Holland & Knight

50 California Street, 28th Floor | San Francisco, CA 94111 | T 415.743.6900 | F 415.743.6910
Holland & Knight LLP | www.hklaw.com

Charles L. Coleman III
Direct Dial: 415.743.6970
charles.coleman@hklaw.com

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VIA E-MAIL (Joann.Richmond@boe.ca.gov)
Ms. Joann Richmond
Chief, Board Proceedings Division
State Board of Equalization
450 N. Street
PO Box 942879
Sacramento, CA 94279-0080

Re: Board Agenda Item I.3 (August 30, 2016): Support Alternative B and Request Deletion of New Staff Definition of "Participation"

Dear Ms. Richmond:

I write to provide public comment regarding the proposed Alternative Summary Decisions, to be discussed at the Board Meeting on August 30, 2016, regarding Item I.3, Cities of Ontario, Palm Springs, San Diego, Santa Barbara and Counties of Sacramento, San Mateo, 525325, 525326.

I support Alternative B – Member Runner's Version, because it deletes footnote 3 from Alternative A – Staff's Version. I also respectfully suggest that the sentence beginning on page 3, line 17, be deleted. This sentence deviates from the current definition for a sales tax, which occurs if there is: "Participation in the transaction in any way…," or the current definition for a use tax, which occurs if there is: "…no participation whatever in the transaction…." Together, both definitions make it clear that the amount and type of participation needed to be a sales tax is minimal. The staff's proposed new definition would create confusion and uncertainty by not explaining what really is meant by "meaningful effect," "real purpose" and "genuine physical interaction."

I believe it is inappropriate to surface a new, " underground" regulation by adding unneccessary and confusing staff *dicta* in the Board's decisions. A more appropriate way to clarify the definition of participation would be through the Interested Party Regulatory Process. This would enable cities, counties, retailers and tax professionals to provide input, ideas and industry knowledge, as well as to explain the problems inherent in staff's new definition.

The staff's proposed new definition of "participation" is inconsistent with existing regulations, and could have unforeseen consequences in this and perhaps other areas unrelated to local tax allocation. I understand that the Board previously unanimously rejected a similar staff staff proposal in the Summary Decision for the Appeal of the Cities of Fontana, Lathrop & San Bernardino, at the oral hearing on October 30, 2013. I would urge the Board to do so again in this matter, and accordingly to delete the definitional language starting at line 17, along with the staff's footnote 3.

Please distribute this letter to the Board Members and their staff and other appropriate parties.

Respectfully submitted,

Charles L. Coleman III