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December 3, 2008

Sent Via E-Mail

Honorable Delegate John Doyle, President
Streamlined Sales Tax Governing Board, Inc.
C/O West Virginia House of Delegates
Room 202E, building 1 (State Capitol Complex)
Charleston, WV 25305

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Re: Governance of the Streamlined Sales & Use Tax Agreement (SSUTA)

Dear Delegate Doyle:

As you are aware, the Council On State Taxation (COST) has long supported the states' efforts to simplify and provide greater uniformity to the sales and use tax system used by the states.¹ The purpose of this letter is to raise three governance issues that COST requests the SSUTA Governing Board to address at its earliest opportunity. The three governance issues are: (1) increasing the participation of elected officials (state legislators) on the Governing Board; (2) establishing an independent review process to address disputes by a member state or the public with a Governing Board action; and (3) developing formal criteria to evaluate the states' substantial compliance with all provisions of the SSUTA and implementing meaningful sanctions for those states found out of compliance with the SSUTA.

About COST

COST is a non-profit trade association based in Washington, DC. Originally formed in 1969 as an advisory committee to the Council of State Chambers of Commerce, COST today has an independent membership of more than 620 major multistate corporations engaged in interstate and international business. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities.

¹ COST's policy position on the SSUTA can be found at:
http://statetax.org/uploadedFiles/About_COST/Policy_Statement/SimplificationOfTheSalesAndUseTaxSystem.pdf

Involvement of Elected Officials

Increasingly, COST is hearing from state revenue officials that it is difficult to make the necessary law changes to keep their state in substantial compliance with every provision of the SSUTA. While subsection D.2 of section 703 of the SSUTA allows for up to four representatives to be part of a state's delegation to the Governing Board, it does not require legislators to be on the Board or to attend the Governing Board meetings. Many of the difficulties of passing legislation to stay in compliance with the SSUTA would be lessened if more legislators were actively involved on the Governing Board. Greater legislative involvement would also provide a broader political perspective, since state revenue officials, understandably, tend to focus more on specialized tax issues. COST would be pleased to work with the Governing Board to increase legislative involvement.

Timely & Independent Review Process

Sections 1001 to 1004 of the SSUTA provide for an issue resolution process. Specifically, section 1001 states: "The governing board shall promulgate rules creating an issue resolution process. The rules shall govern the conduct of the process, including the participation by any petitioner, affected state, and other interested party, the disposition of a petition to invoke the process, the allocation of costs for participating in the process, *the possible involvement of a neutral third party or non-binding arbitration*, and such further details as the governing board determines necessary and appropriate." [Emphasis added.] The Governing Board acts as a quasi-governmental body and wields aspects of legislative, executive and judicial power. When the public or a member state disputes an action taken by the Governing Board, it is vital that the complainant have access to a timely and independent review of the dispute. Fortunately, the Governing Board presently has the authority to promulgate a rule (or rules) to ensure there is an expedited and independent review when the issue resolution procedure is initiated. COST is hopeful the Governing Board will act swiftly to develop a resolution process that quickly (within 90 days of a complainant invoking the process) allows a person to have a dispute reviewed by a neutral party. Allowing a subset of Governing Board states to review the Board's actions is not sufficient because such a subset does not constitute an independent body.

Substantial Compliance with the Agreement and Strict Sanctions for Non-Compliance

As indicated in a letter sent to Scott Peterson on November 1, 2008, COST is concerned that the procedures used by the Compliance Review and Interpretations Committee (and that may be used by the Governing Board) are grossly biased toward finding states in substantial compliance with each provision of the SSUTA when in fact a state may not be in substantial compliance with each provision of the SSUTA. The SSUTA requires that each state's laws (and regulations conforming to the law) must be in substantial compliance with each provision of the SSUTA. Mere statements by tax administrators that they will administer their law to be in compliance with the SSUTA are not sufficient, particularly where the law is deficient or contradictory to administrative policies. Review of a state's compliance should also not be premised on prior reviews that may have found a state in substantial compliance with all provisions of the SSUTA. Annual reviews must be comprehensive and documented to assure consistent review standards are applied to each state. Absent a finding of non-compliance, it is unlikely that a state's tax representatives to the Governing Board will be able to explain to their legislators why their tax laws need to be amended.

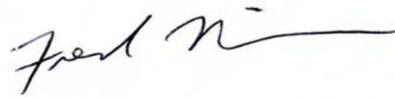
Section 809 of the SSUTA and/or proposed rule RP08004A01 should be modified to provide clear and meaningful sanctions for non-compliance. The proposed rule only provides for

recommendations. A more formal process is needed. Such a process must provide step by step the degree of sanctions that will be imposed and, as applicable, the time frame for moving from one sanction to another (e.g., loss of voting power to expulsion). COST is not suggesting a sanctions process that entails a "one size fits all" approach. However, leaving the sanctions process murky does not serve the best interest of the Governing Board.

Conclusion

COST appreciates your interest in these important matters. COST would be pleased to work with you and the Governing Board to address these issues to the satisfaction of the business community and the states.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred Nicely", with a long horizontal flourish extending to the right.

Fred Nicely

cc: Doug Lindholm, President & Executive Director, COST
COST Board of Directors
Scott Peterson, Executive Director, Streamlined Sales Tax Governing Board, Inc.