EXHIBIT A

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October 26, 2007

Roxanne Bland
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Multistate Tax Commission
444 North Capitol Street, NW, Suite 425
Washington, DC 20001

Re: Comments on MTC Proposed Model Statute and Regulation on Sampling

Dear Roxanne:

Thank you for the opportunity to provide comments on the MTC Proposed Model Statute and Regulation on Sampling. As constituted, we are of the opinion that the current draft of the proposed Model Statute and Regulation does not provide adequate guidance on the resolution of sampling issues. The remainder of this letter outlines our concerns with the proposed model statute and regulation. COST respectfully requests that the appropriate MTC committees continue their work on drafting this statute before it is presented for a vote at a meeting of the Commission.

About COST

COST is a non-profit trade association based in Washington, D.C. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of nearly 600 major multistate corporations engaged in interstate and international business. The organization's mission is to preserve and promote the equitable and nondiscriminatory state and local taxation of multi-jurisdictional business entities.

Model Statute and Regulation

The primary concern of the business taxpayer community is how to resolve disputes about sampling when it is implemented on particular audits with particular facts. All of the states are using sampling in some sales and use tax audits. Sampling procedures that work well in some situations do not work well in other situations.

Define "Reasonable Result"

We are particularly opposed to the words "reasonable result" that appear at the end of the proposed Model Statute. The concept of "reasonable result" is not defined and is likely to result in intractable disputes. Merely providing unlimited discretion to the tax administrators is not acceptable. We recommend some alternative wording be developed

that allows for appeals officers, administrative law judges, or trial court judges to hear and evaluate evidence on how sampling should or should not be applied in specific situations. Members of the business community are willing to work with you on alternative wording.

Define "Statistical Sampling"

The concept of statistical sampling is not clearly defined in the Model Statute or Regulation. We suggest that the Regulation include a definition that follows the definition included in the Federation of Tax Administrators Task Force on EDI Audit and Legal Issues for Tax Administration's white paper, "*Sampling for Sales and Use Tax Compliance*", published in December 2002), www.taxadmin.org/fta/pub/sample.pdf , at page 4. The white paper references the International Federation of Accountants (IFAC), an international organization of national accountancy organizations, that develops pronouncements (International Standards on Auditing) on various auditing topics, including sampling. ISA 530 defines "statistical sampling" and "non-statistical sampling" as follows:

> *"Statistical sampling" means any approach to sampling that has the following characteristics:*
> *(a) random selection of a sample; and*
> *(b) use of probability theory to evaluate sample results, including measurement of sampling risk.*
> *A sampling approach that does not have characteristics (a) and (b) is considered non-statistical sampling.*

Ensure Consistency

The Model Statute and Regulation contain several different terms for sampling: "sampling techniques," "sampling method," "sampling audit method," and "sampling process." Different terms imply different concepts. If the same concept is intended, we recommend that one set of words be used consistently. If two different concepts are intended, please use different terms and explain why they are different.

Add Language Regarding an Appeals Process

Section 3 of the Model Regulation indicates a reasonable effort will be made to reach a sampling agreement. The taxpayer community supports the concept of trying to reach a sampling agreement, and believe that there should be a good faith effort to negotiate a sampling agreement before the sample is selected. However, the sampling agreement should include a process for the taxpayer to appeal sampling issues if the results of the sample do not appear to be representative of the population. We do not want a taxpayer's participation in the sampling process to be viewed as a suspension of the taxpayer's right to appeal sampling issues in a departmental appeals process, district court, or tax court.

Because some sampling issues cannot be resolved or anticipated during the sample planning process, we recommend implementing a procedure that allows for resolution of

sampling issues for specific taxpayers with specific sets of facts. Accordingly, we propose adding a section to the Model Regulation that would provide an appeals process for sampling disputes. It should include the following points:

- The subject matter should include the reasonableness of applying a sampling technique to a particular taxpayer's data or any other issues in the sampling plan, estimation, or projection of results.

- The appeal may be filed during the sample planning stage before the sample is selected, or after the results are projected.

- Filing the sampling issues appeal will toll the statute of limitations on assessments and the statute of limitations on refunds.

- The Department will appoint an independent expert familiar with tax audit sampling techniques. This independent expert will not be a current employee of the Department.

- The independent expert will allow 90 days for the Department's representative and the taxpayer's representative to submit written or oral evidence and expert opinion on the sampling issue.

- The independent expert will provide a written report and recommendation to the department's appeals process or tax court.

Conclusion

We respectfully request that the MTC committees continue their work on drafting this statute before it is presented for a vote at a meeting of the Commission. COST stands ready to work with the appropriate representatives of MTC to craft a model statistical statute and accompanying regulation which provide adequate guidance on the resolution of sampling issues.

Sincerely,

Douglas L. Lindholm

cc: COST Board of Directors
Dr. Will Yancey