



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

February 6, 2006

The Honorable Dwight Cook
North Dakota Senate
1408 17th Street, SE
Mandan, North Dakota 58554-4895

The Honorable Joan Wagnon
Secretary of Revenue
915 South West Harrison
Topeka, Kansas 66612

Steven J. Rauschenberger
*Assistant Senate Republican Leader
Illinois
President, NCSL*

Susan Clarke Schaar
*Clerk of the Senate
Virginia
Staff Chair, NCSL*

William T. Pound
Executive Director

Dear Senator Cook and Secretary Wagnon:

As you are aware, the National Conference of State Legislatures (NCSL) Executive Committee on State and Local Taxation of Telecommunications and Electronic Commerce (Task Force) met January 27-28, 2006 to review and discuss the various issues surrounding the start-up of the Streamlined Sales Tax Governing Board, including compensation to Certified Service Providers (CSPs), nexus questions on the online seller registration, the definition of digital goods and hold harmless provisions for state mistakes. This letter will serve to provide you and the members of the Governing Board with the views of the members of the Task Force with regard to these issues.

- **The NCSL Task Force once again endorsed reasonable and adequate compensation to Certified Service Providers that:**
 - **ensures payment of services to CSPs for costs associated with connecting sellers to the CSPs;**
 - **ensures payment of services to CSPs for costs associated with the development of the Certified Automated System (CAS) that sellers will use to determine the correct sales tax on purchases;**
 - **ensures payment of services to CSPs that allows the CSP to recruit current non-nexus sellers to register as voluntary sellers with the member states of the Streamlined Sales Tax Governing Board; and**
 - **provides consideration to CSPs for costs associated with sales tax exempt transactions.**

As you may know, discussions with regard to compensation, monetary allowances or payment of services to vendors, CSPs and sellers has been ongoing since the very first meetings of the Streamlined Sales Tax Project in 1999-2000. The founding governors and legislative leaders who had the vision to convene the multistate discussions that have brought us where we are today realized that compensation for costs associated with a new streamlined sales tax system would have to be borne by the states and it would have to be sufficient to also entice non-nexus sellers to volunteer to collect. The NCSL Task Force supported compensation for CSPs and sellers as early as January 2001 when the Task Force voted in support of “monetary allowances for certified service providers and sellers implementing new technological models.”

The members of the Task Force acknowledged at that time that for Congress to set aside the *Bellas Hess* and *Quill* decisions and allow states to require out-of-state sellers to collect our sales and use taxes, the states would have to provide compensation or payment of services to cover the cost of collection in a streamlined system. NCSL has consistently reaffirmed that position since the Task Force's endorsement in 2001 and supports the federal legislation, S.2152, the Sales Tax Fairness and Simplification Act, introduced by Senator Mike Enzi of Wyoming, that requires "*reasonable compensation for expenses incurred by a seller.*"

During the discussions on compensation for payment of services to CSPs, the members of the Task Force have acknowledged that either some states do not pay vendors to collect the states sales and use taxes or may pay a small fee that would not be reasonable or adequate in the initial stages of the streamlined sales tax system. We realize that some members of the Streamlined Sales Tax Governing Board may have some trepidations as to how their state's policymakers would react to a level of compensation that would be higher than what may be current compensation paid by a state to sellers, if any at all. The NCSL Task Force believes that the members of the Governing Board should continue to demonstrate the boldness and courage that they and their colleagues have shown thus far in setting the foundation of a simplified and fairer sales tax collections system.

The Task Force respectfully reminds the members of the Governing Board that the compensation to CSPs will come out of the revenues that states will receive from currently uncollected sales taxes on transactions that occur through out-of-state sellers. It is hard to imagine that most governors and legislative leaders would be willing to turn away 90 to 95 percent of uncollected sales tax revenues because of an unwillingness to compensate CSPs at a reasonable and adequate level. To those who argue that the CSPs have to be operational before the "new" revenues will be collected by a state, the Task Force also would remind members of the Governing Board that upon the ratification of the Streamlined Sales and Use Tax Agreement in November 2002, at least 10-12 large online sellers "volunteered" to begin collecting states sales taxes as of early 2003. The sales tax revenues being remitted by these original volunteer online sellers **must** be considered as "new" revenues and we understand that these "new" revenues should be more than sufficient to cover the payment of services to CSPs.

- **The NCSL Task Force reiterates its concern that the seller registration system contains a mandatory linkage between volunteering to collect and forced determinations of seller liability for nexus.** You may recall that in a letter the Task Force sent to the co-chairs of the Streamlined Sales Tax Implementing States and Conforming States on December 1, 2004, we expressed our opposition to such linkage. We are disappointed to learn that sellers currently registering to volunteer to collect are being required to determine their nexus status for each member state. The Task Force would once again advocate that the registration system be redesigned with options for sellers that would allow simple registration to collect sales and use taxes without mandatory questions on nexus status for each and every state. We believe that the failure to do so could act as a deterrent for sellers wishing to volunteer to collect but would be hesitant about risking liability for confusion with regard to their nexus status or possibly being required to pay other state taxes.

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- **The Task Force urges that provisions be added to the Streamlined Sales and Use Tax Agreement that would ensure purchasers using a CSP or the CAS would not be held liable for incorrect information supplied by the state or local governments.** Under the Agreement, sellers and CSPs using state supplied information can not be held liable for mistakes. We believe that the same consideration should be extended to buyers who paid a sales tax determined by a CPS, a CAS, or otherwise was determined based on information in the government provided databases. If the state provided information is sufficient for sellers and CSPs to rely upon, it should be sufficient for purchasers tax determinations.
- **The NCSL Task Force supports the development of a definition for digital goods to be added to the Streamlined Sales and Use Tax Agreement Library of Definitions that state legislatures could use to either tax or exempt digital goods.** We were concerned to learn that at least one state tax department has extended the state's definition of tangible personal property to include digital goods. The Task Force believes that the decision to tax or not tax any item should be decided by each state's elected policymakers and not through departmental or administrative interpretation. We would urge the Governing Board to immediately caution state tax departments from interpreting or extending definitions to include other items. Such actions violate the intent of the Streamlined Sales and Use Tax Agreement. We also request that the Governing Board instruct the Advisory Councils to expeditiously finalize a narrowly crafted definition of digital goods such that policymakers can choose whether to tax them under the Agreement.

Please note that we will send a letter to the State and Local Advisory Council and the Business Advisory Council detailing our concerns with regard to the last two issues listed above, a hold harmless provision for purchasers and a definition for digital goods. We will ask that they work together in a timely manner to develop the appropriate amendments to the Agreement to resolve these issues.

On behalf of the members of the NCSL Task Force, we express to you our appreciation for taking on the responsibility of building the foundation for a viable streamlined sales tax system. We thank you for taking the concerns of state legislators under consideration and welcome the opportunity to discuss them further with you. Please know that you are always welcome to come before the Task Force with your concerns.

Sincerely,



Senator Leticia Van de Putte, Texas



Speaker Christopher Rants, Iowa

Co-Chairs, NCSL Executive Committee Task Force on State and Local Taxation
of Telecommunications & Electronic Commerce

cc: Delegates Streamlined Sales Tax Governing Board