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Streamlined Sales Tax Project

**A Report to the Legislature on the
Streamlined Sales Tax Project**

Board of Governance

Honorable John Chiang, Chairman, Board of Equalization
Honorable Steve Westly, State Controller and Chairman, Franchise Tax Board
Honorable Roy Ashburn, California State Senate
Honorable Debra Bowen, California State Senate
Honorable Rudy Bermudez, California State Assembly
Honorable Mark Wyland, California State Assembly
Ms. Anne Sheehan, Department of Finance

November 14, 2005

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Report to the Legislature on the Streamlined Sales Tax Project (SSTP) as of **October 1, 2005**.

BOARD OF EQUALIZATION (BOE) STAFF PARTICIPATION

- BOE staff attended the following meetings:
 - August 29 – 30, 2005, Milwaukee, WI – Streamlined Sales Tax Project Meeting
 - September 30, 2005, Washington D.C. – Implementing States Meeting
 - October 1, 2005, Washington D.C. – Streamlined Sales Tax Governing Board, Inc. Meeting

- BOE staff did not attend the following meetings:
 - June 30, 2005, Chicago, IL – Streamlined Sales Tax Project Meeting
 - July 1, 2005, Chicago, IL - Petitioning States Meeting

BOARD OF EQUALIZATION – Budget Change Proposal (BCP)

On August 31, 2005, the Board of Equalization, on a 4-1 vote, approved a BCP to request funding to address the increased workload generated by California's participation in the Streamlined Sales Tax Project. The BCP requested funding for 4 limited-term positions for fiscal years 2006-07 and 2007-08.

The BCP was forwarded to the Department of Finance for review and consideration.

IMPLEMENTING STATES

After the Streamlined Sales and Use Tax Agreement (SSUTA) became effective on October 1, 2005, the administrative role of the Implementing States was taken over by the Streamlined Sales Tax Governing Board, Inc. (SST Governing Board). The Implementing States will continue to provide advice to the SST Governing Board and be consulted by it before amending the SSUTA for a period of not less than six months nor longer than one year.

Maryland State Delegate Sheila Hixson was appointed co-chair of the Implementing States in place of Oklahoma State Senator Angela Monson, who will be leaving the Oklahoma Senate. Utah Tax Commissioner Bruce Johnson was re-appointed as the other co-chair.

STREAMLINED SALES TAX PROJECT GROUP (SSTP Group)

Effective October 1, 2005, the SSTP Group ceased to exist. With the establishment of the SST Governing Board and the implementation of the SSUTA, the roles and responsibilities of the SSTP Group were taken over by the State and Local Advisory Council (SLAC) and the Business Advisory Council (BAC). The SLAC is comprised of representatives from participating states and local governments and will meet for the first time November 8 – 9, 2005.

The BAC is an independent body recognized by the SST Governing Board to present business issues relating to the SSUTA. The BAC has incorporated and is developing its bylaws. A chair and vice-chair will be named soon.

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SST GOVERNING BOARD

On October 1, 2005, the SST Governing Board was established. The Governing Board is comprised of representatives from the following states:

Full Members States

- Indiana
- Iowa
- Kansas
- Kentucky
- Michigan
- Minnesota
- Nebraska
- New Jersey
- North Carolina
- North Dakota
- Oklahoma
- South Dakota
- West Virginia

Associate Member States

- Arkansas
- Ohio
- Tennessee
- Utah
- Wyoming

Nevada will become an Associate Member State on January 1, 2006.

Executive Committee

The newly elected Executive Committee of the SST Governing Board consists of the following.

Officers

President – State Senator Dwight Cook, North Dakota

1st Vice-President – Secretary of Revenue Joan Wagnon, Kansas

2nd Vice-President – State Delegate John Doyle, West Virginia

Secretary/Treasurer - Commissioner Jerry Johnson, Oklahoma

Directors

State Senator Ron Amstutz – Ohio

State Senator Orville Smidt – South Dakota

Commissioner Loren Chumley – Tennessee

Commissioner Bruce Johnson – Utah

Mr. Harold Fox – New Jersey

Appointments were also made to the Nomination, Finance, Compliance Review and Interpretations, and Issue Resolution Committees.

Administrative Issues

The SST Governing Board finalized the following:

Registration

Sellers wishing to volunteer to collect under the SSUTA and receive amnesty for uncollected or unpaid sales and use tax can register on-line at www.sstregister.org/sellers. They can also update previously submitted registration information at this website. The information provided will be

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sent to all of the full member states and to associate member states for which the seller chooses to collect.

A seller that is legally required to register in one or more of the member states may still register under the SSUTA at this website. However, the seller will need to contact those states for further licensing requirements.

Only one return per seller is required under the SSUTA, and a seller may choose to use a state's existing return or a simplified electronic return. A state may require a seller to file a return within one year of registering and annually thereafter, or in the month following the accumulation of \$1,000 or more in tax for any state.

Amnesty Terms

A member state is required to provide amnesty to a seller that registers with it under the SSUTA, provided the seller was not registered in that state in the 12 months preceding the state's participation in the SSUTA, as a full or associate member, and the seller has not been contacted for audit. The amnesty precludes assessment for uncollected or unpaid sales or use tax, together with penalty or interest, for sales made prior to the seller's registration. To qualify for the amnesty, a seller must register with a full member state within 12 months of the state's participation in the SSUTA. An associate member state must provide amnesty from the time it joins, as an associate member until 12 months after it becomes a full member. A seller must maintain its registration and continue collecting taxes for at least 36 months in a member state or the amnesty may be voided by the state.

The amnesty is not available to a seller with respect to any matter for which the seller has received notice of the commencement of an audit or for taxes already collected, paid, or remitted. Amnesty does not apply to use taxes due from a seller on their use of products or other types of taxes. The information obtained through registration may not be used by the states for determining whether a seller has nexus for any tax.

The fact that the anticipated technology models were not available to sellers on October 1, 2005, as hoped, led to questions about the availability of amnesty during any interim period. However, not all member states have the authority to provide amnesty for the interim periods. This issue has not been resolved.

Certified Service Provider (CSP)

The SST Governing Board intended to enter into contracts with CSPs on October 1, 2005, so sellers could start collecting taxes the day the SSUTA came into effect. A Request For Proposal (RFP) was issued several months ago and testing and negotiations with prospective CSPs have been ongoing. However, the contract negotiations with groups that responded to the RFP were not completed by October 1, 2005. Additional meetings have been held to try and resolve the CSP compensation issues that are delaying the contracts.

Role of Issue Papers

During its work over the last five years, the SSTP approved numerous issue papers recording the debate and reasoning behind their actions. The states have discussed having the SST Governing Board ratify these issue papers at some point as a form of legislative history for the SSUTA. However, several states are concerned that there are some things in the issue papers that states

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should not be expected to follow. Additionally, some things in the issue papers should probably be raised to the level of a “rule,” rather than just legislative history.

A motion was passed asking the Compliance Review and Interpretation Committee to review the issue papers to identify information that should be incorporated into rules.

STATUS OF THE SSUTA

The SST Governing Board voted to amend several areas of the SSUTA. The following is a summary of approved amendments.

Exemption Issues

The SST Governing Board approved an amendment that attempts to eliminate ambiguities concerning entity- and use-based exemptions. Essentially, the amendment precludes states from using these types of exemptions to circumvent the existing limitations on product-based exemptions. An entity-based exemption may not be “for all human beings.” A state may enact a use-based exemption for an item included in a term defined in the SSUTA, so long as it is “consistent” with the definition and it does not “effectively constitute” a product-based exemption. States will be given until January 1, 2008, to bring their laws into conformity with these changes.

Database Issues

The SSUTA provides that states must provide and maintain a database that assigns ZIP codes to the proper tax rate and jurisdictions for use by sellers and CSPs. The SSUTA was amended, effective immediately, to give states the option of also providing address-based boundary database records for assigning taxing jurisdictions. The SST Governing Board may allow a state to require sellers to use an address-based database provided by the state. A state that provides such a database may also cease providing liability relief for sellers that rely on the ZIP code-based database, although relief may be extended for a seller that can demonstrate undue hardship from the change. A database provided directly by a state or by a vendor designated by a state must be provided at no cost to the users. Vendors providing address-based databases may request certification of their databases from the SST Governing Board, although they must also be certified by the individual states.

Floral Sales

The SSUTA was amended, effective immediately, to allow floral sales to continue to be sourced on an origin basis for another two years. After January 1, 2008, these sales will have to be sourced using a destination basis.

Multiple Remittances

The SSUTA allows a state to require more than one remittance per return from sellers that collect more than \$30,000 in taxes in the state during the preceding year. The SSUTA was amended, effective immediately, to clarify that the seller can remit either actual collections or an amount determined through a calculation method.

Technical Issues

The SST Governing Board approved several motions on technical matters delegated to it by the SSUTA, including the approval of the format for a multistate exemption certificate previously adopted by the SSTP.

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INTERPRETATION REQUESTS

The SST Governing Board also considered the following interpretation requests submitted by business representatives.

Floral Sales

The SST Governing Board approved a requested interpretation of the SSUTA clarifying that the florist taking and transmitting an order is the “seller” for purposes of sales and use tax liability, regardless of whether it is registered to collect tax in the state to which the sale is sourced. This is consistent with the SSUTA’s treatment of drop shippers.

Prepared Food

Food industry representatives requested an interpretation of the “utensils provided by the seller” element of the “prepared food” definition. The SSTP previously approved an interpretation supported by business that attempted to set standards for restaurants different from those for convenience stores, distinguished from one another by the use of a quantitative test. However, five states currently on the SST Governing Board opposed that interpretation at the time. Accordingly, the SST Governing Board voted to refer the matter to its newly created Compliance Review and Interpretations Committee for further work.

COMPARATIVE ANALYSIS OF SSUTA

The comparative analysis currently underway by BOE staff involves a detailed review of each section and definition of the SSUTA and a comparison to California’s Constitution, statutes, regulations, Policy and Procedure Manuals, and other information relating to the administration of sales and use tax. The SSUTA is comprised of 82 sections and 39 definitions. The analysis will strive to identify the impact of conforming to the SSUTA in the following areas:

- Changes necessary to California’s Constitution, statutes, regulations, Policy and Procedure Manuals;
- Tax revenues, including revenue shifts for local jurisdictions;
- Administrative and operational costs for the state and local governments;
- Compliance and cost issues for businesses; and
- The responsibility of the Governor, California Legislature, BOE, and courts.

The analyses for the following sections of the SSUTA are complete.

- 302 – State and Local Tax Bases
- 309 - Application of General Sourcing Rules and Exclusions from the Rules
- 310 - General Sourcing Rules
- 311 - General Sourcing Definitions
- 313 – Direct Mail Sourcing
- 326 – Direct Pay Permit
- Definition – Direct Mail

Sections 309 and 310 require further study to determine the impact conforming to these sections would have on the state, local governments and businesses. Accordingly, the analyses of these sections have been forwarded to the BOE’s Research and Statistical Section for further action.

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FUTURE MEETING SCHEDULE

November 8 – 9, 2005 – State Local Advisory Council Meeting, Tampa, Florida

November 9, 2005 – SST Governing Board, Tampa, Florida

January 12 – 13, 2006 – State and Local Advisory Council Meeting, Phoenix, Arizona

SUMMARY

BOE staff will continue to attend and monitor the SLAC and the SST Governing Board meetings and observe the activities of other participating states. Work on the comparative analysis of the SSUTA will continue to move forward.

BOE staff will continue to work with local government and business representatives regarding the analysis of the SSUTA and any new emerging issues.