



December 2, 2008

The Honorable John Doyle
West Virginia House of Delegates
President
Streamlined Sales Tax Governing Board

Re: Opposition to Proposed Massachusetts Definition on Luxury Clothing Amendment (AM08018)

Delivered Via E-Mail

Dear Delegate Doyle and Members of the Governing Board,

On behalf of the National Retail Federation ("NRF"), I am writing to urge opposition to the proposed Massachusetts definition of luxury clothing amendment (AM08018) to the Streamlined Sales and Use Tax Agreement ("Agreement") being considered during the Streamlined Sales Tax Governing Board ("SSTGB") meeting in Providence, Rhode Island, on December 5-6, 2008.

NRF believes this amendment to allow a clothing threshold in Massachusetts is a move away from simplification, threatens the chances for passage of federal streamlined legislation, is too costly to implement and contrary to the original principles of this sales tax reform project.

Adoption of this Amendment Moves the Agreement in the Wrong Direction, and Imperils Passage of Federal Streamlined Legislation

- By adopting this luxury clothing amendment (a type of tax threshold) the Agreement becomes less simple, less uniform, more burdensome to retailers, and it would not comply with Section 6(A)(10) of the federal legislation.
- The original amendment, which would codify the Massachusetts \$175 clothing threshold into the Agreement, may benefit Massachusetts, but would make it more difficult for Connecticut (\$50) and New York (\$110) to join the Agreement because those states' thresholds are different in amount and application.
- Conversely, by permitting any state to set its own threshold as the current version of the amendment does creates the potential to have 46 different threshold amounts. Each state that creates a threshold adds significant new burdens to the tax collection process.
- The fact that retailers comply with the exemption today does not mitigate or justify the maintenance of a costly and currently unreimbursed, non-uniform anomaly in state tax code. From the beginning of this project, caps and thresholds and definitional exceptions have been identified as items to be eliminated by the Agreement. Passage of this amendment would violate that long-standing policy.

- Before exception-based amendments become the precedent, the SSTGB must discontinue this trend of amending the Agreement to lure new states into accepting the Agreement. Every state potentially has some “exception” that it needs. Whether it is a definition for fur, a lower rate on drugs, a second definition for sourcing, or a new rounding rule, if the SSTGB allows a special carve out for every state’s “special needs” we will end up with merely a reformatted – not reformed – version of the complex tax system which existed when this project started in 1999.
- Since 2003, the federal legislation has specifically disallowed caps and thresholds for tangible personal property in the list of minimum simplifications (H.R. 3396, Section 6(A)(10)). An erosion of this list will be viewed by skeptics as a step away from simplification, and toward complexity and higher costs for retailers.

Adoption of this Amendment Will Directly Affect the Vendor Compensation Debate

- Every exception to the standard rule adds complication and higher cost. The SSTGB should pause and consider the impact that adopting another exception to the Agreement will have on the still unresolved question of retailer reimbursement.
- With regard to clothing that is priced near the threshold limit, below are some of the administrative cost increases for retailers:
 - It creates significant programming complexities to set tax flags;
 - There are a myriad of problems with returns of merchandise;
 - Price fluctuations during the course of the year (e.g., discounts, coupons, promotions, etc.) create a large propensity for inadvertent over collection of tax (which could lead to class action law suits) or under collection of tax (which leads to tax assessments, penalties and interest).

Once federal legislation is passed, states like Massachusetts that currently do not pay retailers for collection, should expect not only to begin paying for this collection service, but pay above any baseline compensation rate to maintain this threshold exception. Going forward, this “above the premium” compensation schedule is a consideration ALL states should be aware of when adopting or amending their version of Agreement compliance legislation.

SSTGB Should Resume a Two-Pronged Test for Amendments to the Agreement

The NRF recommends that going forward the SSTGB go back to basics and core principles when faced with amendments to the Agreement. The most significant weight should be placed on these primary considerations:

- (1) Is it simpler than what exists today;
- (2) Is it less costly OR cost-free to implement for retail tax collectors.

The Massachusetts amendment fails both aspects of this test.

With federal legislation a very real possibility in 2009, this is a time to stay the course and stick to the original goals of the streamlined project. In the future, failure to meet these prime qualifiers should help disqualify many of the unique requests from either the business or the state government community. Strict adherence to these principles will also engender greater confidence and respect for the SSTGB and its processes.

Thank you for the opportunity to share NRF's concerns. I regret that I will be unable to join you in Providence while this amendment is being debated, but I sincerely hope that the considerations spelled out above will be considered as part of the discussion on this important issue.

Sincerely,



Maureen B. Riehl
Vice President
Government and Industry Relations Counsel
National Retail Federation

Cc: Representative Mark Falzone
Scott Peterson
BAC
NRF SST Committee

The National Retail Federation is the world's largest retail trade association, with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalog, Internet, independent stores, chain restaurants, drug stores and grocery stores as well as the industry's key trading partners of retail goods and services. NRF represents an industry with more than 1.6 million U.S. retail companies, more than 25 million employees - about one in five American workers - and 2007 sales of \$4.5 trillion. As the industry umbrella group, NRF also represents over 100 state, national and international retail associations. www.nrf.com