STATE OF CALIFORNIA

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June 6, 2011

The Honorable Darrell Steinberg
Senate President pro Tempore
State Capitol, Room 205
Sacramento, CA 95814

The Honorable Bob Dutton
Senate Minority Leader
State Capitol, Room 305
Sacramento, CA 95814

The Honorable John Pérez
Speaker of the Assembly
State Capitol, Room 219
Sacramento, CA 95814

The Honorable Connie Conway
Assembly Republican Leader
State Capitol, Room 3104
Sacramento, CA 95814

Honorable Members:

This letter is to share with you some of the practical effects that a delay in a decision regarding the Governor's 2011-12 Budget proposal to extend the one (1%) percent sales and use tax rate could have on retailers responsible for payment of the tax. This is not intended to advocate a Board of Equalization (BOE) position on the policy aspects related to a rate extension, but rather, simply to highlight the effects that a delayed decision could potentially have on the taxpayer community. We hope that you will consider this information in your deliberations and the timing of your decision.

We have over one million California and out-of-state retailers and other taxpayers for whom timely and accurate updates on changes to the sales and use tax laws and rates are highly critical to their operations. Keeping our retailers timely informed enables them to comply with the tax laws and collect and remit the proper amount of sales tax reimbursement or use tax from their customers. Based on prior history, the shortest time for this taxpayer community to implement a rate change is 15 days. (See AB 2181 (Ch. 85), enacted on June 30, 1991, with a rate increase effective on July 15, 1991.)

Given the 15-day period, if passage of the 2011-12 Budget meets its deadline of June 15, the BOE would have sufficient time to notice and the taxpaying community would have sufficient time to implement the rate that will be in effect on July 1, 2011. The BOE has in fact, already taken steps to notify the taxpayer community of the pending status of the sales and use tax rate, posting information on our website, sending electronic mail notifications to 680,000 retailers, and keeping media outlets advised; and will continue to do so until a final decision is made. BOE's notification to retailers points out that under current law, the 1 percent state tax rate will expire at midnight, June 30, 2011, resulting in a decrease from 6 percent to 5 percent, unless an extension is approved.

However, if a final decision on the 1 percent tax rate extension is delayed beyond June 15, 2011, the ramifications could be problematic, as follows:

- **If the Budget is approved *with* a rate extension after June 15, but before June 30, 2011**, there may be insufficient time to notice all registered retailers. Despite the BOE's efforts to provide electronic notification, some retailers may not become aware of the rate extension, and, as a consequence, may fail to reimburse themselves for, or collect, the 1 percent tax from their customers. In those situations, the law still holds those retailers liable for payment of the tax. For some retailers, having this unexpected out-of-pocket expense could have a seriously negative impact on their business operations.

- **If the Budget is approved *without* a rate extension after June 15, but before June 30, 2011**, again, the BOE may have insufficient time to notify all registered retailers, and some therefore, may inadvertently collect the additional 1 percent tax, since they either did not have sufficient time to make the necessary programmatic changes, or were not aware of the final Budget decision on the rate decrease. Under the law, retailers must return excess tax reimbursement to the customers from whom it was collected, or remit the excess tax to the State. For those retailers with a large customer base, making refunds to their customers for the excess tax would be burdensome and potentially disruptive to their business operations.

- **If the Budget is approved *after June 30, 2011 without* a rate extension,** the BOE has already provided notice to retailers and on our website informing them that the rate is scheduled to decrease after June 30, 2011. However, many taxpayers still rely on the BOE's official mailed notice before implementing any changes to their tax rates, and any delay in a final decision on this one percent sales and use tax rate could cause confusion for some retailers.

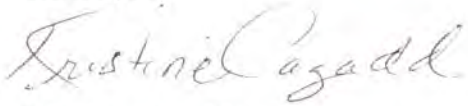
- **If the Budget is approved *after June 30, 2011 with* a rate extension,** every day after June 30, 2011, and until the effective day of the rate extension, current law would require retailers to collect sales tax reimbursement or use tax at the lower rate, and then at the higher rate once the rate extension is enacted. A 15-day minimum period would be required, since many retailers use high-tech, point-of-sale software programmed for the existing tax rate. Retailers use a wide variety of registers, and depending on the model, those registers have various software packages that calculate taxes, and they will need the appropriate tax program for their particular register.

As a final note, there is also some concern with potential uncertainty for retailers that could result from a potential ballot measure if (1) the measure mandates a rate change that requires re-programming without sufficient time (15 days), or (2) the measure mandates a rate change during the height of the holiday sales period.

During this time of economic uncertainty, retailers already are faced with tough challenges. Uncertainty over the tax rate, and whether retailers will have sufficient time to implement a rate change only contribute to these challenges. It is our sincere hope that you consider the retailers' perspective as you continue your deliberations.

If you have any questions regarding the information in this letter, or would like to seek further input as your deliberations continue, please feel free to contact our Legislative Counsel, Margaret Shedd, at (916) 322-2263.

Thank you,



Kristine Cazadd
Interim Executive Director

KC:ls
Enclosures

cc: Senator Mark Leno, Chair, Senate Budget & Fiscal Review Committee
Senator Bob Huff, Vice Chair, Senator Budget & Fiscal Review Committee
Assemblymember Bob Blumenfield, Chair, Assembly Budget Committee
Assemblymember Jim Nielsen, Vice Chair, Assembly Budget Committee
Senator Michael J. Rubio, Chair, Senator Budget & Fiscal Review Committee, Subcommittee 4
Senator Doug LaMalfa, Senate Budget & Fiscal Review Committee, Subcommittee 4
Assemblymember Joan Buchanan, Chair, Assembly Budget Committee, Subcommittee 4
Assemblymember Dan Logue, Assembly Budget Committee, Subcommittee 4
Honorable Jerome E. Horton, Chairman, Board of Equalization
Honorable Michelle Steel, Vice Chair, Board of Equalization
Honorable Betty T. Yee, First District, Board of Equalization
Senator George Runner (Ret.), Second District, Board of Equalization
Honorable John Chiang, State Controller
Mr. Steve Shea, Office of the Senate President pro Tempore
Mr. Dan Rabovsky, Office of Assembly Speaker
Ms. Anissa Nachman, Legislative Director, Office of Senator Dutton
Ms. Deborah Gonzalez, Policy and Fiscal Director, Office of Assembly Republican Leader
Ms. Keely Bosler, Staff Director, Senate Budget & Fiscal Review Committee
Mr. Mark Ibele, Consultant, Assembly Budget Committee
Mr. Seren Taylor, Fiscal Director, Senate Republican Caucus
Mr. Joe Shinstock, Fiscal Consultant, Senate Republican Caucus
Mr. Eric Swanson, Fiscal Director, Assembly Republican Caucus
Mr. Anthony Archie, Fiscal Consultant, Assembly Republican Caucus
Ms. Ana Matosantos, Director, Department of Finance
Mr. Mark Hill, Program Budget Manager, Department of Finance
Mr. John Lloyd, Assistant Program Budget Manager, Department of Finance
Mr. Chris Hill, Assistant Program Budget Manager, Department of Finance
Mr. Scott Sanders, Budget Analyst, Department of Finance
Mr. Jason Sisney, Director, Legislative Analyst's Office
Ms. Ericka Li, Policy & Fiscal Analyst, Legislative Analyst's Office