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February 8, 2024

Federal Trade Commission

Via E-Mail

Re: Comments on Proposed Rule on Unfair or Deceptive Fees (16 CFR 464)

Dear Madam or Sir:

We welcome the opportunity to comment on the Proposed Rule on Unfair or Deceptive Fees (16 CFR 464) as applied to sales, use, and similar transaction taxes. The proposed rule provides that “Total Price” may exclude “Government Charges,” but restricts the definition of “Government Charges” to fees or charges *imposed on consumers*. It appears that the language was intended to broadly include state and local sales, use, and similar transaction taxes but operates on the inaccurate assumption that all such taxes are imposed by statute on the consumer. While many such taxes are imposed on the consumer, some are imposed by statute on the seller and either require or allow the seller to pass them on to the consumer.¹ We respectfully suggest that if the rule is adopted as currently drafted, it would inadvertently treat sales, use, and similar transaction taxes differently from state to state, depending on the language used to implement the tax.

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 over 500 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.

Please reach out if you have any questions or would like to discuss.

Respectfully,

Patrick J. Reynolds

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

¹ Examples include the California Retail Sales Tax (but not the California Vendor Use Tax), the Arizona Transaction Privilege Tax, the New Mexico Gross Receipts Tax, and the Hawaii General Excise Tax.