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**Testimony to the
Maryland Business Tax Reform Commission
July 15, 2010**

**Fredrick J. Nicely
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Chairman Wacks and Members of the Commission, thank you for inviting me to provide an overview of the Streamlined Sales and Use Tax Agreement (“SSUTA”) and to express COST’s support for enactment of legislation that would allow Maryland to become a member of SSUTA. Such legislation will greatly assist the efforts of the states and much of the business community supporting legislation before Congress that would simplify sales/use tax collection and provide SSUTA member states with remote seller collection authority. According to the latest study, if Maryland becomes a full member state, it has the opportunity to enhance its sales/use tax revenue base in 2012 by \$184.1 million¹.

About COST

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of nearly 600 major corporations engaged in interstate and international business. COST’s objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities.

Seller Compliance Issues With Collection Sales/Use Taxes

While only 45 States plus the District of Columbia impose a sales/use tax, over 7,000 local jurisdictions can impose sales and use taxes in the United States. The Supreme Court in 1992 determined that forcing remote (out-of-state) sellers to comply with the myriad of rates, bases, exemptions and definitional changes was an unacceptable burden on the free flow of interstate commerce. The burden of noncompliance on remote sellers was steep. If the tax was collected incorrectly, the full liability for the tax, plus penalties and interest, fell on the remote seller. If the tax was improperly collected and remitted to the wrong jurisdiction, retailers faced the prospect of class action lawsuits in numerous states. The sheer number of jurisdictions imposing such taxes made compliance complex, costly, and in many cases, nearly impossible.

¹ Drs. Bruce, Fox and Luna, “Losses from E-Commerce”, published by Tax Analysts on May 18th, 2009. The authors of this study recently (7/13/10) noted this figure is extremely conservative. (This figure does not take into account catalog sales and sales by telephone, or other revenue gains/losses from legislative changes required by Maryland to comply with the terms of SSUTA.)

History of the SSUTA Project

In the wake of the passage of the Internet Tax Freedom Act in 1998, Congress authorized the Advisory Commission on Electronic Commerce (ACEC) to review the impact of electronic commerce on state and local taxation over the Internet. Although the ACEC failed to agree on a solution, it led to the formation of the Streamlined Sales Tax Project in early 2000. The Project grew out of state enactment of model legislation – developed by a Task Force of the National Conference of State Legislatures – authorizing state revenue departments to work with the National Governors Association, the National Conference of State Legislatures, the Federation of Tax Administrators and the Multistate Tax Commission on an ambitious effort to simplify state sales tax systems. Initially labeled “Zero Burden,” the project sought to identify ways that states could eliminate the compliance issues facing remote sellers in collecting state sales and use taxes. These states soon realized, however, that it was clear not all burdens of collecting the states’ taxes could be removed. Also, the states realized that simply working with other states was not adequate to identify and address the wide range of issues remote sellers (and, indeed, all businesses) were facing with respect to collection of state sales and use taxes. Soon thereafter, retail businesses were brought into the Project to be an integral part of achieving the difficult goal of radical simplification of state sales tax systems. The Project’s ultimate goal was to achieve sufficient simplification such that Congress would ultimately authorize states to collect sales taxes on remote sales via federal legislation.

From March 2000 to November 2002, the participating states and members of the business community worked on drafting the Streamlined Sales and Use Tax Agreement (SSUTA). The Agreement was formally adopted on November 12th, 2002 and required at least 10 states with a minimum of 20% of the US population to be in compliance with the Agreement before it could become operational. While the base SSUTA document was adopted at that time, it is constantly subject to amendment to address issues raised by both the states and the business community.

On October 1st, 2005, the SSUTA Governing Board formally announced that it had met the threshold for SSUTA to become operational. Initially this meant that early state adopters had to provide certified service providers with compensation to assist sellers in collecting the member states’ taxes (on only remote “non-nexus” sales), and businesses had the benefit of a one-year amnesty period to register under SSUTA. In return, those businesses would not be subject to back taxes on potential grey areas of nexus in one or more of the SSUTA member states.

Goals of the SSUTA

The SSUTA and activities of its various committees can be found on the Streamlined Sales Tax Website at www.streamlinedsalestax.org. The goals of the SSUTA can be found in one of the first sections of the SSUTA, Section 102, and are as follows:

- State level administration of sales and use tax collections
- Uniformity in the state and local tax bases
- Uniformity of major tax base definitions
- Central electronic registration system for all member states

- Simplification of state and local tax rates
- Uniform sourcing rules for all taxable transactions
- Simplified administration of exemptions
- Simplified tax returns
- Simplification of tax remittances
- Protection of consumer privacy

Types of Membership and Current Member States

Initially, SSUTA only authorized full membership status for a state that was in “substantial compliance” with each requirement of the SSUTA. As states began experiencing difficulty achieving full compliance, however, the Governing Board authorized an associate membership category. Associate member states have all the same rights as full members but cannot vote on amendments and interpretations to the SSUTA and such states must continue to grant sellers amnesty if a seller voluntarily begins collecting those states’ taxes. Associate membership status was initially granted to states facing economic dislocations in conforming their local taxes to the SSUTA destination sourcing rules, and was later granted to those states that were close to “substantial compliance” or that had legislation pending that would put the state in compliance within the next several years. Accordingly, although a change to Maryland’s rounding rules to comply with the SSUTA was an issue in past efforts to adopt the Agreement, the associate membership provision now allows a state that does not comply with the SSUTA rounding provision to still potentially qualify as an associate member.

Other types of membership now in the Agreement are contingent member states (treated similarly to associate member states), and advisory states. A contingent member state is a state that has adopted statutory changes with a deferred effective date that within a year will allow the state to be in substantial compliance with each requirement of SSUTA. Finally, the Agreement provides for “advisory state” status which allows a state which is not presently complying with SSUTA to commit to future adoption of the SSUTA provisions. Such states can also participate at the SSUTA’s Governing Board meetings with non-voting status and on certain of SSUTA’s committees. Maryland, previously an implementing state before the SSUTA took full effect in 2005, is presently an advisory state.

The following is the list of the full member, associate member and advisory member states.

Full Member States

Arkansas
Indiana
Iowa
Kansas
Kentucky
Michigan
Minnesota
Nebraska
New Jersey

Nevada
North Carolina
North Dakota
Oklahoma
Rhode Island
South Dakota
Vermont
Washington
West Virginia
Wisconsin
Wyoming

Associate Member States

Ohio
Tennessee
Utah

Advisory States

Alabama
Arizona
California
Connecticut
District of Columbia
Florida
Georgia (passed SSUTA legislation 2010 – waiting for petition)
Hawaii (pursued but did not pass legislation in 2010)
Illinois
Louisiana
Maine
Maryland
Massachusetts
Mississippi
Missouri (pursued but did not pass legislation in 2010)
New Mexico
New York
South Carolina
Texas
Virginia

Main Street Fairness Act – HR 5660

For the last several terms, Congress has introduced legislation to authorize states to require remote sellers to collect sales taxes by conforming to SSUTA (and certain other requirements in the federal legislation, *e.g.*, tribal governance issues). On July 1, 2010, U.S. Representative Delahunt (D-MA) introduced HR 5660, entitled the “Main Street Fairness Act.” The legislation is similar to prior versions, but the title of the legislation was modified to put greater emphasis on

leveling the playing field between remote sellers and local brick and mortar stores. It is also anticipated that Senator Enzi (R-WY) will soon introduce similar legislation in the Senate.

Two important issues are represented by placeholder language in the Main Street Fairness Act: 1) vendor compensation and 2) central administration of telecommunications taxes. The vendor compensation issue focuses on what constitutes “reasonable compensation” to be paid by states to business for the administrative burden of collecting and remitting state sales and use taxes. Part of the initial understanding between the business community and the states at the beginning of the SSUTA effort was that if states did not impose only one rate per state, then all the states would provide all sellers with reasonable compensation for acting as collection agents for the states. A Joint Cost of Collection Study in 2006 (available at www.cost.org) indicated a weighted average cost of 3.09% of collections is incurred by sellers in collecting the states’ sales/use taxes (the rate is significantly higher for small sellers and slightly lower for large sellers). The actual compensation is anticipated to be less than that amount, but the precise terms are still under negotiation.

The primary concerns over central administration of telecommunications taxes are raised by local governments. Local governments are concerned about the loss of administrative control over local telecommunications taxes and which taxes would be covered by the Act (*e.g.*, it would not apply to property taxes). One of the benefits the federal legislation could provide to local governments is that certain telecommunications providers not presently collecting the local governments’ taxes would be required to collect and remit such taxes even if the telecommunications company does not have a physical presence within the state and/or local jurisdiction.

Conclusion

The Comptroller’s Office in the past has raised some concerns about certain taxes imposed at the local level going uncollected if Maryland joins the SSUTA. Such fears may be unfounded and need further study to determine if they can be mitigated. Of the 45 states imposing sales and use taxes, Georgia will soon be the 24th new member to SSUTA. Maryland stands to benefit greatly from becoming the 25th state in the Agreement. Further, the State’s adoption will go a long way towards encouraging Congress to adopt HR 5660, the Main Street Fairness Act of 2010.