the SSUTA's "food and food ingredients" definition. The International Bottled Water Association (IBWA)<sup>1</sup> appreciates the opportunity to comment on this petition (AM10001), to which we are firmly opposed.

If adopted, AM10001 will erode and undermine the SSTA's objective by singling out an individual food product from the SSUTA definitions solely for the political expediency of a few participating states that are seeking to tax bottled water. The underlying principle for exempting food from sales and use taxes is that food is a human necessity. Bottled water can clearly be a necessity for some people with suppressed immune systems, or when community water systems are compromised. We request the Governing Board to soundly reject AM10001, or at a minimum have it referred to the State and Local Advisory Council (SLAC) for further study in order to establish a standard for making changes to the SSUTA "food and food ingredients" definition. In fact, as recently as March 12, 2010, the SLAC discussed a new Food Definition Rules Committee where such a study would clearly be appropriate.

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<sup>1</sup> IBWA is the trade association representing all segments of the bottled water industry, including spring, artesian, mineral, sparkling, well, groundwater and purified bottled waters. IBWA represents bottled water bottlers, distributors and suppliers throughout the United States. Founded in 1958, IBWA member companies include U.S. international bottlers, distributors and suppliers. Bottled water companies produce a packaged food product that is comprehensively and stringently regulated by the U.S. Food and Drug Administration (FDA). IBWA is committed to working with state and federal governments to establish and implement stringent standards for assuring the production and sale of safe, high-quality bottled water products. In furtherance of this objective, IBWA has developed and published a Code of Practice (available at IBWA's website: [http://www.bottledwater.org/public/policies\\_main.html](http://www.bottledwater.org/public/policies_main.html)), which establishes standards of bottled water production, quality, and distribution that must be met by IBWA members. In several cases, the IBWA Code of Practice is even more stringent than state and federal regulations. As a condition of membership, IBWA bottlers must submit to an annual plant inspection by an independent third party to determine compliance with the Code of Practice and all applicable FDA regulations.

Bottled water is a highly regulated packaged food product – **period**. It is regulated by the United States Food and Drug Administration (FDA) as such, and is also regulated by nearly every state in the same manner. If a state exempts packaged food products from its sales and uses taxes, bottled water deserves that same exemption. And any state that is a SSTP participant should continue to accept the negotiated SSUTA definition that they agreed to when they joined the program. Some of the AM10001 petitioners had a sales tax on bottled water when the SSUTA was first negotiated, and then repealed their taxation of bottled water in order to join the SSUTA. There have been no intervening developments with bottled water as a food product, except now some states are experiencing revenue projection shortfalls and want to change the SSUTA definition of “food and food ingredients” to make it easier to tax this product. Changing the SSUTA definition of “food and food ingredients” as proposed in AM10001 will open up the proverbial “Pandora’s Box” for future changes that participating states may desire. A standard should therefore be developed for consideration of changes to the definition of “food and food ingredients” under the SSUTA before the Governing Board rules on individual food products.

The Streamlined Sales Tax Project (SSTP) began in 2000 in response to efforts by Congress to permanently prohibit states from collecting sales taxes on online commerce. Because such a ban would have serious financial consequences for states, the SSTP set about to remove the burden on interstate commerce for the collection and remittance of sales and use taxes in the U.S., thereby convincing Congress and the courts to allow states to collect these taxes regularly. As part of their work, the SSTP developed a core set of definitions to simplify the tax code in all 50 states so that what was considered “food” or “clothing” in one state, for example, was also considered “food” or “clothing” in another state.

In the SSUTA, the term “food and food ingredients” is defined as substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. The definition does not include “alcoholic beverages” and “tobacco” and permits states to exclude “candy,” “dietary supplements” and “soft drinks” from the definition. This definition was negotiated by the states at a time when states had varying definitions of “food and food ingredients” under their sales and use tax laws. For example, some states included bottled water in the definition of food, and others did not. But bottled water was clearly included in the SSUTA’s “food and food ingredients” definition from the beginning, even though some of the negotiating states were taxing it under their sales and use taxes.

The bottled water petition currently before the Governing Board (AM10001) seeks to amend the SSUTA to provide a definition for bottled water, and to give states the option to exclude bottled water from the “food and food ingredients” definition. Adopting such a change to the SSUTA is a slippery slope, and the Governing Board should seriously contemplate this fact as it considers the long-term goal of having the SSTP enacted by Congress. The more often specific products are pulled out of the SSUTA definitions the less streamlined it will become and the more likely Congress and the courts will determine that the burden on interstate commerce has not in fact been removed and that the SSTP has not reached its goal.

In the case of bottled water, it can clearly be considered a necessity. Even Washington State has recognized this fact in its current discussions on taxing bottled water under its sales and use tax.

Bottled water is not simply “an item of choice” as some would want you to believe, but is a necessity for medical conditions and emergencies, when potable water is not available, and clean, safe drinking water is critical. At a minimum, the SSUTA should also recognize these situations which are unique to bottled water as a food product. No other food product is similarly situated. If bottled water is to be considered a “luxury” or “item of choice” (not a necessity), then so should other water-based beverage food products like milk, orange juice, coffee and tea.

Tax policy is often used to encourage healthy behavior and discourage poor consumer choices such as candy, cigarettes, soft drinks and alcohol. Placing bottled water on the same level as those products is using tax policy to discourage a healthy choice. With the rise in diabetes and obesity, this tax policy will run counter to efforts to encourage healthier life styles. Any actions, such as taxes, that might discourage the consumption of water, including bottled water, are not in the best interest of consumers.

For the reasons outlined above, we respectfully request that the Governing Board soundly reject AM10001, or, at a minimum, have it referred to the State and Local Advisory Council (SLAC) for further study in order to establish a standard for considering any future changes to the SSUTA “food and food ingredients” definition. This definition will be one of the critical issues in determining the SSUTA burden on interstate commerce. To proceed with any changes to the SSUTA that would remove bottled water from the current food definition defies the spirit and intent of the SSTEP, and serves no purpose but to fill states’ coffers with new tax revenue. And opening up bottled water for possible taxation under the SSUTA would be an ironic disservice to, and poor public policy for, an industry that is called upon every year to provide crucial drinking water throughout the U.S.

Thank you for your consideration of our comments, and please do not hesitate to contact us with any related concerns or questions.

Sincerely,

A handwritten signature in black ink that reads "Joe Doss". The signature is written in a cursive style with a large, looping initial "J".

Joseph K. Doss  
President