



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

December 1, 2004

The Honorable Angela Monson
Oklahoma Senate
2300 N. Lincoln Blvd., Rm. 428
Oklahoma City, OK 73105

The Honorable Bruce Johnson
Commissioner
State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134

The Honorable Loren Chumley
Commissioner
Department of Revenue
500 Deaderick Street
Nashville, TN 37242

The Honorable Richard Finan
Calfee, Halter & Griswold LLP
1 East State Street, Suite 1100
Columbus, OH 43215

John Adams Hurson
*Chairman, Health &
Government
Operations Committee
Maryland House of Delegates
President, NCSL*

James E. Greenwalt
*Director, Senate Information
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Services
Minnesota
Staff Chair, NCSL*

William T. Pound
Executive Director

Dear Senators Finan and Monson and Commissioners Chumley and Johnson:

As you are aware, the National Conference of State Legislatures (NCSL) Executive Committee on State and Local Taxation of Telecommunications met November 19-20, 2004, to review the issues surrounding the Streamlined Sales Tax Project's (SSTP) request to the Multistate Tax Commission to develop and operate the central seller registration system for the Streamlined Sales and Use Tax Governing Board. We have been requested by the members of the Task Force to inform you of the primary concerns raised during our deliberations on the central registration system.

- **The NCSL Task Force is concerned with the further development of the central registration system without a formal Request for Proposal (RFP) being issued by the Streamlined Sales Tax Implementing States.** The Task Force has reservations about the Memorandum of Understanding (MOU) that is currently being developed between the Streamlined Sales Tax Implementing States and Conforming State Committee (CSC) with the Multistate Tax Commission (MTC) for the Development of the Streamlined Sales and Use Tax Central Registration System. Primary to our colleagues concerns was the failure by various parties to follow proper procedures especially as monetary reimbursement is being contemplated.

The Task Force was distressed about the willingness to enter into a Memorandum of Understanding with the Multistate Tax Commission that would agree to reimbursement for development and testing costs if the MTC was not chosen to operate the registration system. As we learned during our meeting, the SSTP originally sought private sector development of a registration system without providing any compensation, therefore the Task Force members believe that it would only be appropriate to offer compensation for the development of the registration systems if an RFP is formally issued soliciting bids from all interested entities, both governmental agencies and the private sector. As state officials, we acknowledge that many of our states procurement laws would require issuance of a formal RFP in order to enter into such an agreement.

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In addition, some legislators raised concerns over the fact that several members of the SSTP, the Implementing States and the Conforming States were also members of the MTC and that this may pose a conflict of interest as it relates to the compensation of the MTC for development costs and/or operating costs without going out for a public bid.

- **The NCSL Task Force urges that the registration system be developed without a mandatory linkage between volunteering to collect and forced determinations of seller liability for nexus.** The members of the Task Force were concerned that the proposed registration system that was previewed at our meeting would discourage any seller from ever volunteering to collect for out of state sales. Many of our colleagues expressed the concern that business apprehension about the Multistate Tax Commission developing and operating the registration system and the relationship to other unrelated taxes might be borne out by a registration system that had a mandatory linkage between volunteering and determinations of nexus status.

The Task Force would advocate that the registration system be developed 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 will ensure a voluntary system in which no seller will volunteer to collect and would give congressional critics more reasons to oppose giving states mandatory collection authority.

- **The Task Force members strongly recommend that the Governing Board, directly or by contract, operate the central registration system.** As we stated in our letter of October 4, 2004 to Senator Finan and Commissioner Chumley, our colleagues stressed the importance that the registration system be operated by an entity that can establish a non-breacheable firewall between the information gathered in the registration process and any other function or mission in which that entity is engaged. Again, our members raised concerns that if sellers were unsure or uncomfortable about how registration information may be used, especially in regard to liability for other taxes, volunteers will not come forward and Congress will never give its approval to mandatory collection. Our members expressed support that the long term operation of the central registration system be part of the Governing Board's administrative responsibility. The Task Force also would support the Governing Board's contracting with an entity to operate the registration system in which there can be no question that the information gathered for the registration system can be used for any other purpose.

On behalf of the members of the NCSL Task Force, we would like to express to you our appreciation for taking on the responsibility of shepherding the process toward the implementation of the Streamlined Sales and Use Tax Agreement. We thank you for taking the concerns of state legislators under consideration and welcome the opportunity to discuss them further with you at the next meeting of either the Conforming States or the Implementing States.

Sincerely,



Senator Leticia Van de Putte, Texas
NCSL Vice President



Senator Steven Rauschenberger, Illinois
NCSL President-elect

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