



State of New Jersey

DEPARTMENT OF THE TREASURY

DIVISION OF TAXATION

PO Box 240

TRENTON NJ 08695-0240

JON S. CORZINE
Governor

November 13, 2006

BRADLEY I. ABELOW
State Treasurer

DIRECTOR'S OFFICE
TEL (609) 292-5185
FAX ~ TRENTON (609) 984-2061

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

Dear Executive Director Peterson:

This responds to your recent letter that invited our response to claims by the Business Advisory Council (BAC) that New Jersey is out of compliance with the Streamlined Sales Tax Agreement (SSTA). The gravamen of the complaint is that New Jersey's recently enacted Fur Clothing Retail Gross Receipts Tax (fur tax) violates Sections 316A and 327C of the SSTA and poses compliance difficulties. New Jersey disagrees with BAC and asserts its full compliance with the SSTA.

Section 316A provides:

A member state may enact a product-based exemption without restriction if the Agreement does not have a definition for a product or for a term that includes the product. **If the Agreement has a definition for the product or for a term that includes the product, a member state may exempt all items included within the definition but shall not exempt only part of the terms included within the definition** unless the Agreement sets out the exemption for part of the items as an acceptable variation. (Emphasis added)

New Jersey exempts all clothing, including fur clothing, from the state sales tax. Historically, New Jersey exempted clothing from the sales tax but included fur clothing within the sales tax base. However, as of October 1, 2005, the effective date of amendments to the New Jersey sales tax act to bring it into conformity with the SSTA, the sales tax exemption for clothing was extended to fur clothing. The New Jersey sales tax act is thus in complete conformity with Section 316A of the SSTA.

Section 327C sets forth:

Except as specifically provided in Section 316 and the Library of Definitions, a member state shall impose a sales or use tax on all products or services within each definition or exempt from sales or use tax all products or services within each definition.

<http://www.state.nj.us/treasury/taxation/>

New Jersey Is An Equal Opportunity Employer • Printed on Recycled Paper and Recyclable

BAC claims the fur tax is a sales or use tax within the meaning of Section 327C and as such New Jersey "may not choose to exempt only certain types of clothing and impose sales and/or use tax on other types of clothing as it has done by enacting the Act." Clearly, the Legislature was cognizant of the requirements of Section 327C, in its enactment of a gross receipts tax, and not a sales tax.

The Compliance Review and Interpretations Committee has considered and rejected a similar argument. Brann & Isaacson of Lewiston, Maine challenged Minnesota's compliance with Section 327C given that state's gross receipts tax on fur clothing. In Interpretation Recommendation 2006-05, the Committee concluded that the Minnesota gross receipts tax on fur clothing did not violate Section 327C. The Governing Board accepted the Committee's recommended interpretation. That interpretation is precedential and it is applicable to the objection raised by BAC.

BAC claims that because the fur tax includes exemptions for items shipped out of state and items purchased for resale, and because the tax has a use tax component, it is in effect a sales tax. Interpretation Recommendation 2006-05 disposes of these claims. The Minnesota tax contains each of the elements that BAC suggests support its contention of New Jersey's non-compliance.

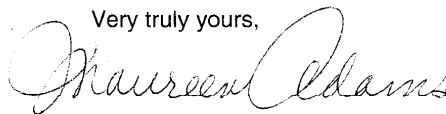
BAC contends that the statutory placement of the fur tax in a section of Title 54 of the New Jersey Statutes Annotated subtitled "sales and use taxes" proves its position. The placement of the fur tax within the statutes is not determinative, and should not be considered so. The fee imposed on tires is codified at N.J.S.A. 54:32F-1 in the same subtitle as the fur tax, and would not be construed by any measure as a sales tax.

BAC complains of compliance difficulties with the fur tax. Such an argument has no place before the Governing Board. BAC is welcome to contact the Division of Taxation's Regulatory Services Branch at (609) 292-5995 for assistance with compliance questions. Additionally, the Division's website is a most helpful place to find guidance on the subject.

Finally, it is our understanding that the Governing Board will consider at its December meeting whether to adopt a proposed definition of "fur clothing" for inclusion within the Library of Definitions. New Jersey intends to vote in favor of adoption of the definition as proposed. Should the Governing Board adopt the amendment as currently drafted, Governor Corzine's administration would support legislation to repeal the fur tax, and amend the state sales tax in favor of taxing fur clothing under the sales tax act.

Thank for the opportunity to set forth New Jersey's position on BAC's complaint.

Very truly yours,



Maureen Adams
Acting Director
Division of Taxation

MA:ab