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of the Florida Taxation and Budget Reform Commission
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Chairwoman Story and members of the Committee, on behalf of the Direct Marketing Association ("DMA") and its membership, I want to thank you for the opportunity to testify today. The DMA is the largest trade association for businesses interested in direct marketing to consumers and businesses via catalogs and the Internet. Founded in 1917, the DMA today has over 4,700 members companies in the United States and 53 foreign countries.

I welcome this opportunity to present the views of the DMA regarding the proposals before the Committee calling for Florida to join the Streamlined Sales and Use Tax Agreement (SSUTA).

Let me say at the outset that virtually all of the 17 states that are full-fledged members of the SSUTA are relatively small states. Significantly, none of the Nation's six largest states (California, Texas, New York, Florida, Illinois, and Pennsylvania) has joined the SSUTA Compact and this is no coincidence.

A key reason as to why none of the large states has joined the SSUTA Compact is the loss of state sovereignty of their own states' tax laws. By joining the SSUTA, a state has to comply with the directives of the SSUTA Governing Board, which requires member states to conform to its rules. Were Florida to join the SSUTA Compact, some of the ramifications in terms the state losing some of its sovereignty over its tax laws are:

The Rounding Rule Change – Under Florida tax law, the state's "Rounding Rule" requires that if tax owed on an item is, for example, 64.1 cents, the tax is "rounded up" to 65 cents. Under the SSUTA Compact, a member-state must conform to traditional rounding rules. And make no mistake – these fractional pennies add up – to a figure of $30 million/year in lost revenue to the Florida treasury.

The Definition of "Food" Versus "Candy" – Because the SSUTA defines "food" as items containing flour, candy bars such as Snickers or Kit Kat that are currently taxed in Florida would be defined as "food," and thus exempt from sales tax. This requirement to conform to the SSUTA would result in a loss of sales tax revenue to the state.

The Definition of "Orange Juice" – Florida has historically promoted the citrus industry with a statute requiring that anything other than 100% orange juice cannot be exempted from tax as a food product. However, under the SSUTA, any item that is 50% or more orange juice would be mandated to be classified as "food," and thus exempt from tax. Here again, there would be a loss of revenue, but even more importantly, a significant loss of sovereignty in terms of state's ability to promote a vital in-state industry.

The Revenue Estimates of Uncollected Sales Tax Due to Internet Sales are Grossly Exaggerated

Proponents of the SSUTA often cite the 2000 University of Tennessee study, which includes unbelievable estimates as to the amount of the uncollected sales tax. In fact, the Tennessee study estimate for uncollected sales tax due to the Internet sales in 2006 was a whopping $45 billion nationally and $3.2 billion for Florida.

In particular, the Tennessee study rests on a number of faulty assumptions, including being based on private sector/pre-Internet "bubble" estimates, rather than being based on US Government data. Further, the Tennessee study's implication that states are "losing" a substantial portion of their sales tax revenues to electronic commerce is simply false, because the vast majority of e-commerce transactions are not to consumers, but rather to businesses, with such business transactions almost always subject to tax collection.

The actual loss due to uncollected sales tax of the study commissioned by the Direct Marketing Association (DMA) in 2003 and updated in 2007 is based on US Commerce Department data. The DMA study estimates that in 2006 uncollected sales tax nationally was $4.2 billion (rather than $45 billion as estimated by the Tennessee study) and for Florida the 2006 figure was $299 million (rather than $3.2 billion as estimated by the Tennessee study).

The Problem of Uncollected Sales Tax is in fact a "Self-Correcting" Problem

Let's look at the economic reality of the Internet. The Internet is often an "incubator" to launch a company. Then, after the company grows in size and prominence, it often becomes a multi-channel seller, with both Internet sales and the opening of retail stores. Companies become so-called "bricks & clicks" operations. In terms of tax law, once a company opens a store, and thus has a physical presence in a state or "tax nexus," the company is then required to collect sales tax on all Internet sales into the state. In effect, as companies grow in size they frequently become "bricks & clicks" operations. And here I think I can speak with some authority - Go to any direct marketing industry conference and see how much focus there is in terms of how to reach customers and prospects in a multi-channel marketing environment. To say that multi-channel marketing is the wave of the future is to state the obvious.

A Key Justification for a State to Join the SSUTA is the Ability to Force Sales Tax Collection on Companies That Do Not Have a Physical Presence or "Tax Nexus" in the State

However, this concept is based on the premise that Congress will grant the states legislative authority to mandate such tax collection. Since the US Supreme Court's 1992 Quill decision, which ruled that absent Congressional approval, states cannot impose sales tax collection duties on out-of-state companies without a physical presence or "tax nexus" in the state, 16 years have passed. Importantly, in the 16 years since the 1992 Quill decision, legislation to overturn Quill and thus mandate sales tax collection, has been introduced each year in the Congress and such legislation has yet to be reported out of either a Subcommittee or full Committee of the Senate or House.

In other words, if Florida were to join the SSUTA the state would face a loss of sales tax revenue due to a number of mandated requirements of the SSUTA compact. As I have noted:

--The change in Florida's "Rounding Rule"

--The re-defining of some candies as "food"

--The re-defining of "orange juice"

All these items, and I presume there are also others, will cost Florida in terms of reduced sales tax revenue.

Thus, by joining the SSUTA Florida would face a major loss of tax sovereignty, and in return, the state would be "betting on the come" that Congress would grant the states sales tax collection authority – Something in which the Congress has shown little interest for the last 16 years.

But let me now turn things around and look at the SSUTA, not from a Florida-only perspective, but from the point of view of what is in the best interest of creating a 21st century/Internet friendly tax regime to encourage economic growth throughout the national market place. And significantly, by this 21st century tax policy standard the SSUTA again fails – in fact, it dramatically fails.

To be blunt, the SSUTA is a document drafted by tax administrators, and as might be expected, it resulted in little in the way of tax simplification. Specifically, the SSUTA has not:

--Reduced the number of sales tax jurisdictions in the Nation, which currently number 7,500

--Has not reduced the number of state and local sales tax rates

--And an often under reported issue – has not reduced the number of audits to which an interstate seller would be subject (each state revenue department would still conduct its own independent audit)

Given these factors, it's not surprising that Congress has not passed legislation authorizing mandatory interstate sales tax collection called for by the SSUTA. To be frank, the SSUTA – the Streamlined Sales & Use Tax Agreement – is misnamed, since the SSUTA is anything but streamlined and simplified.

To better appreciate the failings of the SSUTA, it is instructive to consider its history. The Streamlined Sales Tax Project was launched in 2000 on the heels of two earlier joint government/industry initiatives (the National Tax Association (NTA) Communications and Electronic Commerce Tax Project, and the Congressionally-established Advisory Commission on Electronic Commerce), both of which had concluded that the existing state sales tax system was one of daunting complexity, and that true simplification would require sweeping reforms. To this end, in August 2000, the Direct Marketing Association (DMA) set forth in a letter to the Streamlined Sales Tax Project leaders a comprehensive list of reform proposals. Unfortunately virtually all of the items recommended by the DMA were ignored.

Perhaps most emblematic of the SSUTA's failure to achieve genuine sales tax reform was the early demise of the single most important step

toward simplification: the adoption of a single sales tax rate per state for all commerce (both over-the-counter sales and interstate sales). Had the SSUTA adopted this so-called "one rate per state" proposal, by this single act alone the SSUTA could have eliminated the problem of merchant compliance with thousands of local tax jurisdictions with different tax rates.

To put this one rate per state issue in perspective, the United States is the only economically developed country in the world with a system of sub-state transaction taxes, not only for counties and municipalities, but also for school districts, transportation districts, sanitation districts, sports arena districts, and other local jurisdictions. In light of this wildly complex system, the adoption of the "one rate per state" standard was the **unanimous** recommendation of the NTA's E-Commerce Project (which included delegates of the National Conference of State Legislatures, National Governors Association, and US Conference of Mayors) and was in the majority report recommendation of the Congressional Advisory Commission.

Let me conclude by noting that by joining the SSUTA Florida would suffer immediate loss of sales tax revenue, as well as the loss of tax sovereignty. In return, Florida would be "betting on the come" that

Congress would pass legislation empowering the SSUTA to force mandatory interstate sales tax collection – Such authority Congress has refused to grant the states for the 16 years since the 1992 Quill decision. And as to why Congress has refused to grant such authority, and I believe will continue to deny such authority, is that the SSUTA does not – truly does not – represent genuine tax simplification for the 21st century American economy.

On behalf of the Direct Marketing Association, I want to thank you for this opportunity to offer my comments on this important issue.

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