

## BUSINESS ADVISORY COUNCIL RESPONSE TO SLAC PROPOSAL

- The BAC opposes any requirement that a Seller request a full street address, particularly given there are instances when this address is NOT needed to consummate the sale.
- The current proposal prepared by the SLAC work group fails the BAC’s simplification principles (reproduced below). Examples of such failures include the following.
  - The proposal increases compliance burdens for Sellers by:
    - Requiring that Sellers obtain information not needed to consummate the sale (i.e., full street address).
    - Requiring that many Sellers make costly systems changes to comply with the additional requirements proposed.
    - Requiring Sellers to use only specific databases (many of which may not be used by Sellers today).
    - Imposing unnecessary additional compliance burdens on sales made to buyers in states with no local rates where a full street address is not needed.
    - Requiring that Sellers seek relief from each jurisdiction individually if seeking an exception based on undue hardship.
    - Making free software, a key factor in the Supreme Court’s *Wayfair* decision, unavailable for small businesses unable or unwilling to obtain street addresses for their customers.
  - Raises Internet Tax Freedom Act (“ITFA”) / Commerce Clause Issues:
    - Proposed changes to Sec. 305(F)(2) provide: “If the five-digit zip code area includes more than one tax rate in any level of taxing jurisdiction, the state may assign the lowest, highest or blended rate based on the rates imposed in the five-digit zip code area.”
      - In *Associated Industries of Missouri v. Lohman*, the Supreme Court addressed a case where a state had a uniform, statewide use tax rate, similar to a blended rate, applicable to interstate purchases. In some localities, the uniform statewide use tax rate was higher than the local use tax rate applicable to intrastate purchases. In those localities where the uniform statewide use tax rate would be higher for interstate purchases, the Court found the scheme impermissibly discriminated against interstate commerce and was invalid under the Commerce Clause of the Constitution.

- Anything higher than the lowest rate would be a discriminatory tax on electronic commerce barred by ITFA because its application to sales of certain tangible personal property, digital products, and services delivered using the internet would impose a higher sales tax rate than on sales of goods made locally.
- By way of example:
  - A customer wants to buy a video game. The customer orders a copy of the video game on disk shipped to the customer's home address. Sales tax would be computed using the customer's street address, which might be the lowest local rate in the zip-code. However, if that same customer ordered a digital copy of that same game for download from a seller who only collects the 5-digit zip code for credit card authorization purposes, the Seller might be required to charge the highest rate if the state enacted the highest rate under the proposed change to Section 305(F)(2). The customer would pay a higher sales tax rate on the internet download than would be paid on the disk mail-order.
- It Impacts Completeness & Accuracy of Returns:
  - The proposed changes will deter compliance by Sellers not currently complying or unable to meet these additional requirements.
- Consumer Privacy:
  - Requires that Sellers obtain and retain personally identifiable information that is not needed to consummate the sale.
  - Requires implementation of privacy safeguards not otherwise needed.
  - May conflict with the requirements imposed by many jurisdictions that personally identifiable information be deleted upon customer request.

### **BAC Principles:**

- **Internet Tax Freedom Act and Commerce Clause:** Compliance with federal laws, including the Internet Tax Freedom Act and the U.S. Constitution's Commerce Clause is a necessity. Any change to the SSUTA that would require that sellers collect a higher rate of tax or impose increased burdens on sales of electronically delivered or transferred products than would be required on sales of physical products or services would violate this threshold principle.
- **Impact on simplification:** The BAC supports amendments to the SSUTA that result in simplification of sales and use tax rules and opposes amendments that increase complexity. Simplification reduces compliance burdens for sellers large and small.

- **Impact on sales tax collection burdens:** The BAC generally supports amendments to the SSUTA that reduce administrative burdens. The BAC generally opposes amendments that increase administrative burdens.
- **Impact on completeness and accuracy of returns:** Amendments should result in greater overall compliance and increased accuracy in remitting state and local sales taxes.
- **State legislation:** Some amendments to the SSUTA might require some states to enact legislation to remain in compliance. The BAC will support such proposals if it believes they stand a strong chance of passage.
- **Consumer Privacy:** Requirements that sellers obtain and retain certain consumer specific information for tax purposes may conflict with state laws requiring that such information be deleted for privacy purposes. The BAC disfavors amendments that require the collection of consumer information not necessary to the completion of the sale.