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December 31, 2007

Avin Mark Domnitz, CEO
The American Booksellers Association
200 White Plains Road
Tarrytown, New York 10591

Dear Mr. Domnitz:

Thank you for your association's recent letter to Governor Ted Strickland. Since your correspondence concerned a tax issue, the Governor asked that I respond on his behalf.

As Tax Commissioner, I am charged with the duty providing for the collection of Ohio's state taxes. I agree wholeheartedly with your sentiments that sales and use taxes ought to be paid on all sales to Ohioans, whether made by an out-of-state internet vendor or by a college bookstore. A level playing field for both in-state and out-of state merchants is not only the fairest outcome, but it would also prevent the loss of state tax revenue needed to provide public services.

The Ohio Department of Taxation (ODT) makes every effort to enforce compliance of our sales and use tax laws. While it is certainly a difficult challenge to ensure that the sales and use tax is paid on every Internet purchase, ODT's Sales and Use Tax, Audit, and Tax Discovery divisions all coordinate efforts to collect use tax on a wide variety of purchases, ranging from transportation for hire to watercraft transactions.

In addition to auditing functions, Ohio's income tax form allows taxpayers to pay their use tax on any Internet, catalog or other remote seller purchases that they made without paying any sales tax. Our instructions clearly state that if you are an Ohio resident and do not pay sales tax on a taxable item or service, "Ohio requires you to pay the use tax." Likely of interest to your association, one of the stated benefits of the use tax in our income tax instructions is that this benefits Ohio's retailers by keeping their prices competitive with out-of-state merchants who do not collect sales tax. Although it is difficult to ensure that every individual is complying with Ohio's sales and use tax laws, by allowing them to pay with their individual income tax returns, we do try to make it as easy as possible for individuals to remit their use tax liability.

The largest obstacle that Ohio faces – as well as every other state with a sales and use tax – in collecting sales tax from remote sales is that we cannot require companies without nexus to the state to collect the Ohio sales tax. The most recent U.S. Supreme Court decision concerning this matter, *Quill v. North Dakota* (1992), ruled that a state could not compel the collection of the sales and use tax unless the seller has a physical presence in the state. The *Quill* decision was based heavily on the fact that because of the number of jurisdictions, and the fact that many of those jurisdictions have different tax rates and different definitions of the taxable base, the compliance burdens on sellers prevent a state from being able to require a remote seller to collect its tax, unless the out-of-state seller has a physical presence in the taxing state.

Largely in response to this decision, participating states and the business community embarked on what is now an eight-year effort to bring substantial uniformity to state and local sales tax laws by forming the Streamlined Sales Tax Project (SSTP). The goal of the Project is to remove the tax compliance burdens imposed on remote sellers that make it administratively difficult and cost

prohibitive for them to collect sales taxes on behalf of state and local governments. In 2002, the SSTP approved the Streamlined Sales and Use Tax Agreement (SSUTA), which required compliance with each provision in order to be considered a member state. Associate member states are those that comply with some, but not all, provisions of the SSUTA. There are currently sixteen full member states and five associate member states, including Ohio.

Although Ohio is currently an associate member, we have already made a number of conforming changes to our sales tax law in order to comply with the Agreement's uniform definitions requirements. For example, Ohio has made a number of already made the required changes to the definitions of items such as "food," "price," "computer software," and "tangible personal property", as well as changes in rounding of the sales tax (prior to the change, Ohio essentially rounded up in calculating the tax on most transactions rather than using the 4/5 rounding as required by the Agreement).

However, the one major obstacle still preventing Ohio from full participation in the SSUTA is the requirement to require that all in-state sellers convert from collecting the tax on delivery sales at the tax rate imposed at the seller's store location (origin basis) to collecting at the tax rate where the good is delivered (destination basis). For Ohio, there are two primary problems involved with converting to destination sourcing: (i) the compliance burden on in-state businesses that will now be required to collect tax at a number of different rates based on customer location (Ohio currently has 91 different sales tax jurisdictions) and (ii) the revenue loss to some counties that results in changing to destination sourcing.

We continue to work diligently with the SST Governing Board in order to amend the Agreement to help Ohio and states with similar problems in converting to destination sourcing. In fact the Governing Board recently amended its rules in a way that allows states like Ohio to become a full member without requiring in-state merchants to convert to destination sourcing. Under the amendment, Ohio merchants would continue to collect sales taxes based on the rate at the *origin* of a sale within the state of Ohio, while out-of-state retailers would collect sales taxes based on the rate at the *destination* of the sale. Although there is still a long way to go, this amendment clearly represents a very hopeful outcome for both Ohio and the Project itself.

Once again, thank you very much for your correspondence. Let me assure you that when it comes to trying to create a level playing field for Ohio's businesses that must compete with out-of-state businesses that avoid collecting Ohio sales tax, ODT shares the same interest as the "brick and mortar" vendor community.

The cooperation between the State and business organizations such as the National Federation of Independent Business, the Ohio Retail Merchants and the Ohio Chamber of Commerce has been invaluable in trying to achieve the goal of creating a level playing field for in-state businesses that must compete with remote vendors. Although the ultimate outcome of the Streamlined Project is unknown at this point, we continue to pursue a fair solution for Ohio's business community.

Sincerely,



Richard A. Levin
Tax Commissioner

cc: Office of Governor Ted Strickland