

January 7, 2009

MEMORANDUM

To: Representative Paul Luebke, Co-Chair
Senator John H. Kerr, III, Co-Chair
Revenue Laws Study Committee
North Carolina General Assembly

From: Andy Sabol, Director
Sales and Use Tax Division
North Carolina Department of Revenue

Subject: Streamlined Sales and Use Tax Governing Board Activities Update

The Streamlined Sales and Use Tax Project is entering its ninth year of efforts to provide simplification and uniformity to the administration of sales and use tax in addition to furthering the development of technological solutions for the collection and remittance of sales and use tax. The adoption of the Streamlined Sales and Use Tax Agreement ("Agreement") in November 2002 provided the framework of the principles that states would have to adopt to achieve the uniformity and simplification measures initially established by the coalition of states, local governments, and the business community that are part of the effort. In October 2005, the Streamlined Sales Tax Governing Board ("Governing Board") was formed as an entity to administer the Agreement after the requisite number of states was found to be in compliance with the provisions of the Agreement. The membership of the Governing Board consists of representatives from the twenty-two member states with representatives of local government and the business community participating through their service on various committees and councils.

A goal of the states with adoption of the changes necessary to come into compliance with the Agreement was to encourage sellers, especially remote sellers to voluntarily agree to collect sales and use tax in those states that had taken action to simplify and to adopt uniform measures. The Governing Board established a central registration system in October 2005 that allows sellers to register for sales and use tax purposes in all member states. Over 1000 sellers have registered since the system's inception. For North Carolina, this has resulted in collections of approximately \$36 million in new

revenues since October 2005. Collections continue to increase each year as over \$15 million was received in fiscal year 2007-2008 and \$7.9 million has been received for the 2008-2009 fiscal year.

The states realize that the amounts being collected voluntarily are far less than the amounts estimated that states are not collecting from sales by remote sellers that do not have a physical presence in states and, based on United States Supreme Court decisions, cannot be required by states to collect. The Governing Board has recently commissioned a study by an authority in the field to provide an update on estimates of tax legally due but uncollected as a result of sales made by remote sellers. The Supreme Court has stated in its decisions that Congress has the authority to grant states the ability to require collection of sales and use tax by remote sellers. Legislation has been introduced in the last several sessions of Congress that would authorize states to require collection of sales and use tax by remote sellers. The legislation, as introduced, would provide such authorization to those states that had adopted the simplification and uniformity measures established in the "Agreement," in addition, to a few items not addressed in the Agreement. There have been subcommittee and committee meetings held on the legislation in past Congressional sessions; however, there has not been any significant action taken. It is anticipated that legislation will again be introduced soon after the new Congress convenes.

The leadership of the Governing Board believes that the upcoming session of Congress represents the best opportunity for action on Streamlined-related legislation. The Governing Board is in the process of selecting an agent to advocate to members of Congress on behalf of the Governing Board for enactment of legislation. The Governing Board is holding a quarterly meeting in May 2009 in the Washington D.C. area and state delegates will schedule meetings with their respective members of Congress to encourage passage of Streamlined-related legislation. Similar meetings were held in 2008.

With each bill that has been introduced in Congress, there have been two major items that were not firmly established and that are not included in the provisions of the "Agreement," a small seller threshold and vendor compensation. The small seller threshold would exclude remote sellers that sell under a certain dollar amount per year from having to collect tax in states in which they do not have nexus. The vendor compensation provision would require states to allow a vendor's discount to all sellers, not just remote sellers. The legislation that has been introduced simply provides that a state must allow "reasonable" compensation but does not attempt to set out what is considered to be "reasonable." There have been discussions that the legislation introduced in the upcoming session of Congress will delegate the determination of the appropriate small seller threshold level and reasonable compensation to the Governing Board. To that end, the Governing Board has commissioned a task force, headed by Harley Duncan, the former executive director of the Federation of Tax Administrators, to review these issues and present recommendations. An interim report has been issued and work will continue on these topics.

The Governing Board is requesting that state and local governments concerned about the remote sales issue to seriously consider becoming involved with advocating passage of Streamlined-related legislation with members of Congress. Especially important is securing support from members to the referring committees, which in the past have been the House Judiciary and Senate Finance Committees. Another important item is securing co-sponsorship for introduced legislation. North Carolina has been an active participant in the Streamlined efforts since the beginnings in March 2000 and the General Assembly has continued to show its support through passage of legislation over the years of measures necessary to stay in compliance with the "Agreement." My staff and I will be glad to provide any assistance that we can to the General Assembly for any action to promote passage of federal legislation.