

The Project approved moving this paper to Implementing States on August 5, 2004.

Amnesty for Registration Implementation and Administration Procedures August 2004

Introduction: Discussions at the January 2004 SSTP meeting in San Diego resulted in questions and concerns about how the amnesty provisions found in Section 402 of the Streamlined Sales and Use Tax Agreement will be administered. A survey was distributed to member states to acquire input. A summary of responses was presented and discussed at the May 2004 SSTP meeting in Tampa.

The question that precipitated the survey, “What constitutes notice of commencement of an audit?,” was answered at the May meeting. A majority of states present were in agreement with the survey results. “Notice of commencement of an audit” means the date that written notification is sent to the seller indicating that the state intends to audit the business records for sales and/or use tax purposes.

Responses to the survey also pointed out that definitions are needed for certain terms used in the agreement and that clarification is needed for some of the administrative provisions so that reader’s will have the same understanding of the provisions. Each section of the amnesty for registration provisions are printed below followed by definitions of terms used in that section and an explanation of administrative procedures when necessary.

Section 402: Amnesty for Registration

A. Subject to the limitations in this section:

1. A member state shall provide amnesty for uncollected or unpaid sales or use tax to a seller who registers to pay or to collect and remit applicable sales or use tax on sales made to purchasers in the state in accordance with the terms of the Agreement, provided that the seller was not so registered in that state in the twelve-month period preceding the effective date of the state’s participation in the Agreement.
2. The amnesty will preclude assessment for uncollected or unpaid sales or use tax together with penalty or interest for sales made during the period the seller was not registered in the state, provided registration occurs within twelve months of the effective date of the state’s participation in the Agreement.
3. Amnesty similarly shall be provided by any additional state that joins the Agreement after the seller has been registered.

Terms:

- **“Uncollected or unpaid sales and use tax”** means tax was not collected on retail sales made either by an instate seller or by a seller located out of state. It does not include taxes collected, but not reported or remitted to the state. It does not include tax due on purchases and withdrawals from inventory for a seller’s own use.
- **“Effective date of state’s participation in the Agreement”** means the date a state’s membership is effective as described in Section 804: Requirements for Membership Approval. That is, the proposed date of entry from the state’s petition for membership or the first day of the calendar quarter after the state’s petition is approved by the governing board, whichever is later, and is at least sixty days after the state’s petition is approved.

Administrative provisions:

- **Nexus is irrelevant.** The amnesty provisions apply to **all** sellers that register to pay or to collect and remit sales and use taxes in accordance with the terms of the Agreement. This includes sellers that have a physical presence within a member state, provided they meet the limitations set out in Section 402A of the Agreement. Each member state must determine whether the seller qualifies for amnesty within their state based on information available from their state’s registration systems.
- **On-line registration system.** In the event that the anticipated Streamlined on-line registration system is not available at the time that a state becomes a member of the Agreement, a written statement included with the seller’s registration indicating that they are registering with all member states under the provisions of the Agreement will be sufficient to invoke the amnesty provisions for that seller.

B. The amnesty is not available to a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and which audit is not yet finally resolved including any related administrative and judicial processes.

Terms:

- **“Notice of commencement of an audit”** means the date that written notification is sent to the seller indicating that the state intends to audit the business records for sales and/or use tax purposes.

C. The amnesty is not available for sales or use taxes already paid or remitted to the state or to taxes collected by the seller.

D. The amnesty is fully effective, absent the seller's fraud or intentional misrepresentation of a material fact, as long as the seller continues registration and continues payment or collection and remittance of applicable sales or use taxes for a period of at least thirty-six months. Each member state shall toll its statute of limitations applicable to asserting a tax liability during this thirty-six month period.

Terms:

- **"Toll statute of limitations"** means that states preserve their right to audit all periods that were open under the state's statute of limitations at the time of the seller's registration if the seller fails to meet the amnesty provisions. That is, if the seller defaults within the first 36 months, states have the right to audit for periods prior to registration as if no time had elapsed. The seller will be considered to have defaulted even if they maintain their registration, if they fail to file returns or files returns without payment of the tax due, or if the state can prove that the seller committed fraud or intentionally misrepresented material facts. This provision does not prevent states from auditing the seller for periods following registration.

Examples:

- Seller registers in January 2005 under the Agreement, but stops remitting tax in January 2007. Even if the seller files the returns without payment of the tax due, states can audit for all periods prior to January 2005 that would have been within their statute of limitations as of the date of the seller's registration. Depending on the state's statutes this would allow audits back to periods in 2001 or earlier.
- Seller registers January 2005 under the Agreement, but stops remitting tax after filing the December 2007 return. Assuming fraud or intentional misrepresentation of a material fact is not an issue, states cannot audit for the periods prior to January 2005 since the seller filed returns for the requisite 36 months. States can audit all periods starting with January 2005 that are within their normal statute of limitations.

E. The amnesty is applicable only to sales or use taxes due from a seller in its capacity as a seller and not to sales or use taxes due from a seller in its capacity as a buyer.

Administrative provisions:

- The seller remains liable for tax due on purchases made for their own use and for items withdrawn from inventory for their own use for all periods open under the state's statute of limitations.

F. A member state may allow amnesty on terms and conditions more favorable to a seller than the terms required by this section.

Administrative provisions:

- Questions were raised about allowing amnesty for specific situations not addressed in the amnesty provisions. Examples:
 - A seller starts to collect sales tax in anticipation of registering with SSTP. Since they have already collected sales tax, on retail sales within the state, they do not meet the amnesty provisions.
 - A seller finds a past liability for a company they bought out. This requires reporting sales tax on sales made by the previous company.

Allowing amnesty in these situations is more permissive than the amnesty requirements. States are allowed, but are not required, to grant amnesty as long as they do not impose more restrictive provisions than allowed in the Agreement for qualifying sellers.