

## **Joint Subcommittee to Study the Impact of Collecting Remote Sales Taxes on the Economy of the Commonwealth (HJR 176 - 2004)**

August 16, 2004

The Joint Subcommittee to Study the Impact of Collecting Remote Sales Taxes on the Economy of the Commonwealth (HJR 176 - 2004) held its first meeting on August 16, 2004.

The members of the Joint Subcommittee are: Delegate Timothy D. Hugo, Chairman; Delegate R. Lee Ware, Jr.; Delegate Lynwood W. Lewis, Jr.; Senator Emmett W. Hanger, Jr.; Senator Charles J. Colgan; Mr. John Backus; Mr. Steve DelBianco; Mr. Bill Frischling; Mr. Lee Goodman; The Honorable John M. Bennett, ex officio; The Honorable George C. Newstrom, ex officio; and The Honorable Michael J. Schewel, ex officio.

The first order of business was the nomination and election of Delegate Timothy D. Hugo as Chairman, and Senator Emmett W. Hanger, Jr. Vice Chairman.

The meeting began with the Division of Legislative Services ("DLS") providing an overview of the Streamlined Sales and Use Tax Agreement ("SSUTA") that was approved by state representatives on November 12, 2002. SSUTA is a multistate agreement with the objective of simplifying the administration of sales and use taxes. Under the agreement, a remote vendor (a vendor with no physical presence in a state) who voluntarily elects to participate in SSUTA is required to remit use tax on goods and services sold to customers in states in which the vendor does not have nexus for purposes of tax collection responsibilities.

SSUTA was crafted as a result of working group meetings that included interested businesses and representatives of 42 states and the District of Columbia. Virginia first became involved in the working group meetings in 2002. A provision of SSUTA provides that the multistate agreement will become effective when at least ten states comprising at least twenty percent of the population of states imposing sales taxes are in substantial compliance with the agreement. It is anticipated that these requirements will be met on October 1, 2005, and the multistate agreement will then become effective. DLS related that, while SSUTA is a voluntary agreement states and vendors may join, there have been efforts at the Congressional level to enact laws that adopt most of the elements of SSUTA but that also permit state and local governments to mandate or require remote vendors to collect and remit use tax.

DLS concluded its presentation by discussing issues under SSUTA that may impact states that join the agreement. These issues were identified as the requirement under the agreement that participating states maintain ongoing substantial compliance with the agreement; the need for states to adopt

procedures to identify potential legislation that may conflict with the terms of the agreement; procedures for annual recertification of substantial compliance to the governing body of SSUTA; administrative costs, including a temporary increase in the discount paid to vendors voluntarily participating in the agreement; and, if the Commonwealth were to adopt SSUTA, the likely changes that would be required to its sales and use tax laws to bring them into substantial compliance with the agreement.

Next, a representative from the Northern Virginia Technology Council presented some questions and concerns in regard to SSUTA. The Council has five primary concerns: SSUTA is a work in progress with potential changes still to be made and since the agreement has yet to become effective there is very little to evaluate; if the provisions of SSUTA were to become mandatory, there could be very costly compliance burdens on technology and other service providers; the scope of SSUTA extends beyond E-retailers; costs and benefits to Virginia are still unknown; and Virginia's comparative advantage in growing and attracting technology companies would erode, nationally and internationally. As Virginia residents are subject to use tax on goods purchased from remote vendors, the Council recommended that Virginia focus on enforcing the current tax collection laws to bolster revenues.

Finally, a representative from the National Retail Federation ("NRF") addressed the joint subcommittee and encouraged the joint subcommittee to recommend that Virginia become a participating state in SSUTA. NRF believes that the ability of remote vendors to sell goods without having to charge use tax, especially given the proliferation of sales of goods over the Internet, places "main street" vendors (those not selling over the Internet or in interstate commerce) at an unfair competitive disadvantage. Because main street vendors must collect sales tax, it is difficult for them to compete with remote vendors who do not have to collect and remit use tax on the same goods and services. NRF believes it is appropriate that remote vendors collect and remit use tax as they also benefit from the transportation and police services provided by the states in which their customers are located. For those states that comply with the provisions of SSUTA, NRF stated that it is appropriate for Congress to authorize such states to require remote vendors to collect and remit use tax. NRF also believes that the burdens placed upon retailers in collecting sales and use taxes should be eliminated through the full reimbursement of administrative costs by states.

The Chairman and Vice-Chairman of the HJR 176 joint subcommittee will meet to determine a meeting date and an agenda for the next joint subcommittee meeting.