COST
Council On State Taxation

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California Department of Tax and Fee Administration
Sandy Barrow, Chief
Tax Policy Bureau
Processing, Policy, and Data Division

Re: CDTFA Digital Products Workshop – S.B. 122

Dear Ms. Barrow,

On behalf of the Council On State Taxation (COST), we appreciate the chance to provide comments to the California Department of Tax and Fee Administration (CDTFA) and participate in the workshop on S.B. 122. Of particular note is the opportunity for the CDTFA to lower the administrative burden and increase compliance by also exploring the use of a "multiple points of use" exemption certificate (MPU).

About COST

COST is a non-partisan, 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 more than 450 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.

Authority to Create MPU Exemption Certificate

Subsections 6052(c)(1) and 6372(e) of S.B. 122 authorize the CDTFA to set forth, authorize, or require alternative methods to calculate the sales or use tax due in this state, including on licenses of digital products concurrently available for use in multiple locations.

For use tax purposes Subsection 6052(c)(2) and (d), as well as subsection 7051.3, allow the purchaser to request a waiver or apply for a direct pay permit. A purchaser requesting a waiver must provide its first use location information. However, many businesses do not know this information at the time of the purchase. Exploring the use of an MPU exemption certificate could also reduce the administrative burden and, when combined with the requested waiver and direct pay permits, provides a robust set of solutions to best fit the myriads of business use cases.

MPU Exemption Certificates

States, including Massachusetts, Minnesota, Ohio, Texas, and Washington, recognize the administrative complexity businesses have with purchases of software packages in this digital world because of the ease with which it can be used concurrently within and outside a state. Generally, the following approach by states provides clear and administrable tax compliance.

- The seller is relieved of all obligation to collect the sales tax upon receipt of the MPU exemption certificate from the purchaser.
- The state provides reasonable, consistent, and uniform directions on how to apportion the use tax to both in-state and out-of-state users.
  - For example, Washington state uses the number of users in this state divided by the number of users everywhere.
- The purchaser claiming the MPU can easily report and pay the use tax to each jurisdiction where concurrent use occurs.
- Once a purchaser provides the MPU exemption certificate to the seller, the certificate remains in effect until it is revoked in writing.

Additionally, exploring the use of MPU exemption certificates could minimize the potential of sellers and purchasers planning their purchases to be sourced outside of California.

Conclusion

Thank you for allowing COST to provide comments to this workgroup. We request that CDTFA take the above recommendation into consideration when evaluating how to move forward with S.B. 122.

Respectfully,

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cc: COST Board of Directors
Patrick J. Reynolds, COST President & Executive Director