

March 30, 2007

[REDACTED]
President

[REDACTED] Printing
[REDACTED]

Fort Worth, Texas [REDACTED]

Dear Mr. Motheral:

We received a copy of your message to the Governor's office regarding Streamlined Sales Tax (SST). We appreciate that you took the time to share your concerns about this national initiative and its potential impact on businesses and purchasers in Texas.

The SST Project began as a joint effort by states to address the growing problem of state and local sales tax revenue losses due to remote sales from e-commerce (e.g., sales over the Internet). Federal law, affirmed by a 1992 Supreme Court decision, prohibits states from requiring sellers to collect tax on interstate shipments, unless the seller has a physical presence or "nexus" in the state where delivery occurs. The Court ruled that the maze of local and state sales tax laws placed an undue burden on remote sellers, violating the fair commerce clause of the U.S. Constitution. As a result, some states joined together to simplify and standardize the administration of their sales and use taxes across state boundaries, creating the Streamlined Sales Tax Agreement (Agreement).

The Agreement contains numerous requirements states must adopt to be eligible for membership. One of those requirements specifies that member states must use common definitions provided in the Agreement. If a term defined in the Agreement appears in a member state's sales and use tax statutes or administrative rules or regulations, the member state must adopt the Streamlined Sales and Use Tax Agreement (SSUTA) definition in substantially the same language as the SSUTA definition.

The Agreement defines "Sales Price" as "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.



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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."

Although the SST Governing Board member states have all adopted this definition, the exact interpretation varies. Several of the member states have construed the inclusion of "delivery charges" in the sales price of a taxable item. Those states include charges for postage purchased through a mailing agent as part of the sales price of printed materials, including charges for mailing provided by the U.S. Postal Service that has been purchased by printers and direct mailers as part of a mail fulfillment contract.

This interpretation has raised serious concerns in the direct mail and printing industry. Your association has requested that Texas support the position taken by the direct mail industry: Charges for postage purchased through a mailing agent should be excluded from the definition of sales price.

Texas does agree that charges for U.S. Postal Service postage incurred when mailing items to a third party should not be included in the sales price of a taxable item when separately stated and purchased by a printer or direct mailer acting as a mailing agent. This position follows long-standing policy in this state relating to mail fulfillment services.

However, Texas is not an SST Governing Board member state and does not have a vote on this issue. For several reasons, including but not limited to the requirement that all states must adopt destination-based sourcing, Texas has not adopted the Agreement. The Governing Board's refusal to compromise on many major issues has left several states, including Texas, questioning whether further involvement in SSTP is in the best interest of its citizens.

It is our understanding that, although the Governing Board briefly discussed several proposals related to direct mail, including the proposed postage rule, at the recent meeting in Charlotte, N.C., no action was taken and the proposals were withdrawn pending further analysis. As a result, the Streamlined State and Local Advisory Council (SLAC) plans to conduct a survey of the states on the topic of "mailing services" provided in connection with direct mail and, possibly, a survey on how the cost of postage is treated when it is purchased by a mailing agent on behalf of its customer. Although Texas is not a member of the Governing Board and thus cannot vote on proposals before the Board, the State will voice support for the proposed postage rule as a member of the SLAC.



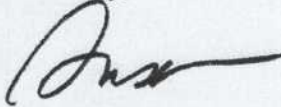
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At this time, Texas continues to monitor the progress and activities of SST, but is not actively working toward adopting the Agreement. Please be assured that we will not recommend that the Legislature adopt the SST in Texas, unless we are able to implement the requirements in a manner that is fair and equitable to all Texas taxpayers.

If you have any further concerns or questions about Streamlined Sales Tax or Texas Sales and Use Tax, please contact Robin Corrigan, of our Tax Policy Division, by e-mail at robin.corrigan@cpa.state.tx.us, or by phone at 1-800-531-5441, extension 3-1810.

Sincerely,



Susan Combs

cc: The Honorable Rick Perry
The Honorable Troy Fraser
The Honorable Phil King
The Honorable Sylvester Turner
Mr. John O'Brien
Mr. David Somerville
Mrs. Robin Corrigan

