

BAC

Business Advisory Council

December 15, 2009

Streamlined Sales Tax Governing Board {Sent Via E-Mail}
Attn: Delegate John Doyle, President
4205 Hillsboro Pike, Suite 305
Nashville, TN 37215

Re: "Good Faith" Amendment to Section 317 of the Agreement

Ladies and Gentlemen:

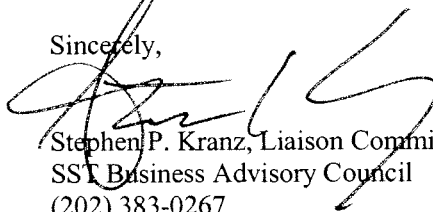
The Business Advisory Council has worked with the State and Local Advisory Council in connection with the latter's development of AM09017A01, a motion by Wisconsin to amend section 317 of the Streamlined Sales and Use Tax Agreement.

With the exception of the two major items set forth below, we support the motion:

1. Section 317 (D) (1) (a) (iii) would require a seller to know not only the nature of the purchaser's business, but how the purchaser operates that business as well. We believe this would impose an undue burden on a seller, especially in the context of today's economy and the prevalence of remote sales. We do not think it would be reasonable to impose this virtually infinite burden on a seller merely because it was not possible to obtain complete exemption information within 90 days of the sale. We thus recommend that sub-clause (iii) be deleted.
2. Section 317 (D) (2) would allow a state to disregard the information collected by the seller during the "120-day" period if the seller "had reason to know.... that the information ... was materially false." We believe that the term "had reason to know" would pose an unreasonable threat to sellers. For example, a state might assert that a posting on the revenue department's website that the purchaser was recently found guilty of sales tax fraud should have been seen by the seller and thus the seller "had reason to know" that the purchaser was not in the business as claimed. Although the provision would place the burden of proof on the state to show that the seller "had reason to know," that does not materially reduce the threat. Accordingly, we recommend that the "or had reason to know...." item be deleted from the last two sentences of the proposed 317 (D) (2).

Thank you for giving us this opportunity to comment.

Sincerely,



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Cc: Scott Peterson, SSUTA Executive Director
BAC Board Officers