

2017 Annual Report of Amendments to the Streamlined Sales and Use Tax Agreement (SSUTA) and Streamlined Sales Tax Governing Board (SSTGB) Rules and Interpretive Opinions

Pursuant to SSTGB Rule 803.2, this document contains the amendments, and rules related thereto, and interpretive opinions adopted by the Streamlined Sales Tax Governing Board (SSTGB) during 2017. While some amendments may include a specific future effective date, most are adopted without a specific effective date. Absent a specific effective date, the date by which a state must conform to an amendment is the date upon which a state may be sanctioned. Pursuant to Section 805 of the SSUTA as amended through December 19, 2017, if a state is required to make a statutory change to comply with any amendment to the SSUTA, or interpretation or interpretive rule adopted by the SSTGB, the state may not be sanctioned for failure to comply with the amendments and rules “...until the later of the first day of January at least two years after the adoption of the amendment ... or the first day of a calendar quarter following the end of one full session of the state’s legislature.”

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Section I. Amendments to the SSUTA

A. (AM17002A01) This amendment created Section 106 of the SSUTA and was adopted by the SSTGB on October 11, 2017. No state is required to make a statutory change relating to this amendment and therefore this change did not require a second vote. This amendment was effective upon its passage.

Summary of amendment – This amendment was brought forth by Nevada and North Carolina to create Section 106 of the SSUTA to remove certain products from being subject to the requirements of the Agreement.

Section 106: Treatment of Marijuana and Products Containing Marijuana

The provisions of the Agreement do not apply to the sales or use of marijuana or products containing marijuana.

B. (AM17009) This amendment revises Section 322 of the SSUTA and was adopted by the SSTGB on October 11, 2017. No state is required to make a statutory change relating to this amendment and therefore this change did not require a second vote. This amendment was effective upon its passage.

Summary of amendment – This amendment was brought forth by Ohio to amend Section 322 of the SSUTA to require a notice of 60 days prior to the calendar month in which a sales tax holiday is to take place, rather than 60 days prior to the calendar quarter in which the sales tax holiday is to take place.

Section 322: SALES TAX HOLIDAYS

A. If a member state allows for temporary exemption periods, commonly referred to as sales tax holidays, the member state shall:

1. Not apply an exemption unless the items to be exempted are specifically defined in Part II or Part III(B) of the Library of Definitions and the exemptions are uniformly applied to state and local sales and use taxes.
2. Provide notice of the exemption period at least sixty days prior to the first day of the calendar ~~quarter~~month in which the exemption period will begin.
3. Not apply an entity or use based exemption to items except a member state may limit a product based exemption to items purchased for personal or non-business use.
4. Not require a seller to obtain an exemption certificate or other certification from a purchaser for items to be exempted during a sales tax holiday.

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C. (AM17001A02) This amendment revises Section 502 of the SSUTA and was adopted by the SSTGB on May 11, 2017. No state is required to make a statutory change relating to this amendment and therefore this change did not require a second vote. This amendment was effective upon its passage.

Summary of amendment – This amendment was brought forth by Kentucky and South Dakota to amend Section 502 of the SSUTA to add definitions of “product category” and “certify a product category”. The definitions were added as subsection (F).

Section 502: STATE REVIEW AND APPROVAL OF CERTIFIED AUTOMATED SYSTEM SOFTWARE AND CERTAIN LIABILITY RELIEF

F. For purposes of this section:

1. “Product Category” means:

(a) Terms specifically defined in Appendix C, Parts II and III of the Agreement (e.g., clothing, durable medical equipment, food, drugs, soft drinks, disaster preparedness supplies);

(b) Subcategories of terms specifically defined in (a) that may be taxed differently than the product category as a whole. This may vary on a state-by-state basis (e.g., oxygen delivery equipment, kidney dialysis equipment, prewritten computer software delivered electronically, prepared food that requires additional cooking by the consumer);

(c) Terms representing groups of like products that do not fall within (a) and (b) (e.g., other digital products, building materials, furniture, motor vehicles); and

(d) Subcategories of (c) that are taxed differently than the product category as a whole. This may vary on a state-by-state basis (e.g., printed materials, newspapers, catalogs).

2. “Product category” does not include:

(a) Any individual product(s) that properly falls within any product category in a state (e.g., shirts, reusable thermometers, ultrasound machine, bread, tables, chairs, automobile, motorcycle) unless the

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individual product is taxed differently than any other products within that product category; or

(b) “Tangible personal property.”

3. “Certify a product category” means the state reviews the product category and determines that the taxability of a product properly included in that product category is consistent with their state’s laws. The state certifies the taxability is based only on (1) the product-based exemptions or impositions provided by state law; (2) the specific description provided by the seller or certified service provider; and (3) not requiring either the purchaser or seller to produce documentation to claim the exemption.

D. (MC17003A02 and MC17004A02) This amendment revises Section 502 of the SSUTA was adopted by the SSTGB on October 11, 2017. No state is required to make a statutory change relating to this amendment and therefore this change did not require a second vote. This amendment was effective upon its passage.

Summary of amendment – This amendment was brought forth by Kentucky and South Dakota to approve the uniform format and instructions that certified service providers (CSP) and states are to use to document the review and approval of the tax rules/product categories included in the (CSPs) program under Section 502 of the SSUTA. The form is TC-0005 – SST CSP/CAS Change Request Form.

Here are links to the form and instructions that were approved:

[Link to Instructions for Form TC-0005i – CSP/CAS Change \(Tax Rule\) Request](#)

[Link to Form TC-0005 – CSP/CAS Change \(Tax Rule\) Request](#)

E. (AM17003A02) This amendment revises Sections 327 and 805 of the SSUTA and was adopted by the SSTGB on October 11, 2017. States may be required to make a statutory change relating to this amendment and therefore a second vote was required. The second vote took place on December 19, 2017. Member States must comply with this amendment no later than January 1, 2020.

Summary of amendment - This amendment was brought forth by Oklahoma and North Dakota to amend Sections 327 and 805 of the SSUTA to require states to follow any specific lists of products or services relating to a term defined in the SSUTA as adopted by the Governing Board.

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Section 327: LIBRARY OF DEFINITIONS

Each member state shall utilize common definitions as provided in this section. The terms defined are set out in the Library of Definitions, in Appendix C of this Agreement. A member state shall adhere to the following principles:

- A. If a term defined in the Library of Definitions appears in a member state's sales and use tax statutes or administrative rules or regulations, the member state shall enact or adopt the Library definition of the term in its statutes or administrative rules or regulations in substantially the same language as the Library definition.
- B. A member state shall not use a Library definition in its sales or use tax statutes or administrative rules or regulations that is contrary to the meaning of the Library definition.
- C. Except as specifically provided in Sections 316 and 332 and the Library of Definitions, a member state shall impose a sales or use tax on all products or services included within each Part II or Part III (B) definition or exempt from sales or use tax all products or services within each such definition- including all products and services listed in the rules, appendices and interpretive opinions adopted by the governing board. Provided, the requirements of this subsection shall only apply to Part III (B) definitions to the extent that such definitions are used in the administration of a sales tax holiday. A member state is not in compliance with the Agreement if the member state excludes any product or service that is included within a product definition or includes a product or service that is excluded from a product definition.

Section 805: COMPLIANCE

- A. A member state is in compliance with the Agreement if the effect of the state's laws, rules, regulations, and policies is substantially compliant with each of the requirements set forth in the Agreement, even though the state uses different words than those contained in the Agreement. These requirements shall include the rules, interpretive opinions, and appendices adopted by the Governing Board.
- B. Unless the governing board specifies a different time period, no member state shall be found out of compliance under subsection A for failing to substantially comply with any amendment to the Agreement adopted under section 901 of the Agreement or an interpretation or interpretive rule adopted under section 902 of the Agreement, if substantial compliance with the amendment, interpretation or interpretive rule requires the state to make a statutory change, until the later of the first day of January at least two years after the adoption of the amendment, interpretation or interpretive rule or the first day of a calendar quarter following the end of one full session of the state's legislature.

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- C. Unless the governing board specifies a different time period, no member state shall be found out of compliance under subsection A if its noncompliance is a result of a judicial ruling in that state that interprets that term of the Agreement in a manner inconsistent with an interpretation by, or interpretive rule of, the governing board adopted under section 902 of the Agreement and the member state comes into substantial compliance with the interpretation of the governing board by amending its statutes before the later of the first day of January at least two years after the issuance of the judicial decision or the first day of a calendar quarter following one full session of the state’s legislature.

F. (AM17004A01) This amendment revises Appendix C, Part II – Library of Definitions of the SSUTA and was adopted by the SSTGB on May 11, 2017. No state is required to make a statutory change relating to this amendment and therefore this change did not require a second vote. This amendment was effective upon its passage.

Summary of amendment - This amendment was brought forth by South Dakota to amend Appendix C of the SSUTA to add a definition of “feminine hygiene products”. The definition was added to the Health-Care section of Part II of the Library of Definitions.

“Feminine Hygiene Products” means tampons, panty liners, menstrual cups, sanitary napkins, and other similar tangible personal property designed for feminine hygiene in connection with the human menstrual cycle, but does not include “grooming and hygiene products” as defined in this Agreement.

G. (AM17010) This amendment revises Appendix C, Part II – Library of Definitions of the SSUTA and was adopted by the SSTGB on October 11, 2017. No state is required to make a statutory change relating to this amendment and therefore this change did not require a second vote. This amendment was effective upon its passage.

Summary of amendment - This amendment was brought forth by North Dakota on behalf of the National Diaper Bank Network to amend the Library of Definitions within the SSUTA to allow a state to exclude “diapers” from the definition of “clothing.”

CLOTHING

“Clothing” means all human wearing apparel suitable for general use. The following list contains examples and is not intended to be an all-inclusive list.

- A. “Clothing” shall include:

...
10. Diapers, children and adult, including disposable diapers...

- B. “Clothing” shall not include:

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1. Belt buckles sold separately...

C. A member state may exclude items under subsection A.10, “Diapers, children and adult, including disposable diapers,” from the definition of “clothing.” A state may limit the exclusion to children or adult diapers. “Diaper” means an absorbent garment worn by individuals who are incapable of, or have difficulty, controlling their bladder or bowel movements.

H. (AM17005A01) - This amendment created Disclosed Practice 5 and was approved by the SSTGB on May 11, 2017. No state was required to make a statutory change relating to this amendment and therefore this change did not require a second vote. Each state is required to update their online taxability matrix to indicate the treatment of this disclosed practice in their state by the first day of the calendar month that is at least 60 days from when it was approved. Therefore each state had until August 1, 2017 to complete this update.

Summary of amendment - This amendment created Disclosed Practice 5 relating to tax administration practices which address various scenarios that may occur after the initial sale has taken place.

Note: These tax administration practices address various scenarios that may occur after the initial sale has taken place, including scenarios in which customers are returning or exchanging products. The practices are intended to provide general guidance on how a seller can obtain a refund or credit from the state for the tax refunded to a customer.

Unless indicated otherwise throughout Disclosed Practice 5:

- Use of the word “tax” means the sales or use tax paid by the customer to the seller which was timely remitted by the seller to the state;
- Use of the word “refund” includes a credit unless otherwise stated;
- Unless otherwise stated, the refund is being claimed within the state’s statute of limitations;
- Unless otherwise stated, the seller has refunded the tax to the customer;
- The tax rates used in the examples are for illustrative purposes only and are presumed to be correct;
- The seller is not engaged in fraud or making intentional misrepresentations;
- The seller maintains proper books and records to substantiate taxes collected and remitted based on the applicable state’s requirements;
- The disclosed practices do not apply to sales of motor vehicles;
- The disclosed practices relate to products voluntarily returned by the customer and accepted by the seller (*e.g.*, does not include repossessed products) and;
- **The disclosed practices only provide general guidance and assume there are no other unique circumstances that apply.**

Disclosed Practice 5.1 – Refund Procedure Document

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***Explanation:** Some states have written procedures on their websites to explain how sellers and customers can properly obtain a refund of tax when a product is returned to the seller or subsequently determined to not be taxable.*

Disclosed Practice 5.1 - Does your state have written guidance on your website, or otherwise, that explains how sellers and/or customers can properly obtain a tax refund from your state? (If “yes”, please provide a website link and/or indicate how a person can obtain guidance in the comments.)

Disclosed Practice 5.2 - Initiation of the State’s Statute of Limitations for a Seller to Claim a Tax Refund for Returned Products

***Explanation:** Each state’s statute of limitations differs as to when it begins for a seller to obtain a refund of tax paid for products returned by a customer. It can be based on:*

- *The due date of the tax return on which the tax was required to be reported by the seller to the state;*
- *The date the tax on the sale was due by the seller to the state;*
- *The date the tax was remitted to the state or the due date of the tax return, whichever is later;*
- *The date the customer returns the product (such as a rescission of sale) to the seller and receives the refund from the seller.*

Example 5.2

- Seller is located in your State and makes a \$100 sale on January 21, 2016, of one product.
- Customer takes possession of the product in your State on the date of the sale.
- The transaction is subject to a 6% sales tax, including any applicable local sales taxes.
- Seller collects \$106 from the customer.
- Seller reports the \$100 sale and remits the \$6 in sales tax owed to the state and local jurisdiction on its January tax return which was due on February 20, 2016, but was filed with and submitted to the state on February 21, 2016.
- Customer returns the product on March 25, 2016, and receives a full refund of the purchase price (\$100) and sales tax paid to Seller (\$6).
- The Seller makes a request for a refund/credit of the \$6 in tax with your State after having refunded the sales tax to the customer.

Disclosed Practice 5.2 - When does your state’s statute of limitations begin for a seller to obtain a refund of tax paid for products returned by a customer?

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Post Transaction 5.2.A. - It begins on the due date of the tax return on which the tax was required to be reported by the seller to the state (February 20, 2016, in Example 5.2 above).

Post Transaction 5.2.B. - It begins on the date the tax on the sale was due by the seller to the state (February 20, 2016, in Example 5.2 above).

Post Transaction 5.2.C. - It begins on the date the tax was remitted to the state or the due date of the tax return, whichever is later (February 21, 2016, in Example 5.2 above).

Post Transaction 5.2.D. – It begins on the date the customer returns the product (such as a rescission of sale) to the seller and receives the refund from the seller (March 25, 2016, in Example 5.2 above).

Post Transaction 5.2.E. - Other – If the state’s answers to 5.2.A. – 5.2.D. were all “no”, check “yes” and explain when the statute of limitations for a seller’s claim begins in the comments section.

Disclosed Practice 5.3 – Statute of Limitations for a Seller to Claim a Tax Refund

Explanation: Most states have either a three- or four-year statute of limitations for refunds related to when a seller can obtain a refund of tax paid for products returned by a customer.

Disclosed Practice 5.3 –How long is your state’s statute of limitations time period for a seller to claim a tax refund on products returned by a customer?

Post Transaction 5.3.A. - A three-year statute of limitations (that begins based on the state’s response in 5.2) for a seller to make a refund request to the state.

Post Transaction 5.3.B. - A four-year statute of limitations (that begins based on the state’s response in 5.2) for a seller to make a refund request to the state.

Post Transaction 5.3.C.- If the answers to both 5.3.A. and 5.3.B., were “no” indicate “yes” and provide your state’s time period for a seller to make a refund request to the state in the comments section.

Disclosed Practice 5.4 – Documentation to Prove Refund of Tax to Customer

Explanation: States differ on what records are required to be retained to prove tax was paid by the customer and refunded to the customer. The seller retains information that identifies the product purchased, the date purchased, the tax collected, the product returned, the date returned and the tax refunded to the customer. Note: A state’s answer

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to this question does not impact the use of sampling, as authorized by the state, in an audit to ascertain liability.

Disclosed Practice 5.4 - Will your state accept the seller's electronic sales receipts *that identify the product purchased, the date purchased, the tax collected, the product returned, the date returned and the tax refunded to the customer* as sufficient documentation to prove that a customer paid tax?

Disclosed Practice 5.5 – Credit on Tax Return, Subsequent Tax Return or Refund Claim

Explanation: *States differ on how they will allow a seller to claim credit for tax refunded to its customers. If the product return was made prior to the tax return being filed, some states will allow a credit on the tax return. Some states, subject to a state's statute of limitations, will allow a credit to be claimed on a subsequent tax return filed by a seller, while other states may require or allow a seller to file an amended tax return/refund claim to claim a credit.*

Disclosed Practice 5.5 – How does a seller obtain a refund of tax refunded to their customer?

Example 5.5.A.

- Seller is located in your State and sells a product for \$100 on January 21, 2016.
- Customer takes possession of the product at the seller's location on the date of the sale.
- The transaction is subject to a 6% sales tax, including any applicable local sales taxes.
- Seller collects \$106 from the customer.
- Customer returns the product to the seller at the seller's location on February 7, 2016, and receives a full refund of the purchase price and sales tax paid to the seller.
- The January tax return is due on February 20, 2016.

Post Transaction 5.5.A. – Does your state allow a seller to take a credit (or net) on its tax return to report the original sale if the product was returned prior to the seller filing that tax return?

(Note: A "Yes" answer means the seller could take a credit (or net) on the January return. If this is required, state that in the comments section.)

Example 5.5.B.

- Seller is located in your State and sells a product for \$100 on January 21, 2016.
- Customer takes possession of the product at the seller's location on the date of the sale.

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- The transaction is subject to a 6% sales tax, including any applicable local sales taxes.
- Seller collects \$106 from the customer.
- Customer returns the product to the seller at the seller's location on May 10, 2016, and receives a full refund of the purchase price and sales tax paid to the seller.

Post Transaction 5.5.B. - Subject to the state's statute of limitations, does your state allow a seller to take a credit (or net) during the reporting period when the product was returned (May 10) if the product is returned in a different reporting period than the original sale?

(Note: a "Yes" answer means the seller could take a credit (or net) on the May return. If this is required, state that in the comments section.)

Example 5.5.C.

- Seller is located in your State and sells a product for \$100 on January 21, 2016.
- Customer takes possession of the product at the seller's location on the date of the sale.
- The transaction is subject to a 6% sales tax, including any applicable local sales taxes.
- Seller collects \$106 from the customer.
- Customer returns the product to the seller at the seller's location on May 10, 2016, and receives a full refund of the purchase price and sales tax paid to the seller.
- The January tax return is due on February 20, 2016.

Post Transaction 5.5.C. – Subject to the state's statute of limitations, does your state allow the seller to file an amended tax return and/or refund claim when the product is returned after the seller filed its tax return to the state to report the original sale?

(Note: a "Yes" answer means the seller could file an amended January return or refund claim. If this is required, state that in the comments section.)

Disclosed Practice 5.6 – Single Transaction for a Refund with Netting for Additional Required Charges

Explanation: Some states have a general requirement that a seller must provide a customer with a full refund of the sales price and associated tax of the product returned. Other states will allow sellers to net a refund for additional charges (e.g. restocking/return fees) required to make the return (with any applicable tax on those charges being required to be collected and remitted by the seller).

Disclosed Practice 5.6 – May the seller process the refund and additional charges in one transaction on a single invoice?

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Post Transaction 5.6.A.- Does your state allow the seller to obtain a refund from the state if the seller subtracts from the original sales price any charges imposed by the seller to make a return (understanding the tax must be collected on any taxable charges)? If your state has exceptions note those exceptions in the comments section.

Post Transaction 5.6.B.- If the answer to 5.6.A was “no,” does your state allow the seller to obtain a refund from the state if it provides a full refund, including the tax, but subsequently imposes any service charges (and imposing any applicable tax) to the customer as a separate transaction on a separate invoice?

Disclosed Practice 5.7 - Taxability of Return Fees

Disclosed Practice 5.7 – Are restocking or return fees taxable in your state?

Post Transaction 5.7.A. – Does your state impose tax on restocking fees or return fees that are not directly associated with the use of a returned product?

Post Transaction 5.7.B. – Does your state impose tax on a charge for the use (e.g. wear and tear) of a product?

Disclosed Practice 5.8 - Cash/Credit Refund versus Store Credit

***Explanation:** Some sellers, when accepting a returned product will not provide cash or credit to a customer’s credit card or debit card based on seller’s return policies. Instead, a store gift card/voucher is provided for the entire purchase amount, including tax.*

Disclosed Practice 5.8. Does your state treat the refund in the form of store credit the same as a cash refund for returned products?

Disclosed Practice 5.9 - Simultaneous Return and Sale

***Explanation:** This disclosed practice addresses whether a state will allow a seller to claim credit (or net) for a returned product with a simultaneous purchase of another product in a single transaction.*

Example 5.9.A.

- Seller is located in your State and sells a product for \$100.
- The transaction is subject to a 6% tax, including any applicable local taxes.
- Seller collects \$106 from the customer.
- Customer later returns the product and simultaneously purchases another product for \$150, subject to a 6% tax, including any applicable local taxes; and
- Seller collects \$53 from the customer and remits \$3 of tax to the state.

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Disclosed Practice 5.9.A. - Does your state allow the seller to only collect and remit the additional tax on the price difference of a returned product when the replacement product costs more? **If no, explain in the comments section.**

Example 5.9.B.

- Seller is located in your State and sells a product for \$100.
- The transaction is subject to a 6% tax, including any applicable local taxes.
- Seller collects \$106 from the customer.
- Customer later returns the product and simultaneously purchases another product for \$50, subject to a 6% tax, including any applicable local taxes; and
- Seller refunds \$53 to the customer and requests \$3 tax refund from the state.

Disclosed Practice 5.9.B. - Does your state allow the seller to obtain a refund from the state for the price difference of a returned product when the replacement product costs less? **If no, explain in the comments.**

Disclosed Practice 5.10 - Refund Pending State Approval

***Explanation:** After completing a transaction and reporting and paying that tax on the transaction to the state, a seller may be notified by a customer that a transaction was not taxable. Seller will not refund tax to the customer until the state approves the seller's refund request.*

Disclosed Practice 5.10.A. - Will your state refund or credit a seller for tax erroneously collected and remitted to the state prior to the seller refunding the customer the tax if the seller does not have a written agreement to refund the tax to the customer?

Disclosed Practice 5.10.B. - If you answered "no" to disclosed practice 5.10.A., if the seller has a written agreement that it will refund the tax to the customer if the state approves the refund, will your state refund or credit a seller for tax erroneously collected and remitted to the state prior to the seller refunding the customer the tax?

Disclosed Practice 5.10.C. - Does your state require the seller to refund the tax to the customer prior to obtaining a refund from the state?

Disclosed Practice 5.11 - Seller Refund When Customer Did Not Pay Tax

***Explanation:** The seller paid tax to the state prior to receiving payment from the customer. The customer subsequently refuses to pay the tax. The transaction is not subject to tax. Seller files for a refund, providing the customer's reasons for why the tax is not owed.*

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Disclosed Practice 5.11

Can the seller, who remitted the tax to the state, obtain a refund of the tax paid to the state if the customer refuses to pay the tax because the customer correctly asserted the transaction was exempt under the state's laws?

Disclosed Practice 5.12 - Returned Product to Seller in Another State

Explanation: Customer buys a product sourced to State A and returns the product to seller's location in State B. Seller at location in State B refunds full amount of State A's tax to the customer and claims a refund with State A for the tax.

Disclosed Practice 5.12 - The customer has the original sales receipt indicating your state's tax was charged. If the product is returned in another state, will your state allow the seller to claim the refund of the tax paid to your state?

Disclosed Practice 5.13 - Returned Product to Seller in Another Local Jurisdiction Within the Same State

Explanation: Customer buys a product sourced to Local Jurisdiction X in State A and returns the product in Local Jurisdiction Y in State A. The seller refunds the full amount of Local Jurisdiction X and State A's tax to the customer and claims a refund for the local and state tax paid to State A.

Disclosed Practice 5.13 - The customer has the original sales receipt indicating the tax was charged for a local jurisdiction in your state. The product is returned in your state in a different local jurisdiction. Does your state require the seller to claim the refund of the tax paid to the original local jurisdiction? If the state has no local jurisdictions, enter NA in the comment section.

Disclosed Practice 5.14 - Returned Product with No Receipt

Explanation: Some sellers allow customers to return a product without a receipt. Seller has no idea where product was originally purchased (both location and seller). In that situation, sellers' policy is to provide a credit for the product based on the returned product's current selling price in the store, plus the tax rate at that store.

Disclosed Practice 5.14 - If a seller refunds tax to a customer, without a receipt, using the tax rate at the store where the return was made and the price of the returned product at the store at that time, will your state allow the seller to receive a refund or credit of this tax from the state? Note in the comments section any special documentation the seller needs to provide the state.

Disclosed Practice 5.15 - Customer Directly Filing for a Refund

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Explanation: Sometimes a customer either cannot find the seller or the seller refuses to file a tax refund claim on behalf of the customer. In that situation, a customer wants to file a tax refund claim directly with the state. The states' procedures on whether they will refund the tax to the customer vary.

Disclosed Practice 5.15.A. - Does the state give customers the option to request a tax refund directly from the state (*i.e.*, the customer is not required to make the request through the seller)? Note any special requirements that may apply, such as minimum dollar thresholds, in the comment section.

Disclosed Practice 5.15.B. - If the answer to disclosed practice 5.15.A was "no," does the state allow a customer to obtain a tax refund from the state when the seller cannot be found or refuses to refund the tax to a customer? If "yes", provide details in the comment section.

I. (AM17007A01) - This amendment created Disclosed Practice 6 and was approved by the SSTGB on May 11, 2017. No state is required to make a statutory change relating to this amendment and therefore this change did not require a second vote. Each state was required to update their online taxability matrix to indicate the treatment of this disclosed practice in their state by the first day of the calendar month that is at least 60 days from when it was approved. Therefore each state had until August 1, 2017 to complete this update.

Summary of amendment - This amendment created Disclosed Practice 6 relating to tax administration practices with respect to Voluntary Disclosure Agreements.

Background:

A seller considering registering with a state for sales and use tax may have identified a possible past sales and use tax liability in that state. The seller has started the process of entering into a voluntary disclosure agreement (VDA) with your states to address any potential past liability. Although in many cases these sellers want to register and start collecting the appropriate sales and use taxes as soon as possible, it is concerned that registering may adversely affect the VDA it is working on with the that state.

The purpose of these disclosed practices is to assist sellers in determining the earliest date the seller may register without that registration adversely impacting the outcome of the VDA(s).

Disclosed Practice 6.1 – Determining the Earliest Possible Date to Register Without It Adversely Affecting a Voluntary Disclosure Agreement

6.1.a. A seller's registration prior to the seller (or its representative) submitting the state's voluntary disclosure agreement (VDA) application will adversely affect the seller's VDA with the state.

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6.1.b. A seller's registration after the seller (or its representative) submits the state's voluntary disclosure agreement (VDA) application, but before either the seller or the state signs the actual VDA will adversely affect the VDA with the state.

6.1.c. A seller's registration after the state signs the voluntary disclosure agreement (VDA) but before the seller signs the VDA will adversely affect the VDA.

II. Rule Amendments

A. (RP17002) This amendment repeals SSTGB Rule 603 – Small Seller Exemption since it is obsolete. The amendment was adopted by the SSTGB on October 11, 2017. No state is required to make a statutory change relating to this amendment and therefore this change did not require a second vote. This amendment was effective upon its passage.

Summary of amendment - This was brought forth by North Dakota on behalf of the Executive Director to repeal Rule 603 since it is obsolete.

B. (RP17001) This amendment revises SSTGB Rule 807.1 – Open Meetings and was adopted by the SSTGB on May 10, 2017. No state is required to make a statutory change relating to this amendment and therefore this change did not require a second vote. This amendment was effective upon its passage.

Summary of amendment - This amendment was brought forth by Utah to amend Section 807.1 of the SSUTA to only require roll call votes on teleconferenced meetings if the vote is not unanimous or a Governing Board delegate requests a roll call vote. The changes from the prior version are shown using underlining and ~~strikeouts~~.

Rule 807.1 – Open Meetings

A. Definitions (Unchanged text omitted)

B. Required open and public meetings

1. General Rule. Pursuant to Section 807 of the Streamlined Sales and Use Tax Agreement and Articles Six and Seven of the Bylaws, all meetings of the Governing Board or a Governing Board committee shall be open and public, unless a closed meeting is specifically provided for in the Agreement, and all persons shall be permitted to attend any meeting of the Governing Board or a Governing Board committee except as otherwise provided in this rule.

2. Teleconference Meetings. Nothing in this rule shall be construed to prohibit the Governing Board or a Governing Board committee from holding an open or closed meeting by teleconference, subject to all of the following:

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- a. the teleconferencing meeting shall comply with all requirements of this rule applicable to other meetings;
- b. the portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting;
- c. each public teleconference location shall be identified in the notice of the meeting and shall be accessible to the public;
- d. all votes taken during a teleconferenced meeting may be by voice vote. If a voice vote is not unanimous or if a delegate of the Governing Board requests a roll call vote, a ~~shall be by~~ roll call vote shall be taken;
- e. at least one member of the Governing Board or Governing Board committee or of an employee of the Governing Board or a Member State shall be physically present at the location specified in the notice of the meeting; and
- f. members of the public shall be allowed to participate in open meetings via teleconference.

3. Teleconference Definition. For the purposes of this section, “teleconference” means a conference of individuals in different locations, connected by electronic means, through either audio or video, or both.

C. (RP16004) This amendment revises SSTGB Rule 809 – Sanctions and was adopted by the SSTGB on May 10, 2017. No state is required to make a statutory change relating to this amendment and therefore this change did not require a second vote. This amendment was effective upon its passage.

Summary of amendment - This amendment was brought forth by Kentucky to amend Section 809 of the SSUTA relating to sanctions. The changes from the prior version are shown using underlining and ~~strikeouts~~.

Rule 809 – Sanction of Member States

A. Executive Committee to Consider Sanctions

If the Governing Board finds a member state is out of compliance with the Agreement, the Executive Committee shall, using its discretion, consider what sanctions should be recommended to the Governing Board pursuant to the procedures set out in this rule.

B. Stay of Consideration of Sanctions

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1. If a member state files a petition for reconsideration pursuant to Rule 1001, the Executive Committee shall stay consideration of sanctions for those findings of noncompliance for which the member state has filed the petition.
2. If the Governing board confirms a state is out of compliance under Rule 1001, the Executive Committee shall consider what sanctions, if any, should be recommended to the Governing Board pursuant to the procedures set out in this rule in light of any sanctions already imposed.

C. Notice and Comments

Within 30 days after the notice provided for in Section 805.1 is sent by the Executive Director, the Executive Committee shall provide a 30-day public comment period during which written comments may be submitted to the Executive Committee. All comments received by the Executive Committee shall be posted on the Governing Board website.

D. Public Meeting

No sooner than 10 days after the close of the public comment period, the Executive

Committee shall hold a public meeting, which may be by teleconference pursuant to Rule 807.1(B)(2), convened in accordance with Rule 807 to determine the recommendation regarding sanctions to be made to the Governing Board. If a member of the Executive Committee represents the member state that has been found by the Governing Board to be out of compliance, that committee member shall not vote on the recommendation. The meeting shall provide an opportunity for public comments. The subject state shall be afforded an opportunity to be heard by the Committee at such meeting.

E. Possible Recommendation

1. In arriving at a recommendation for sanction(s), the Executive Committee shall consider the following factors and may consider other factors:

- (a) the requirement(s) of the Agreement with which the state is out of compliance;
- (b) the resulting additional burden the noncompliance places on sellers and purchasers, as applicable;
- (c) whether the noncompliance is the result of a newly identified issue with a requirement of the Agreement;
- (d) whether the noncompliance is the result of an action by the state or its local jurisdictions;

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- (e) the length of time the state has been out of compliance with a requirement of the Agreement;
- (f) any efforts taken by the subject state to address the noncompliance;
- (g) any increase in the number of noncompliance issues the subject state has with the Agreement; and
- (h) any actions which will be required to address the noncompliance.

2. Recommendations which may be made by the Executive Committee include, but are not limited to:

- (a) No sanction being imposed;
 - (b) Suspension of the subject state's right to vote on amendments to the Agreement;
 - (c) Suspension of the subject state's right to vote to determine if a petitioning state is in compliance with the Agreement;
 - (d) Suspension of the subject state's right to vote on any matter which may come before the Governing Board;
 - (e) Suspension of the subject state's right to have any delegates serve on the Governing Board;
 - (f) Alteration of the state's membership to Associate Member status; or
 - (g) Expulsion from membership in the Agreement.
3. If an issue of noncompliance remains from a prior year, the Executive Committee shall consider whether the sanction for that issue of noncompliance will increase.

F. Written Recommendation

1. When a recommendation is made by the Executive Committee, it shall issue a written report which shall provide the Committee's rationale for its recommendation. If there are multiple sanctions recommended, the Committee shall identify which sanction or sanctions, if any, would be removed if a particular instance of noncompliance is corrected.
2. The Executive Committee shall issue a written recommendation within 90 days after the public meeting provided for in subsection (D) of this rule.

G. A copy of the recommendation shall be sent to the subject state and the Governing Board delegates of each member state. The recommendation shall be posted on the Governing Board's website.

H. Agenda

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Sanctions recommended by the Executive Committee shall be placed on the agenda of the Governing Board for the next regular or special meeting for which there is sufficient time for the required notice to be given.

I. Governing Board Action

1. At a meeting where a recommendation of the Executive Committee for a sanction is on the agenda, the Governing Board shall:

- (a) impose a sanction recommended by the Executive Committee;
- (b) impose a different sanction;
- (c) defer any action on imposition of a sanction until a date certain; or (d) decide not to impose a sanction.

2. If a sanction is imposed, the Governing Board shall specifically identify in writing:

- (a) the corrective action(s) the member state must take to have the sanction(s) removed; and
- (b) the person(s) who will verify and document that the member state has completed the corrective action(s);

3. When the member state has completed the required actions, which have been verified by the person(s) identified in subsection 2.(b), the sanction imposed by the Governing Board with respect to that issue shall be lifted.

J. Effective Date of Sanction

The Governing Board shall determine the effective date of any sanction it imposes. The effective date may be conditional which would result in the sanction being imposed only if the subject state fails to come into compliance by a date certain.

K. Review of Sanctions for Continued Noncompliance

If a member state remains out of compliance with the same requirement of the Agreement after the next annual recertification process under section 803, the Executive Committee shall reconsider potential sanctions and make a recommendation to the Governing Board pursuant to the procedures set out in this rule.

L. Publication of Decision

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The Executive Director shall notify the subject state and each member state's Governing Board delegates in writing when the Governing Board renders a decision to impose or lift a sanction. A copy of any such decision shall be posted on the subject state's and the Governing Board's website.

Section III. Other Guidance Updated

A. Streamlined Sales and Use Tax Agreement – Certificate of Exemption (F0003) was revised and approved on May 10, 2017. The revised exemption certificate is to be used beginning January 1, 2018. No state was required to make a statutory change related to the updating of this document and therefore this change did not require a second vote.

Summary of Change: The Streamlined Sales and Use Tax Certificate of Exemption (Form F0003) to be used beginning January 1, 2018 was revised to split item F (Religious and Educational organization) under the “Reason for exemption” section into two separate items since some states provide an exemption for one but not both of these types of organizations. The change results in item F. under the “Reason for exemption” being labeled “Religious organization #” and a new item M. being added that is labeled “Educational organization #.”

The revised Streamlined Sales and Use Tax Certificate of Exemption can be found at: <http://www.streamlinedsalestax.org/uploads/downloads/Forms/F0003%20Exemption%20Certificate%20Revised%205-2017%20for%20use%20beginning%201-1-2018.pdf>.