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April 1, 2021

**VIA EMAIL**

The Honorable Andrew Koenig, Chair  
The Honorable Bill Elgel, Vice Chair  
Missouri General Assembly  
Senate Ways and Means Committee

**Re: COST Recommends Improvements to H.B. 554 – Marketplace Law Provisions**

Dear Chair Koenig, Vice Chair Elger and Members of the Committee,

On behalf of the Council On State Taxation (COST), I am writing to provide comments to H.B. 554, which would require remote sellers and marketplace facilitators with over \$100,000 in gross receipts to collect the State's sales/use tax. While COST is generally supportive of this legislation, we are writing to offer several suggested amendments to the legislation that would facilitate and improve collection of Missouri's state and local sales and use taxes. Those suggestions are addressed below.

**About COST**

COST is a nonprofit trade association consisting of over 500 multistate corporations engaged in interstate and international business. COST's objective is to preserve and promote equitable and nondiscriminatory state and local taxation of multijurisdictional business entities. COST has a significant number of members that own property, have employees, and make substantial sales in Missouri.

**Partially Participate in Some Streamlined Sales Tax Simplification**

COST understands that amending Missouri's tax law at the present time to become a full member of the Streamlined Sales and Use Tax Agreement (SSUTA) is a huge policy consideration for many states and possibly too large of a task to accomplish with this legislation. Recognizing this, the SSUTA Governing Board has adopted model language<sup>1</sup> that would allow a nonmember state to take advantage of certain SSUTA efficiencies without full membership. Under the model language, Missouri would not be required to change its tax definitions; however, it would assist sellers by completing the SSUTA's taxability matrix and providing certain sellers with services from the SSUTA's Certified Service Providers to reduce burdens on sellers located outside of Missouri who would be required to collect and remit Missouri's sales/use tax. Missouri would also take advantage of SSUTA's central registration system. We recommend you consider including the model language in H.B. 554 to ameliorate burdens this legislation imposes (model legislation attached). Increased participation in this simplification effort also benefits Missouri-based companies selling products to purchasers located in other states.

<sup>1</sup> The model language can be found at [https://www.streamlinedsalestax.org/docs/default-source/miscellaneous/model-act-for-nonmember-state-participationf3b70b50e5420eb4eecac8cd652e7c.pdf?sfvrsn=7457c968\\_6](https://www.streamlinedsalestax.org/docs/default-source/miscellaneous/model-act-for-nonmember-state-participationf3b70b50e5420eb4eecac8cd652e7c.pdf?sfvrsn=7457c968_6).

### **Include Other NCSL Marketplace Provider Provisions**

The bill's definition of a "marketplace provider" closely follows model legislation adopted by the National Conference of State Legislatures (NCSL),<sup>2</sup> which COST supports.<sup>3</sup> While the bill contains a collection exception for marketplace sellers if all of the marketplace facilitator's sellers are registered to collect the tax, we also recommend including the following provision (also in the NCSL model):

Nothing herein shall prohibit the marketplace facilitator and the marketplace seller from contractually agreeing to have the marketplace seller collect and remit all applicable taxes and fees, where the marketplace seller:

1. Has annual U.S. gross sales over [\$1 billion], including the gross sales of any related entities, and in the case of franchised entities, including the combined sales of all franchisees of a single franchisor;
2. Provides evidence to the marketplace facilitator that it is registered under [cite code section] in this state; and,
3. Notifies the Department in a manner prescribed by the Department that the marketplace seller will collect and remit all applicable taxes and fees on its sales through the marketplace and is liable for failure to collect or remit applicable taxes and fees on its sales.

Additionally, we recommend the provision that addresses insufficient or incorrect information given to marketplace facilitators, should more closely follow the NCSL model. Under the NCSL model marketplace sellers can be held liable for the tax in that situation and there is no sunset of the liability relief to facilitators as provided for in H.B. 554.<sup>4</sup>

Lastly, the NCSL model allows a marketplace facilitator to either report its own sales and its third-party marketplace sales on one return or report its own sales separately from its third-party sellers' sales. H.B. 554 would currently mandate two separate returns. Many marketplace facilitators operating in the State already report both sets of sales figures on a single return, and this pragmatic option should remain available for their use.

### **Calculation & Exclude Sales for Resale in Remote Seller Threshold**

The calculation of the \$100,000 threshold for remote sales should be modified to require an annual calendar year threshold calculation (instead of calendar quarter) and exclude transactions made by many manufacturers and wholesalers that are not subject to tax because they are "sales for resale." Efficient administration of the tax by both the Department of Revenue and taxpayers is best served by not requiring the collection and remittance of *de minimis* amounts of tax. Accordingly, we recommend "gross receipts" for the threshold be clarified to exclude "sales for resale."

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<sup>2</sup> The NCSL Marketplace Facilitator Sales Tax Collection Model Legislation is available at: [https://www.ncsl.org/Portals/1/Documents/Taskforces/SALT\\_Model\\_Marketplace\\_Facilitator\\_Legislation.pdf?ver=2020-01-30-122035-320](https://www.ncsl.org/Portals/1/Documents/Taskforces/SALT_Model_Marketplace_Facilitator_Legislation.pdf?ver=2020-01-30-122035-320).

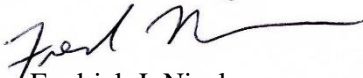
<sup>3</sup> COST policy position on the "Collection of Sales, Use or Similar Taxes by Marketplace Facilitators" is available at: <https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/marketplace-facilitator-laws-policy-statement-final-june-2020.pdf>.

<sup>4</sup> The relief would end for retail sales made on and after January 1, 2025.

**Conclusion**

COST appreciates the opportunity to provide comments to H.B. 554 and we hope you can address our recommended changes to the legislation. Please let us know if we can assist in making these changes to H.B. 554 to reduce the burdens imposed on sales/use taxpayers in Missouri.

Sincerely,



Fredrick J. Nicely

Attachment.

cc: COST Board of Directors  
Douglas L. Lindholm, COST President & Executive Director

# Utilizing Streamlined Sales and Use Tax Services Act

## **Short Title.**

This [chapter, statute, law] shall be known and cited as the "Utilizing Streamlined Sales and Use Tax Services Act."

## **[Findings – If Needed by the State.]**

The legislature finds that the Streamlined Sales and Use Tax Agreement (SSUTA) provides certified service provider and central registration services which will assist sales and use tax compliance for both in-state and out-of-state sellers and will foster higher levels of accurate sales tax collection and remittance, facilitate in collecting sales and use tax revenues, and administrative savings to the [Department]. By making these services available to sellers, the State will substantially reduce the burden imposed on sellers to collect and remit sales and use taxes to this State and other states.

## **Definitions.**

"Central Registration System" means the central registration provided by the Governing Board pursuant to Article IV of the Streamlined Sales and Use Tax Agreement.

"Certified service provider" means an agent certified by the Governing Board to perform the seller's sales and use tax functions as provided for under the Governing Board's contract with such providers.

"Governing Board" means the Streamlined Sales and Use Tax Agreement's Governing Board, including its various committees that address certified service provider and central registration services and issues.

## **Authorization.**

The [Department] is authorized to consult and contract with the Governing Board, and other states as necessary, to allow sellers to use the Governing Board's certified service providers and central registration services, and as necessary, work jointly with other states to accomplish these ends.

The [Department] is authorized to take actions reasonably required to implement these provisions, including the adoption of rules and regulations, and the procurement of goods and services, which may be coordinated jointly with the Governing Board and other states. This includes the following:

- 1) Provide and maintain an electronic, downloadable database of all sales and use tax rates for the jurisdictions in this state that levy a sales or use tax.
- 2) Provide and maintain an electronic, downloadable database that assigns the addresses and zip codes in the state to the applicable taxing jurisdictions.
- 3) Complete the Streamlined Sales and Use Tax Agreement's Taxability Matrix and Certificate of Compliance, noting how the State's sales and use tax law follows or deviates from those requirements.

The [Department] shall also work with the Governing Board to:

- 1) Establish and provide a certification process to allow certified service providers to receive compensation, similar to that for the Governing Board's full member states. Non-SSUTA states may have a different compensation structure solely to account for additional complexities in collecting and remitting this State's sales and use tax due to not being a Governing Board full member state.
- 2) Enter into a contractual relationship with the Governing Board and/or the Governing Board's certified service providers. At a minimum, the contractual relationship shall address:
  - A. The responsibilities of the Governing Board, certified service providers, and the sellers that contract with the certified service provider related to liability for proper collection and remittance of sales and use taxes.
  - B. The responsibilities of the Governing Board, certified service providers, and the sellers that contract with the certified service provider related to record keeping, auditing, and the protection and confidentiality of taxpayer information.
  - C. The method and amount of compensation to be provided to the certified service provider by this State for the services the certified service provider provides to certain sellers.
- 3) The [Department] is authorized to pay annual dues to the Governing Board, not to exceed the dues calculation that would be owed if the State was a Governing Board full member state.
- 4) [State adds any necessary language to comply with the State's purchasing and contract

laws here.]

- 5) The [Department] shall also comply with the Governing Board's requirements to use the Board's central registration system and is authorized to enter into a contract consistent with the requirements imposed on the Governing Board's full member states.

**Relief from Liability.**

- 1) Sellers and certified service providers are relieved from liability to the state for having charged and collected the incorrect amount of sales or use tax resulting from the seller or a certified service provider relying on 1) erroneous data provided by the state in its rate and boundary databases, or 2) erroneous data provided by the state concerning the taxability of products and services as provided in the Taxability Matrix.
- 2) Sellers and certified service providers are relieved from liability to the state for having charged and collected an incorrect amount of sales and use tax resulting from the seller or certified service provider relying on certification by the [Department] of the accuracy of the certified service provider's tax rules and automated systems.

**Effective Date.**

This act shall be effective on X date.