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**Resale Issues
Work Group**

August 2006

Mission Statement: Address resale issues

Plan of Action:

1. Clarify by example issues concerning “resale” raised in the:
 - Memorandum dated November 2005 regarding Streamlined Sales Tax Purchaser Concerns submitted to the State and Local Advisory Council by members of the business community. Attachment 1.
 - E-mails between Art Rosen and Diane Hardt. Attachment 2.
2. Identify any overlap with other SST efforts (e.g., bundling, sales price).
3. Obtain state-by-state information through surveys and questionnaires to identify current positions and interpretations.
4. Determine if there is support for defining “sale for resale” and, if not, are there alternatives for improving uniformity without deciding tax treatment.
5. Evaluate if there is a need for any changes to the Agreement necessary to address purchaser concerns.

Excerpt from Memorandum dated November 2005 from business community regarding purchaser use tax concerns

2) SALE FOR RESALE EXEMPTION

A. Definition of "sale for resale"

Concern

The Agreement fails to address a major area of uncertainty for purchasers in states' varying treatment of what constitutes an exempt "sale for resale."

Problem

The Agreement allows sellers complete immunity in accepting a properly completed exemption certificate or sufficient exemption information from a purchaser claiming a sale for resale, but the purchaser gains no certainty with respect to its potential use tax liability on such purchases. With the Agreement's shift toward examining the purchaser and relieving the seller of liability, defining a "sale for resale" would provide needed certainty.

Potential Solutions

Begin a project to define "sale for resale" and add this definition to the Agreement's administrative definitions in the Library of Definitions.

B. Services purchased for resale

Concern

The Agreement does not provide guidance regarding when a purchase of a taxable service is a purchase for "resale" (i.e., as a component of a broader service or property) or when the purchase of a taxable service is "used" by the purchaser.

Problem

The tax treatment of the purchase of taxable services varies among the states when the service is either provided in connection with or as an additional component of another service or item of tangible personal property. While the lack of a "sale for resale" definition in the Agreement creates uncertainty with respect to all claimed sales for resale (both of services and of tangible personal property), the problem is especially acute in the service area. Many examples of this problem can be found in the "telecommunications field" (e.g., purchases of telecommunications services used to provide security services).

Potential solutions

- Address specific sale for resale scenarios for services in an interpretation or rule to be adopted by the Governing Board.
- As noted above, amend the Agreement to provide a definition of "sale for resale."

C. Interplay with "sales price" definition

Concern

Interpretations of the components of "sales price" discussed above could impact the availability of the sale for resale exemption.

Problem

To the extent that certain items or services are deemed to be the "seller's cost" or "charges by the seller" includable in sales price, such classification could impact the availability of the sale for resale exemption for the seller's purchase of such items or services.

Potential solutions

Provide an interpretation or rule regarding the application of the sale for resale exemption to components of sales price.

Excerpts from e-mails between Art Rosen to Diane Hardt (June and July 2006)

To summarize the conclusion of our teleconference, the business community is seeking four definitions, each to cover the following types of situations:

1. A purchaser buys an item of tangible personal property that it resells in the same form in which the item was purchased.
2. A purchaser buys an item of tangible personal property that becomes an ingredient or a component part of another item that it then sells.
3. A purchaser buys a service that it resells in the same form in which the service was purchased.
4. A purchaser buys a service that becomes an ingredient or a component part or another service that it then sells.

While some might suggest that we should also cover combinations of tangible personal property and services, I think that is too complicated at this point and my overlap with the bundling efforts.

We are looking for four definitions. I don't think that any one of the four definitions should have any more revenue impact than any other definitions, such as those for selling price, for example.