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August 26, 2016

Ms. Joanne Richmond  
Chief, Board Proceedings  
State Board of Equalization  
450 N Street  
Sacramento, California 94279

**Re: State Board of Equalization Meeting  
August 30, 2016  
Item 13**

The following is submitted in response to the public comments submitted by Robert Cendejas for the Board Agenda item referenced above. On behalf of 344 jurisdictions (please see Attachment A) we encourage the Board to adopt Alternative A – Staff’s Version.

Many of the recent local tax cases that have been before the Appeals Division and Board Members have involved the issue of participation and what it means in terms of involvement in the actual sale. The language on page 3, line 17, including footnote 3 (definitional language) has been the Appeals Division’s long-standing interpretation of what participation in the sale means.

To say that only “*extremely minor*” participation is needed in a transaction to qualify the tax as a sales tax ignores important and established legal distinctions. For example, while purchasing inventory is important, it does not rise to the level of “*participation in the transaction*” in any way, as the Board ruled in this case at the March 2016 Board hearing.

We have no trouble understanding what “*meaningful effect*”, “*real purpose*” and “*genuine physical interaction*” mean. We understand this to mean some activity that is directly involved in, and has a bona fide effect on, the outcome of the transaction rather than an ancillary activity that is created to redirect local tax. Mr. Cendejas’ suggestion to remove the definitional language would create significant ambiguity in an area where consistency and clarity regarding participation are essential. As such, we support the inclusion of the definitional language in this decision and in any regulation or regulatory clarification that the Board chooses to enact in the future.

In addition, Mr. Cendejas points out that the definitional language was not included in the Summary Decision adopted in the Appeal of Cities of Fontana, Lathrop and San Bernardino. In that case, the definitional language was deleted because it was not necessary to the Board’s decision. The Board’s focus was on whether principal negotiations could be attributed to Ontario, not whether the outside salespeople performed principal negotiations. However, in this case, the definitional language is

necessary to the Board's decision, as it found that *"even if the nominations were not regarded as purchase orders for these purposes, we find that their receipt by taxpayer's Oakland office nevertheless constituted participation in the sales by that office because the nominations served a real purpose in the actual sales process."* That decision is supported by the definitional language.

The Board's long-standing policy is to distribute local sales and use tax according to the current laws and regulations. We know of no long-standing policy that supports the allocation of local sales and use tax based on preference, despite what Mr. Cendejas suggests.

On behalf of our client jurisdictions, we encourage the Board Members to adopt Alternative A – Staff's Version as it most accurately reflects the decision and provides the most clarity. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'R Sturdivant', with a stylized flourish at the end.

Robin Sturdivant  
Associate/Client Advocate

## ATTACHMENT A

Adelanto	Carson	Encinitas	Irwindale
Agoura Hills	Cathedral City	Eureka	Jurupa Valley
Alameda	Cerritos	Fairfield	Kern County
Alameda County	Chico	Farmersville	King City
Alhambra	Chino	Firebaugh	Kings County
Aliso Viejo	Chino Hills	Fontana	La Canada-
Amador County	Chula Vista	Fortuna	Flintridge
American Canyon	Citrus Heights	Fountain Valley	La Habra
Anderson	Claremont	Fowler	La Mesa
Apple Valley	Clearlake	Fremont	La Mirada
Arcadia	Cloverdale	Fresno County	La Palma
Arcata	Clovis	Fullerton	La Puente
Arroyo Grande	Coalinga	Galt	La Quinta
Artesia	Colfax	Garden Grove	La Verne
Atascadero	Colma	Glendale	Laguna Hills
Auburn	Colton	Glendora	Laguna Niguel
Avalon	Colusa	Goleta	Laguna Woods
Azusa	Commerce	Gonzales	Lake County
Baldwin Park	Concord	Grand Terrace	Lake Elsinore
Banning	Contra Costa	Grass Valley	Lake Forest
Barstow	County	Gridley	Lakewood
Beaumont	Corcoran	Greenfield	Lassen County
Bell	Corning	Guadalupe	Lathrop
Bell Gardens	Corona	Hawaiian Gardens	Lawndale
Bellflower	Coronado	Healdsburg	Lemon Grove
Benicia	Costa Mesa	Hemet	Lemoore
Beverly Hills	Cotati	Hermosa Beach	Lincoln
Big Bear Lake	Covina	Hesperia	LiveOak
Blue Lake	Crescent City	Highland	Livermore
Blythe	Cudahy	Hollister	Livingston
Brawley	Culver City	Holtville	Lodi
Brentwood	Dana Point	Hughson	Loma Linda
Buellton	Desert Hot Springs	Humboldt County	Lomita
Buena Park	Diamond Bar	Huntington Beach	Lompoc
Burbank	Dixon	Huntington Park	Loomis
Burlingame	Downey	Huron	Los Alamitos
Butte County	Duarte	Imperial	Los Altos
Calexico	Dublin	Imperial Beach	Los Angeles County
Calimesa	Eastvale	Imperial County	Madera County
Calistoga	El Centro	Indio	Malibu
Camarillo	El Cerrito	Industry	Mammoth Lakes
Canyon Lake	El Dorado County	Inglewood	Manhattan Beach
Carmel	El Segundo	Ione	Marin County
Carpinteria	Elk Grove	Irvine	Marina

Mariposa County	Pico Rivera	Santa Clara County	Toulumne County
Martinez	Pinole	Santa Clarita	Tracy
Marysville	Pismo Beach	Santa Cruz	Truckee
Maywood	Placentia	Santa Cruz County	Tustin
McFarland	Placer County	Santa Cruz County	Twentynine Palms
Mendocino County	Placerville	Library Financing	Union City
Menifee	Pleasant Hill	Authority	Upland
Merced	Pleasanton	Santa Maria	Vacaville
Merced County	Plymouth	Santa Monica	Vallejo
Metro Trans Comm.	Port Hueneme	Santa Paula	Ventura County
MTC	Portola Valley	Santee	Vernon
Mission Viejo	Poway	Scotts Valley	Victorville
Monrovia	Rancho Cucamonga	Seal Beach	Vista
Montclair	Rancho Mirage	Seaside	Walnut
Montebello	Rancho Santa	Shasta County	Wasco
Monterey County	Margarita	Shasta Lake	Waterford
Monterey Park	Red Bluff	Sierra Madre	West Covina
Moorpark	Redlands	Signal Hill	West Hollywood
Moreno Valley	Redondo Beach	Simi Valley	Westminster
Morro Bay	Rialto	Siskiyou County	Wheatland
Mountain View	Riverside	Solana Beach	Whittier
Murrieta	Riverside County	Solano County	Willows
Napa County	Rocklin	Soledad	Windsor
National City	Rosemead	Sonoma County	Winters
Needles	Salinas	Sonoma County	Yolo County
Nevada City	San Benito County	AP/OSD	Yorba Linda
Nevada County	SANBAG	Sonoma Cnty Trans	Yreka
Newark	San Bernardino	Auth	Yuba City
Newman	(City)	South El Monte	Yuba County
Newport Beach	San Carlos	South Gate	Yucaipa
Norco	San Clemente	South Lake Tahoe	Yucca Valley
Norwalk	San Diego County	South Pasadena	
Oakland	San Dimas	Stanislaus County	
Oakley	San Fernando	Stanton	
Oceanside	San Francisco	Stockton	
Orange	San Gabriel	Suisun City	
Orange County	San Jacinto	Sunnyvale	
Orange Cove	San Joaquin	Sutter County	
Orland	San Joaquin County	Sutter Creek	
Oxnard	San Juan Capistrano	Taft	
Pacifica	San Luis Obispo	TAM - Trans Auth of	
Palmdale	San Luis Obispo Co.	Marin	
Paradise	San Marcos	Tehachapi	
Paramount	San Marino	Tehama County	
Parlier	San Mateo County	Temecula	
Paso Robles	San Pablo	Temple City	
Patterson	San Rafael	Thousand Oaks	
Perris	Sand City	Tiburon	