Streamlined Sales Tax Governing Board, Inc.

Date: February 2020

To: Members of the Missouri Legislature

Re: Information Regarding the Streamlined Sales Tax Governing Board

Dear Missouri State Legislator,

Representative Warren Love has introduced legislation in Missouri (HB 1967) that is intended to allow Missouri to join the Streamlined Sales Tax Governing Board (SSTGB). In an effort to give you a better understanding of the SSTGB, I am hopeful that you will take the time to read the information below that provides the background on our organization, a brief explanation of what we do and the success we have realized to date in our member states.

The effort that resulted in the formation of the Streamlined Sales Tax Governing Board began back in 2000. The goal of this effort was to find solutions for the complexities in state sales tax systems that resulted in the U.S. Supreme Court holding in *National Bellas Hess v. Illinois (1967)* and *Quill Corp. v. North Dakota (1992)*) that a state may not require a seller to collect its sales and use taxes unless the seller has a physical presence in the state because of the undue burdens that would be imposed on the out-of-state sellers. In a nutshell, the Court ruled that the existing state sales tax systems were too complicated and imposed undue burdens on businesses that did not have a physical presence in the state.

Recognizing that e-commerce and remote sales were increasing significantly, that their existing systems were complicated - especially for multi-state businesses - and the voluntary compliance on the part of purchasers to directly remit the use tax already due on untaxed purchases from the remote sellers was extremely low, state legislators, tax administrators, accountants, attorneys and most importantly - business community members came together to:

> (a) Cooperatively discuss the sales tax collection and remittance related issues that imposed burdens on retailers and
> (b) Developed alternatives to reduce or eliminate these burdens.

This effort eventually lead to the development of the Streamlined Sales and Use Tax Agreement (SSUTA). The purpose of the SSUTA is to provide a roadmap on how to simplify and modernize sales and use tax administration in order to substantially reduce the burden of sales tax compliance – not only for remote sellers, but also for your own in-state sellers and the states.

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It is important to note that the SSUTA focuses on improving sales and use tax administration for **all** sellers and for **all** types of commerce (brick and mortar and remote sales alike) by having the states adopt the following simplification and uniformity principles (not an all-inclusive list):

A. State level administration of sales and use tax collections.
B. Uniform destination-based sourcing rules for interstate transactions
C. Uniformity in the state and local tax bases and major definitions.
D. Central, electronic registration system for all member states.
E. Simplification of state and local tax rates and the provision of rate and jurisdiction databases.
F. Simplified exemption administration.
G. Simplified tax returns and remittance process.
H. Offering of certified service providers and their related services.
I. Protection of consumer privacy.

One of the most important concepts contained in the SSUTA is the Certified Service Provider (CSP) model for calculating, collecting, and reporting the taxes due. Under the CSP model, a seller can outsource nearly all its sales tax administration responsibilities. As part of the CSP services, the CSP will handle the set-up, integration and installation of its tax calculation software with that of the seller. In some cases, this is a simple plug and play – but in other instances, such as for those sellers that have an older enterprise accounting system, this will take additional effort on the part of the CSP.

The CSP's tax calculation software will identify which products and services are taxable, will calculate the appropriate state and/or local tax and will interface with the seller's accounting system. The software and services provided will also generate the necessary sales tax returns, file those tax returns and remit the tax to the appropriate taxing authority. In addition, if there are any audits of these sellers, the audits will be handled by the CSP. Prior to being approved as a CSP, each member state will have reviewed and certified the accuracy of the CSP's software. Each state also provides liability relief for errors that may result in the incorrect calculation of the tax amount once the CSP's software is certified.

This software and the related services are **provided at no charge** to sellers for those states where the seller meets the definition of a "volunteer seller." That definition is contained in the contract the SSTGB has with the CSPs. The reason the CSPs are willing to provide the software and services at no charge to these sellers is because the states allow the CSP to keep a percentage of the sales tax they collect and remit to the member states on behalf of the volunteer sellers. The details of the compensation paid to the CSPs are laid out in the CSP contract that is posted on the SSTGB website.

If you go back and review the list of the main simplification and uniformity requirements states must adopt to become members of the SSTGB that I included above, you will see that I didn't include anything about making states tax or exempt the sale of any certain product and/or service. While there are certain uniform definition requirements states must adhere to, there are no specific requirements indicating what a state can or cannot tax. That is left to you – the legislators of this state – to decide.

What we do at Streamlined is focused primarily on the administrative tasks and processes of calculating, collecting and reporting the taxes to make it easier for all sellers to voluntarily comply with the required administrative tasks - but leave it up to each state's legislature to determine what is taxable and what is exempt. It is also very important to note that nothing that is contained in the Streamlined Sales and Use Tax Agreement preempts or overrides your state laws. Your own laws ultimately determine what is taxable and what is exempt. If your laws conflict with the requirements of the SSUTA, then your state may be found to be out of compliance with the SSUTA and need to take some action to get back into compliance or face possible sanctions through our self-policing procedures. However, the SSTGB will not tell you what you ultimately can or cannot tax or exempt.

The *Wayfair* Ruling

On June 21, 2018, the United States Supreme Court ruled in the case of *South Dakota v. Wayfair* that it's prior decision in the *Quill* case – which required a physical presence in a state before the state could require them to collect its sales tax – was wrong and that physical presence in a state is not required to create a "substantial nexus." Although the Court determined that physical presence was not necessary, it also indicated that some other principle in the Court's Commerce Clause might still invalidate the South Dakota law at issue. The "other principle" to which the Court was referring was whether South Dakota's laws discriminated against or imposed an "undue burden" on interstate commerce. The Court remanded the case back to the State of South Dakota to address these "other principles." However, the litigants in the case settled with the State of South Dakota rather than trying to push the "undue burden" claim. It is possible the litigants settled with the State of South Dakota because they recognized all the work South Dakota had done to remove the "undue burdens" and would not have been successful.

Although the Court did not need to further discuss what South Dakota had done with respect to removing the "undue burdens" on interstate commerce, they took the liberty to explain some of the features in South Dakota's laws which it indicated appeared to be "...designed to prevent discrimination against or undue burdens upon interstate commerce..." Those features, according to the Court were: (1) there was a safe harbor to protect businesses with only limited business in South Dakota; (2) the law could not be applied retroactively; and (3) South Dakota had adopted the Streamlined Sales and Use Tax Agreement. The Court went on and identified some of the features of the Streamlined Sales and Use Tax Agreement including that (a) it standardized taxes to reduce administrative burdens and costs; (b) required a single, state level administration; (c) provides uniform definitions of products and services; (d) requires simplified rate structures; (e) other uniform rules; (f) provides sellers access to sales tax administration software paid for by the states; and (g) provides immunity for sellers who use the software from audit liability.

Recognizing that the United States Supreme Court pointed to the simplification and uniformity provisions contained in the Streamlined Sales and Use Tax Agreement as one of the reasons why South Dakota's tax system appeared to be designed to prevent discrimination against or undue burdens upon interstate commerce is one of the primary reasons Missouri should amend its statutes to bring the state into compliance with the Streamlined Sales and Use Tax Agreement. There have already been reports of groups that are looking for a state that requires remote sellers to collect and remit its sales and use tax to challenge and claim that it is imposing an "undue burden" on interstate commerce. Joining Streamlined will certainly help Missouri defend itself against that potential "undue burden" challenge by a remote seller.

Where is Streamlined Today?

As the present point in time, twenty-four of the 46 states (and DC) that have a sales tax have adopted the simplification and uniformity provisions contained in the SSUTA. These states represent about 35 percent of the population. In addition, as of February 1, 2020 we have over 9,200 active retailers that have voluntarily registered through the Streamlined central registration system and agreed to collect and remit the appropriate state and local sales and use taxes in some or all of our member states, regardless of any physical presence in those states. Many of these retailers have been registered through our organization since before 2009 and to date, have remitted over $4.5 billion of sales and use taxes that in many cases would have otherwise gone uncollected. Also, keep in mind that by everyone paying the sales and use taxes that are already legally due and owing, this will help prevent state and local governmental units from having to either make cuts to some of the essential services your citizens expect or for you to have to consider other possible methods to fund these services. As the volume of remote sales continues to rise, state and local governmental units will continue to see lower than expected growth in their sales tax revenues.

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Although Streamlined's initial goal was to have Congress pass federal legislation that recognized the work our member states did to make the collection and remittance of sales tax as simple and burden free as possible and allow states that have adopted these simplification and uniformity provisions to require remote sellers to collect and remit their sales and use taxes, since the United States Supreme Court's decision in *South Dakota v. Wayfair*, we are now urging Congress not to get involved, but instead let the states show them that they can implement this collection requirement in a fair and reasonable manner.

Requiring everyone, including remote sellers, to collect and remit your states sales and use taxes will help level the playing field between your own brick and mortar sellers and remote sellers and ultimately lead to everyone paying the same sales and use taxes they already legally owe – regardless of whom they make the purchase from – and without the government inadvertently picking winners and losers.

If you would like to speak to some state legislators from other states that have joined the Streamlined Sales Tax Governing Board and discuss their experiences, please feel free to reach out to Senators Wayne Harper or Curt Bramble (UT), Representative Brian Patrick Kennedy (RI), Senator Ann Rest (MN), Representative Gary Scherer (OH), Representative Tim Reed (SD) or Senator Jack Kolbeck (SD). They are all state legislators that have been actively involved with the Streamlined organization – some since its inception.

I appreciate you taking the time to read this and thoughtfully consider how joining Streamlined can help the State of Missouri, its local units of government, its citizens and its businesses.

I would also encourage you to feel free to reach out to me if you have any questions or want additional information regarding the Streamlined Sales Tax Governing Board and our operations.

Sincerely,

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