STREAMLINED SALES AND USE TAX AGREEMENT

Adopted November 12, 2002 and amended through May 19, 2011

(Amended November 19, 2003, November 16, 2004, April 16, 2005, October 1, 2005, January 13, 2006, April 18, 2006, August 30, 2006, December 14, 2006, June 23, 2007, September 20, 2007, December 12, 2007, April 2, 2008, June 18, 2008, September 5, 2008, December 6, 2008, February 26, 2009, May 12, 2009, September 30, 2009, December 17, 2009, March 31, 2010, April 30, 2010, August 17, 2010, October 7, 2010, November 8, 2010, December 13, 2010, and May 19, 2011)

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ARTICLE I

PURPOSE AND PRINCIPLE

Section 101: TITLE

This multistate Agreement shall be referred to, cited, and known as the Streamlined Sales and Use Tax Agreement.

Section 102: FUNDAMENTAL PURPOSE

It is the purpose of this Agreement to simplify and modernize sales and use tax administration in the member states in order to substantially reduce the burden of tax compliance. The Agreement focuses on improving sales and use tax administration systems for all sellers and for all types of commerce through all of the following:

A. State level administration of sales and use tax collections.

B. Uniformity in the state and local tax bases.

C. Uniformity of major tax base definitions.

D. Central, electronic registration system for all member states.

E. Simplification of state and local tax rates.

F. Uniform sourcing rules for all taxable transactions.

G. Simplified administration of exemptions.

H. Simplified tax returns.

I. Simplification of tax remittances.

J. Protection of consumer privacy.

Section 103: TAXING AUTHORITY PRESERVED

This Agreement shall not be construed as intending to influence a member state to impose a tax on or provide an exemption from tax for any item or service. However, if a member state chooses to tax an item or exempt an item from tax, that state shall adhere to the provisions concerning definitions as set out in Article III of this Agreement.

Section 104: DEFINED TERMS

This Agreement defines terms for use within the Agreement and for application in the sales and use tax laws of the member states. The definition of a term is not intended to influence the interpretation or application of that term with respect to other tax types.

An alphabetical list of all the terms defined in the Agreement and their location in the Agreement is found in Appendix B of this Agreement, the Index of Definitions. Terms defined for use within this Agreement are set out in Article II of the Agreement. Many of the uniform definitions for application in the sales and use tax laws of the member states are set out in Appendix C of this Agreement, the Library of Definitions. Definitions that are not set out in Appendix C are defined when applied in a particular section of the Agreement and are set out in that section of the Agreement. The appendices have the same effect as the Articles in the Agreement.

Section 105: TREATMENT OF VENDING MACHINES

The provisions of the Agreement do not apply to vending machines sales. The Agreement does not restrict how a member state taxes vending machine sales.

ARTICLE II

DEFINITIONS

The following definitions apply in this Agreement:

Section 201: AGENT

A person appointed by a seller to represent the seller before the member states.

Section 202: CERTIFIED AUTOMATED SYSTEM (CAS)

Software certified under the Agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

Section 203: CERTIFIED SERVICE PROVIDER (CSP)

An agent certified under the Agreement to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

Section 204: ENTITY-BASED EXEMPTION

An exemption based on who purchases the product or who sells the product. An exemption that is available to all individuals shall not be considered an entity-based exemption.

Compiler's note: On October 1, 2005 Section 204 was amended by adding the second sentence. Each member state shall comply with the October 1, 2005 amendment to this section no later than January 1, 2008.

Section 205: MODEL 1 SELLER

A seller registered under the Agreement that has selected a CSP as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

Compiler's note: On September 30, 2009 Section 205 was amended by adding "registered under the Agreement" after the first "seller." The amendment became effective upon its adoption.

Section 206: MODEL 2 SELLER

A seller registered under the Agreement that has selected a CAS to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

Compiler's note: On September 30, 2009 Section 206 was amended by adding "registered under the Agreement" after the first "seller." The amendment became effective upon its adoption.

Section 207: MODEL 3 SELLER

A seller registered under the Agreement that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system.

Compiler's note: On September 30, 2009 Section 207 was amended by adding "registered under the Agreement" after the first "seller." The amendment became effective upon its adoption.

Section 207.1: MODEL 4 SELLER

A seller that is registered under the Agreement and is not a Model 1 Seller, a Model 2 Seller or a Model 3 Seller.

Compiler's note: On September 30, 2009 Section 207.1 was adopted and became effective upon its adoption.

Section 208: PERSON

An individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

Section 209: PRODUCT-BASED EXEMPTION

An exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.

Section 210: PURCHASER

A person to whom a sale of personal property is made or to whom a service is furnished.

Section 211: REGISTERED UNDER THIS AGREEMENT

Registration by a seller with the member states under the central registration system provided in Article IV of this Agreement.

Section 212: SELLER

A person making sales, leases, or rentals of personal property or services.

Compiler's note: The Governing Board issued an interpretation of Section 212 on April 2, 2008. That interpretation can be found in the Library of Interpretations.

Section 213: STATE

Any state of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Compiler's note: On April 18, 2006 Section 213 was amended as follows: "Any state of the United States, ~~and~~ the District of Columbia and the Commonwealth of Puerto Rico." The amendment to this section became effective upon adoption.

Section 214: USE-BASED EXEMPTION

An exemption based on a specified use of the product by the purchaser.

Compiler's note: On October 1, 2005 Section 214 was amended as follows: "An exemption based on a specified use of the product by the purchaser~~'s use of the product~~." Each member state shall comply with the October 1, 2005 amendment to this section no later than January 1, 2008.

ARTICLE III

REQUIREMENTS EACH STATE MUST ACCEPT TO PARTICIPATE

Section 301: STATE LEVEL ADMINISTRATION

A. Each member state shall provide state level administration of sales and use taxes subject to the Agreement. The state level administration may be performed by a member state's Tax Commission, Department of Revenue, or any other single entity designated by state law. Sellers and purchasers are only required to register with, file returns with, and remit funds to the state level authority. The state level authority of a member state shall provide for collection of any local taxes and distribution of them to the appropriate taxing jurisdictions. The state level authority shall conduct, or others may be authorized to conduct on its behalf, subject to the provisions of subsection B, all audits of the sellers and purchasers for that state's tax and the tax of its local jurisdictions. Except as provided herein, local jurisdictions shall not conduct independent sales or use tax audits of sellers and purchasers.

B. If authorized by its state law, nothing in this section prohibits the state level authority from authorizing audits of taxpayers to be conducted or performed by others on behalf of the state level authority so long as: (1) the person is conducting the audit for all taxes due and not just for taxes due to a specific local taxing jurisdiction, (2) the person is subject to the same confidentiality provisions (and other protections afforded to a taxpayer) as a person working for the state level authority, (3) absent fraud, a refund claim filed subsequent to the audit that covers part of the audit period or mutual consent, the audit does not cover an audit period already conducted by the state level authority or another person acting on its behalf and (4) the audit is subject to the same administrative and appeal procedures granted to audits conducted by the state level authority.

Compiler's note: On April 30, 2010 Section 301 was amended by adding subsection B and amending the first subsection as follows:

<u>A.</u> Each member state shall provide state level administration of sales and use taxes <u>subject to the Agreement</u>. The state level administration may be performed by a member state's Tax Commission, Department of Revenue, or any other single entity designated by state law. Sellers <u>and purchasers</u> are only required to register with, file returns

with, and remit funds to the state level authority. ~~Each~~ The state level authority of a member state shall provide for collection of any local taxes and distribution of them to the appropriate taxing jurisdictions. ~~Each member~~ The state level authority shall conduct, or ~~authorize~~ others may be authorized to conduct on its behalf, subject to the provisions of subsection B, all audits of the sellers and purchasers ~~registered under the Agreement~~ for that state's tax and the tax of its local jurisdictions.~~,~~ Except as provided herein, ~~and~~ local jurisdictions shall not conduct independent sales or use tax audits of sellers and purchasers ~~registered under the Agreement~~.

This amendment became effective upon its adoption.

Section 302: STATE AND LOCAL TAX BASES

The tax base for local jurisdictions shall be identical to the state tax base unless otherwise prohibited by federal law. This section does not apply to sales or use taxes levied on fuel used to power motor vehicles, aircraft, locomotives, or watercraft, or to electricity, piped natural or artificial gas or other fuels delivered by the seller and the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

Compiler's note: On December 13, 2010 Section 302 was amended as follows:

~~Through December 31, 2005, if a member state has local jurisdictions that levy a sales or use tax, all local jurisdictions in the state shall have a common tax base. After December 31, 2005, the~~ The tax base for local jurisdictions shall be identical to the state tax base unless otherwise prohibited by federal law. This section does not apply to sales or use taxes levied on fuel used to power motor vehicles, aircraft, locomotives, or watercraft, or to electricity, piped natural or artificial gas or other fuels delivered by the seller and the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

Section 303: SELLER REGISTRATION

Each member state shall participate in an online sales and use tax registration system in cooperation with the other member states. Under this system:

A. A seller registering under the Agreement shall be registered in each of the member states.

B. A model 2, model 3, or model 4 seller may elect to be registered in one or more states as a seller which anticipates making no sales into such state(s) if it has not had sales into such state(s) for the preceding 12 months. Such election does not relieve the seller of its agreement pursuant to Section 401 (B) to collect taxes on all sales into such states or its liability for remitting to the proper states any taxes collected.

C. The member states agree not to require the payment of any registration fees or other charges for a seller to register in a state in which the seller has no legal requirement to register.

D. A written signature from the seller is not required.

E. An agent may register a seller under uniform procedures adopted by the member states.

F. A seller may cancel its registration under the system at any time under uniform procedures adopted by the governing board. Cancellation does not relieve the seller of its liability for remitting to the proper states any taxes collected.

G. Nothing in this section shall be construed to relieve a seller of any legal obligation it may have under a state's laws to register in that state or its obligation to collect and remit taxes for at least thirty-six months in a state and meet all other requirements for amnesty set out in Section 402 of this Agreement in order to be eligible for amnesty in such state.

H. Whenever a state joins the Agreement, sellers registered under the Agreement shall be registered in the new state as follows:

1. Model 1 sellers will be automatically registered in such state.

2. Model 2, model 3 and model 4 sellers will be automatically registered in the new state but may elect to be registered as a seller which anticipates making no sales into the new state.

I. Upon registration, the governing board shall provide to the seller information regarding the requirements and options for filing a simplified electronic return and for filing remittances in any member state. Member states may provide information to sellers concerning other tax return filing options in that state.

J. The governing board shall cause the system for registering under the Agreement to include a feature that allows sellers registered under the Agreement to update relevant registration data in the system and have such updated data provided to all member states. The governing board shall establish conditions and procedures to allow states which are not members of the Agreement to participate in the registration system.

K. The provisions of Subsections B and H of this section shall become effective on January 1, 2010.

Compiler's note: On September 30, 2009 Section 303 was amended by deleting "is" and inserting "shall be" in subsection A, the addition of a new subsection B, renumbering the preexisting B, C, D and E, and the addition of subsections G, H, I, J, and K. This amendment became effective upon its adoption.

Section 304: NOTICE FOR STATE TAX CHANGES

A. Each member state shall lessen the difficulties faced by sellers when there is a change in a state sales or use tax rate or base by making a reasonable effort to do all of the following:

1. Provide sellers with as much advance notice as practicable of a rate change.
2. Limit the effective date of a rate change to the first day of a calendar quarter.
3. Notify sellers of legislative changes in the tax base and amendments to sales and use tax rules and regulations.

B. Failure of a seller to receive notice or failure of a member state to provide notice or limit the effective date of a rate change shall not relieve the seller of its obligation to collect sales or use taxes for that member state.

C. Each member state failing to provide for at least thirty days between the enactment of the statute providing for a rate change and the effective date of such rate change shall relieve the seller of liability for failing to collect tax at the new rate if:

1. the seller collected tax at the immediately preceding effective rate; and
2. the seller's failure to collect at the newly effective rate does not extend beyond thirty days after the date of enactment of the new rate.

D. Notwithstanding subsection C, if the member state establishes the seller fraudulently failed to collect at the new rate or solicits purchasers based on the immediately preceding effective rate this relief does not apply.

E. Member states may provide for relief of liability for failing to collect tax as a result of a tax change beyond the liability relief required by subsection C.

Compiler's note: On September 5, 2008 Section 304 was amended by the addition of subsection C, D and E. This amendment became effective upon its adoption.

Section 305: LOCAL RATE AND BOUNDARY CHANGES

Each member state that has local jurisdictions that levy a sales or use tax shall:

A. Provide that local rate changes will be effective only on the first day of a calendar quarter after a minimum of sixty days' notice to sellers.

B. Apply local sales tax rate changes to purchases from printed catalogs wherein the purchaser computed the tax based upon local tax rates published in the catalog only on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to sellers.

C. For sales and use tax purposes only, apply local jurisdiction boundary changes only on the first day of a calendar quarter after a minimum of sixty days' notice to sellers.

D. Provide and maintain a database that describes boundary changes for all taxing jurisdictions. This database shall include a description of the change and the effective date of the change for sales and use tax purposes.

E. Provide and maintain a database of all sales and use tax rates for all of the jurisdictions levying taxes within the state. For the identification of states, counties, cities, and parishes, codes corresponding to the rates must be provided according to Federal Information Processing Standards (FIPS) as developed by the National Institute of Standards and Technology. For the identification of all other jurisdictions, codes corresponding to the rates must be in the format determined by the governing board.

F. Provide and maintain a database that assigns each five digit and nine digit zip code within a member state to the proper tax rates and jurisdictions. The state must apply the lowest combined tax rate imposed in the zip code area if the area includes more than one tax rate in any level of taxing jurisdictions. If a nine digit zip code designation is not available for a street address or if a seller or CSP is unable to determine the nine digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or CSP may apply the rate for the five digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or CSP has exercised due diligence if the seller has attempted to determine the nine digit zip code

designation by utilizing software approved by the governing board that makes this designation from the street address and the five digit zip code applicable to a purchase.

G. Have the option of providing address-based boundary database records for assigning taxing jurisdictions and their associated rates which shall be in addition to the requirements of subsection (F) of this section. The database records must be in the same approved format as the database records pursuant to subsection (F) of this section and must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act (4 U.S.C.A. Sec. 119(a)). The governing board may allow a member state to require sellers that register under this Agreement to use an address-based database provided by that member state. If any member state develops address-based assignment database records pursuant to the Agreement, a seller or CSP may use those database records in place of the five and nine-digit zip code database records provided for in subsection (F) of this section. If a seller or CSP is unable to determine the applicable rate and jurisdiction using an address-based database record after exercising due diligence, the seller or CSP may apply the nine digit zip code designation applicable to a purchase. If a nine-digit zip code designation is not available for a street address or if a seller or CSP is unable to determine the nine digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or CSP may apply the rate for the five digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or CSP has exercised due diligence if the seller or CSP has attempted to determine the tax rate and jurisdiction by utilizing software approved by the governing board that makes this assignment from the address and zip code information applicable to the purchase.

H. States that have met the requirements of subsection (F) may also elect to certify vendor provided address-based databases for assigning tax rates and jurisdictions. The databases must be in the same approved format as the database records pursuant to (G) of this section and must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act (4 U.S.C.A. Sec. 119 (a)). If a state certifies a vendor address-based database, a seller or CSP may use that database in place of the

database provided for in subsection (F) or (G) of this section. Vendors providing address-based databases may request certification of their databases from the governing board. Certification by the governing board does not replace the requirement that the databases be certified by the states individually.

I. Make databases provided pursuant to subsections (E), (F), (G) and (H) available to a seller or CSP by the first day of the month prior to the first day of a calendar quarter. Databases must be in a format approved by the governing board and available on each state's website or other location determined by the governing board.

Compiler's note: On October 1, 2005 the following amendments were made to Section 305:

1. *In Section 305 (F) "or CSP" was added after each "seller." In addition, in two places "~~of a purchaser~~" was replaced with "applicable to a purchase."*
2. *Section 305 (G) was amended as follows: "~~Participate with other member states in the development of an~~ Have the option of providing address-based ~~system~~ database records for assigning taxing jurisdictions and their associated rates which shall be in addition to the requirements of subsection (F) of this section. The ~~system~~ database records must be in the same approved format as the database records pursuant to subsection (F) of this section and must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act ~~(4 U.S.C. Sec. 119)~~ (4 U.S.C.A. Sec.119 (a)). The governing board may allow a member state to require sellers that register under this Agreement to use an address-based ~~system~~ database provided by that member state. If any member state develops ~~an~~ address-based assignment ~~system~~ database records pursuant to the ~~Mobile Telecommunications Sourcing Act~~ Agreement, a seller or CSP may use ~~that system~~ those database records in place of the ~~system~~ five and nine-digit zip code database records provided for in subsection (F) of this section. If a seller or CSP is unable to determine the applicable rate and jurisdiction using an address-based database record after exercising due diligence, the seller or CSP may apply the nine digit zip code designation applicable to a purchase. If a nine-digit zip code designation is not available for a street address or if a seller or CSP is unable to determine the nine digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or CSP may apply the rate for the five digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or CSP has exercised due diligence if the seller or CSP has attempted to determine the tax rate and jurisdiction by utilizing software approved by the governing board that makes this assignment from the address and zip code information applicable to the purchase".*
3. *Section305 (H) was added.*

The amendment to this section became effective upon adoption.

Compiler's note: On June 23, 2007 subsection I was added.

Section 306: RELIEF FROM CERTAIN LIABILITY

Each member state shall relieve sellers and CSPs using databases pursuant to subsections (F), (G) and (H) of Section 305 from liability to the member state and local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or CSP relying on erroneous data provided by a member state on tax rates, boundaries, or taxing jurisdiction assignments. After providing adequate notice as determined by the governing board, a member state that provides an address-based database for assigning taxing jurisdictions pursuant to Section 305, subsection (G) or (H) may cease providing liability relief for errors resulting from the reliance on the database provided by the member state under the provisions of Section 305, subsection (F). If a seller demonstrates that requiring the use of the address-based database would create an undue hardship, a member state and the governing board may extend the relief from liability to such seller for a designated period of time.

Compiler's note: On October 1, 2005 Section 306 was amended as follows: "Each member state shall relieve sellers and CSPs using databases pursuant to subsections (F), (G) and (H) from liability to the member state and local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or CSP relying on erroneous data provided by a member state on tax rates, boundaries, or taxing jurisdiction assignments. After providing adequate notice as determined by the governing board, a ~~A~~ member state that provides an address-based ~~system~~ database for assigning taxing jurisdictions pursuant to Section 305, subsection (G) ~~or pursuant to the federal Mobile Telecommunications Sourcing Act will not be required to provide~~ or (H) may cease providing liability relief for errors resulting from the reliance on the ~~information~~ database provided by the member state under the provisions of Section 305, subsection (F). If a seller demonstrates that requiring the use of the address-based database would create an undue hardship, a member state and the governing board may extend the relief from liability to such seller for a designated period of time."

The amendment to this section became effective upon adoption.

Section 307: DATABASE REQUIREMENTS AND EXCEPTIONS

A. The electronic databases provided for in Section 305, subsections (D), (E), (F), and (G) shall be in a downloadable format approved by the governing board. The databases may be directly provided by the state or provided by a vendor as designated by the state. A database provided by a vendor as designated by a state shall be applicable to and subject

to all provisions of Sections 305, 306 and this section. These databases must be provided at no cost to the user of the database.

B. The provisions of Section 305, subsections (F) and (G) do not apply when the purchased product is received by the purchaser at the business location of the seller.

C. The databases provided by Section 305, subsections (D), (E), (F), and (G) are not a requirement of a state prior to entering into the Agreement. A seller that did not have a requirement to register in a state prior to registering pursuant to this Agreement or a CSP shall not be required to collect sales or use taxes for a state until the first day of the calendar quarter commencing more than sixty days after the state has provided the databases required by Section 305, subsections (D), (E), and (F). Provided, for the initial implementation of the Agreement pursuant to Section 701, a CSP shall be required to collect sales or use taxes for each member state, subject to the provisions of Section 705, pursuant to the terms of the operating agreement entered into between the CSP and the governing board in order to provide adequate time for testing and loading of the databases.

Compiler's note: On October 1, 2005 the following amendments were made to Section 307:
Section 307 (A) was amended by adding the last three sentences.
Section 307 (C) was amended by adding "and (G)" after "(F)," deleting the second sentence (~~The governing board shall establish the effective dates for availability and use of the databases.~~) and adding the last two sentences.
The amendment to this section became effective upon adoption.

Section 308: STATE AND LOCAL TAX RATES

A. No member state shall have multiple state sales and use tax rates on items of personal property or services, except that a member state may impose a single additional rate, which may be zero, on food and food ingredients and drugs as defined by state law pursuant to the Agreement. In addition, if federal law prohibits the imposition of local tax on a product that is subject to state tax, the state may impose an additional rate on such product, provided such rate achieves tax parity for similar products.

B. A member state that has local jurisdictions that levy a sales or use tax shall not have more than one local sales tax rate or more than one local use tax rate per local

jurisdiction. If the local jurisdiction levies both a sales tax and use tax, the local rates must be identical.

C. The provisions of this section do not apply to sales or use taxes levied on fuel used to power motor vehicles, aircraft, locomotives, or watercraft, or to electricity, piped natural or artificial gas, or other fuels delivered by the seller, or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

Compiler's note: On April 18, 2006 Section 308A was amended by deleting "~~after December 31, 2005~~" following "or services" and by adding the second sentence. The amendment to this section became effective upon adoption.

Compiler's note: On December 13, 2010 Section 308C was amended as follows:

C. The provisions of this section do not apply to sales or use taxes levied on fuel used to power motor vehicles, aircraft, locomotives, or watercraft, or to electricity, piped natural or artificial gas, or other ~~heating~~ fuels delivered by the seller, or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

Section 309: APPLICATION OF GENERAL SOURCING RULES AND EXCLUSIONS FROM THE RULES

A. Each member state shall agree to require sellers to source the retail sale of a product in accordance with Section 310 or Section 310.1. Except as provided in Section 310.1, the provisions of Section 310 apply to all sales regardless of the characterization of a product as tangible personal property, a digital good, or a service. Except as otherwise provided in this Agreement, the provisions of Section 310 and Section 310.1 only apply to determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product. These provisions do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions of that use.

B. Sections 310 and 310.1 do not apply to sales or use taxes levied on the following:

1. The retail sale or transfer of watercraft, modular homes, manufactured homes, or mobile homes. These items must be sourced according to the requirements of each member state.
2. The retail sale, excluding lease or rental, of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, as defined in Section 310,

subsection (D). The retail sale of these items shall be sourced according to the requirements of each member state, and the lease or rental of these items must be sourced according to Section 310, subsection (C).

3. Telecommunications services and ancillary services, as set out in Section 315, and Internet access service shall be sourced in accordance with Section 314.
4. Florist sales as defined by each member state. Such sales must be sourced according to the requirements of each member state.
5. The retail sale of products and services qualifying as direct mail shall be sourced in accordance with Section 313.

Compiler's note: On October 1, 2005 Section 309 (B)(4) was amended by deleting 2005 and inserting 2007. The amendment to this section became effective upon adoption.

Compiler's note: On December 14, 2006 Section 309 (b) was amended as follows: "~~Section~~ Sections 310 and 312 ~~does~~ do", and 309 (B) (3) was amended by adding "and ancillary services" following "services" and "and Internet access service" before "shall".

Compiler's note: On June 23, 2007 the date in subsection B 4 was changed from "December 31, 2007" to December 31, 2009."

Compiler's note: On September 5, 2008 Section 309 (B)(4) was amended to delete "Until December 31, 2009," at the beginning of the first sentence and to replace "Prior to this date, these items" at the start of the second sentence with "Such sales." The amendment became effect upon its adoption.

Compiler's note: On October 7, 2010, subsection A was amended by inserting "or Section 310.1" at the end of the first sentence and after "Section 310" in third sentence; the first clause was added in the second and third sentences; and "to all sales" was added after "apply" in the second sentence. In addition, number 5 was added to subsection B. The amendments to this section became effective upon their adoption.

Section 310: GENERAL SOURCING RULES

A. Except as provided in Section 310.1, the retail sale, excluding lease or rental, of a product shall be sourced as follows:

1. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
2. When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the

location indicated by instructions for delivery to the purchaser (or donee), known to the seller.

3. When subsections (A)(1) and (A)(2) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

4. When subsections (A)(1), (A)(2), and (A)(3) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

5. When none of the previous rules of subsections (A)(1), (A)(2), (A)(3), or (A)(4) apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided (disregarding for these purposes any location that merely provided the digital transfer of the product sold).

B. The lease or rental of tangible personal property, other than property identified in subsection (C) or subsection (D), shall be sourced as follows:

1. For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (A). Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different

locations, such as use of business property that accompanies employees on business trips and service calls.

2. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (A).
3. This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

C. The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, as defined in subsection (D), shall be sourced as follows:

1. For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.
2. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (A).
3. This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

D. The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection (A), notwithstanding the exclusion of lease or rental in subsection (A). "Transportation equipment" means any of the following:

1. Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.

2. Trucks and truck-tractors with a Gross Vehicle Weight Rating (GVWR) of 10,001 pounds or greater, trailers, semi-trailers, or passenger buses that are:
    a. Registered through the International Registration Plan; and
    b. Operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.
3. Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.
4. Containers designed for use on and component parts attached or secured on the items set forth in subsections (D)(1) through (D)(3).

Compiler's note: The Governing Board issued an interpretation of Section 310C on April 18, 2006. That interpretation can be found in the Library of Interpretations.

Compiler's note: The Governing Board issued an interpretation of the definition of Section 310A on September 20, 2007. That interpretation can be found in the Library of Interpretations.

Compiler's note: On December 12, 2007 Section 310 (A) was amended as follows: "~~The~~ Except as provided in Section 310.1, the retail sale, excluding lease or rental, of a product shall be sourced as follows:". The amendment was effective upon its adoption.

Section 310.1: ELECTION FOR ORIGIN-BASED SOURCING

A. A member state that has local jurisdictions that levy or receive sales or use taxes may elect to source the retail sale of tangible personal property and digital goods pursuant to the provisions of this section in lieu of the provisions of subsection A (2), (3) and (4) of Section 310 if they comply with all provisions of subsection C of this section and the only exception to Section 310 is the exception provided for in subsection B of this section.

B. A member state may source retail sales, excluding lease or rental, of tangible personal property or digital goods to the location where the order is received by the seller if:
    1. The order is received in the same state by the seller where receipt of the product by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs;

2. Location where receipt of the product by the purchaser occurs is determined pursuant to Section 310A (2), (3) and (4); and
3. At the time the order is received, the recordkeeping system of the seller used to calculate the proper amount of sales or use tax to be imposed captures the location where the order is received.

C. A member state electing to source sales pursuant to this section shall comply with all of the following:

1. When the location where the order is received by the seller and the location where the receipt of the product by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs as determined pursuant to Section 310A (2), (3) and (4) are in different states, the sale must be sourced pursuant to the provisions of Section 310.
2. When the sale is sourced pursuant to this section to the location where the order is received by the seller, only the sales tax for the location where the order is received by the seller may be levied. No additional sales or use tax based on the location where the product is delivered to the purchaser may be levied on that sale. The purchaser shall not be entitled to any refund if the combined state and local rate or rates at the location where the product is received by the purchaser is lower than the rate where the order is received by the seller.
3. A member state may not require a seller to utilize a recordkeeping system which captures the location where an order is received to calculate the proper amount of sales or use tax to be imposed.
4. A purchaser shall have no additional liability to the state for tax, penalty or interest on a sale for which the purchaser remits tax to the seller in the amount invoiced by the seller if such invoice amount is calculated at either the rate applicable to the location where receipt by the purchaser occurs or at the rate applicable to the location where the order is received by the seller. A purchaser may rely on a written representation by the seller as to the location where the order for such sale was received by the seller. When the purchaser does not have a written representation by the seller as to the location where the order for such sale was received by the seller, the purchaser

may use a location indicated by a business address for the seller that is available from the business records of the purchaser that are maintained in the ordinary course of the purchaser's business to determine the rate applicable to the location where the order was received.

5. The location where the order is received by or on behalf of the seller means the physical location of a seller or third party such as an established outlet, office location or automated order receipt system operated by or on behalf of the seller where an order is initially received by or on behalf of the seller and not where the order may be subsequently accepted, completed or fulfilled. An order is received when all of the information from the purchaser necessary to the determination whether the order can be accepted has been received by or on behalf of the seller. The location from which a product is shipped shall not be used in determining the location where the order is received by the seller.

6. Such member state shall provide for direct pay permits pursuant to Section 326 of this Agreement and the requirements of this subsection. Purchasers which remit sales and use tax pursuant to such a permit shall remit tax at the rate in effect for the location where receipt of the product by the purchaser occurs or the product is first used as determined by state law. A member state may establish reasonable thresholds at which level the member state will consider direct pay applications, provided the threshold must be based upon purchases with no distinction between taxable and non-taxable purchases. The member state shall establish a process for application for a direct pay permit as provided herein. The member state may require the applicant to demonstrate:

    a. Ability to comply with the sales and use tax laws of the state,
    b. A showing of a business purpose for seeking direct payment permit and how the permit will benefit tax compliance, and
    c. Proof of good standing under the tax laws of the state.

The member state shall review all permit applications in a timely manner so that applicants receive notification of authorization or denial within one hundred twenty

(120) days. The member state may not limit direct pay applicants to businesses engaged in manufacturing or businesses that do not know the ultimate use of the product at the time of the purchase.

7. When taxable services are sold with tangible personal property or digital products pursuant to a single contract or in the same transaction, are billed on the same billing statement(s), and, because of the application of this section, would be sourced to different jurisdictions, a member state shall elect either origin sourcing or destination sourcing to determine a single situs for that transaction. Such member state election is required until such time as the governing board adopts a uniform methodology to address such sales.

8. A member state that elects to source the sale of tangible personal property and digital goods pursuant to the provisions of this section shall inform the governing board of such election.

D. Compliance with the provisions of this section shall satisfy a state's eligibility for membership in this Agreement as follows:

1. If a state is in substantial compliance with each of the provisions of this Agreement other than sourcing of sales of tangible personal property and digital goods as provided in Section 310 and elects to source sales of tangible personal property and digital goods pursuant to this section, such state may become an associate member state in the same manner as provided for states to become full member states pursuant to Article VIII of this Agreement.

2. A state which becomes an associate member state pursuant to this subsection shall automatically become a full member state, provided that at least five (5) states which are not full member states on December 31, 2007, have been found to be in substantial compliance with each of the provisions of the Agreement other than sourcing sales of tangible personal property and digital goods pursuant to Section 310 of the Agreement and have notified the governing board of an election pursuant to paragraph 8 of subsection C of this section to source sales pursuant to this section and have been found to be in substantial compliance with the provisions of this section.

3. The provisions of this section shall be fully effective for all purposes on or after January 1, 2010.

Compiler's note: On December 12, 2007 Section 310.1 was adopted. This section becomes effective on and after January 1, 2010. On September 30, 2009 Section 310.1 was amended to delete "On or after January 1, 2010, a" in D 2 and to delete the following after "2010" in D 3: ", provided that at least five (5) states which are not full member states on December 31, 2007, have been found to be in substantial compliance with each of the provisions of the Agreement other than sourcing sales of tangible personal property and digital goods pursuant to Section 310 of the Agreement and have notified the governing board of an election pursuant to paragraph 8 of subsection C of this section to source sales pursuant to this section and have been found to be in substantial compliance with the provisions of this section. States electing to source sales under this section after that time may become full member states if all other requirements for membership are satisfied". This amendment became effective upon its adoption. Compiler's note: On October 7, 2010 "product" was replaced by "sale" in the first sentence of C 2; "on that sale" was added to the end of the second sentence in C2; and "from the purchaser" was added to the second sentence in C 5. The amendments to this section were effective upon their adoption.

Section 311: GENERAL SOURCING DEFINITIONS

For the purposes of Section 310, subsection (A), the terms "receive" and "receipt" mean:

A. Taking possession of tangible personal property,

B. Making first use of services, or

C. Taking possession or making first use of digital goods, whichever comes first.

The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

Section 312: MULTIPLE POINTS OF USE (Repealed on December 14, 2006)

Compiler's note: The following is the section that would have gone into effect on January 1, 2008 had it not been repealed:

Notwithstanding the provisions of Section 310, a business purchaser that is not a holder of a direct pay permit that knows at the time of its purchase of a digital good, computer software, or a service that the digital good, computer software, or service will be concurrently available for use in more than one jurisdiction shall deliver to the seller in conjunction with its purchase an exemption certificate claiming multiple points of use or meet the requirements of Section 312, subsections (B) or (C). Computer software, for purposes of this section includes, but is not limited to computer software delivered electronically, by load and leave, or

in tangible form. Computer software received in-person by a business purchaser at a business location of the seller is not included.

Upon receipt of an exemption certificate claiming multiple points of use, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct pay basis.

A purchaser delivering an exemption certificate claiming multiple points of use may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser's books and records as they exist at the time the transaction is reported for sales or use tax purposes.

A purchaser delivering an exemption certificate claiming multiple points of use shall report and pay the appropriate tax to each jurisdiction where concurrent use occurs. The tax due will be calculated as if the apportioned amount of the digital good, computer software or service had been delivered to each jurisdiction to which the sale is apportioned pursuant to Section 312, subdivision (A)(2).

The exemption certificate claiming multiple points of use will remain in effect for all future sales by the seller to the purchaser (except as to the subsequent sale's specific apportionment that is governed by the principles of Section 312, subdivisions (A)(2) and (A)(3)) until it is revoked in writing.

Notwithstanding Section 312, subsection (A), when the seller knows that the product will be concurrently available for use in more than one jurisdiction, but the purchaser does not provide an exemption certificate claiming multiple points of use as required in subsection (A), the seller may work with the purchaser to produce the correct apportionment. The purchaser and seller may use any reasonable, but consistent and uniform, method of apportionment that is supported by the seller's and purchaser's business records as they exist at the time the transaction is reported for sales or use tax purposes. If the purchaser certifies to the accuracy of the apportionment and the seller accepts the certification, the seller shall collect and remit the tax pursuant to Section 312, subdivision (A)(3). In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the information certified by the purchaser.

When the seller knows that the product will be concurrently available for use in more than one jurisdiction and the purchaser does not have a direct pay permit and does not provide the seller with an exemption certificate claiming multiple points of use exemption as required in Section 312, subsection (A), or certification pursuant to Section 312, subsection (B), the seller shall collect and remit the tax based on the provisions of Section 310.

A holder of a direct pay permit shall not be required to deliver an exemption certificate claiming multiple points of use to the seller. A direct pay permit holder shall follow the provisions of Section 312 subdivisions (A)(2) and (A)(3) of this section in apportioning the tax due on a digital good, computer software, or a service that will be concurrently available for use in more than one jurisdiction.

Nothing in this section shall limit a person's obligation for sales or use tax to any state in which the qualifying purchases are concurrently available for use, nor limit a person's ability under local, state, federal, or constitutional law, to claim a credit for sales or use taxes legally due and paid to other jurisdictions.

Compiler's note: The following is the section as first enacted:

Notwithstanding the provisions of Section 310, a business purchaser that is not a holder of a direct pay permit that knows at the time of its purchase of a digital good, computer software delivered electronically, or a service that the digital good, computer software delivered electronically, or service will be concurrently available for use in more than one jurisdiction shall deliver to the seller in conjunction with its purchase a form disclosing this fact ("Multiple Points of Use or MPU" Exemption Form).

A. Upon receipt of the MPU Exemption Form, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct pay basis.

B. A purchaser delivering the MPU Exemption Form may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser's business records as they exist at the time of the consummation of the sale.

C. The MPU Exemption Form will remain in effect for all future sales by the seller to the purchaser (except as to the subsequent sale's specific apportionment that is governed by the principle of subsection (B) and the facts existing at the time of the sale) until it is revoked in writing.

D. A holder of a direct pay permit shall not be required to deliver a MPU Exemption Form to the seller. A direct pay permit holder shall follow the provisions of subsection (B) in apportioning the tax due on a digital good or a service that will be concurrently available for use in more than one jurisdiction.

Section 313: DIRECT MAIL SOURCING

A. Notwithstanding Sections 310 and 310.1, the following provisions apply to sales of "advertising and promotional direct mail:"

1. A purchaser of "advertising and promotional direct mail" may provide the seller with either:

   a. A direct pay permit.

   b. An Agreement certificate of exemption claiming "direct mail" (or other written statement approved, authorized or accepted by the state); or

   c. Information showing the jurisdictions to which the "advertising and promotional direct mail" is to be delivered to recipients.

2. If the purchaser provides the permit, certificate or statement referred to in subparagraph a or b of paragraph 1 of subsection A of this section, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any tax on any transaction involving "advertising and promotional direct mail" to which the permit, certificate or statement applies. The purchaser shall source the sale to the jurisdictions to which the "advertising and promotional direct mail" is to be delivered to the recipients and shall report and pay any applicable tax due.

3. If the purchaser provides the seller information showing the jurisdictions to which the "advertising and promotional direct mail" is to be delivered to recipients, the seller shall source the sale to the jurisdictions to which the "advertising and promotional direct mail" is to be delivered and shall collect and remit the applicable tax. In the absence of bad faith, the seller is relieved of any further obligation to collect any additional tax on the sale of "advertising and promotional direct mail" where the seller has sourced the sale according to the delivery information provided by the purchaser.

4. If the purchaser does not provide the seller with any of the items listed in subparagraphs a, b or c of paragraph 1 of subsection A of this section, the sale shall be sourced according to Section 310.A.5. The state to which the "advertising and promotional direct mail" is delivered may disallow credit for tax paid on sales sourced under this paragraph.

B. Notwithstanding Sections 310 and 310.1, the following provisions apply to sales of "other direct mail."

1. Except as otherwise provided in this paragraph, sales of "other direct mail" are sourced in accordance with Section 310.A.3.

2. A purchaser of "other direct mail" may provide the seller with either:

a. A direct pay permit; or

b. An Agreement certificate of exemption claiming "direct mail" (or other written statement approved, authorized or accepted by the state).

3. If the purchaser provides the permit, certificate or statement referred to in subparagraph a or b of paragraph 2 of subsection B of this section, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay or remit any tax on any transaction

involving “other direct mail” to which the permit, certificate or statement apply. Notwithstanding paragraph 1 subsection B, the sale shall be sourced to the jurisdictions to which the “other direct mail” is to be delivered to the recipients and the purchaser shall report and pay applicable tax due.

C. For purposes of this section:

1. “Advertising and promotional direct mail” means:

a. printed material that meets the definition of “direct mail,” in Appendix C, Part 1;

b. the primary purpose of which is to attract public attention to a product, person, business or organization, or to attempt to sell, popularize or secure financial support for a product, person, business or organization. As used in this subsection, the word “product” means tangible personal property, a product transferred electronically or a service.

2. “Other direct mail” means any direct mail that is not “advertising and promotional direct mail” regardless of whether “advertising and promotional direct mail” is included in the same mailing. The term includes, but is not limited to:

a. Transactional direct mail that contains personal information specific to the addressee including, but not limited to, invoices, bills, statements of account, payroll advices;

b. Any legally required mailings including, but not limited to, privacy notices, tax reports and stockholder reports; and

c. Other non-promotional direct mail delivered to existing or former shareholders, customers, employees, or agents including, but not limited to, newsletters and informational pieces.

Other direct mail does not include the development of billing information or the provision of any data processing service that is more than incidental.

D. 1. a. This section applies to a transaction characterized under state law as the sale of services only if the service is an integral part of the production and distribution of printed material that meets the definition of “direct mail.”

b. This section does not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental regardless of whether "advertising and promotional direct mail" is included in the same mailing.

2. If a transaction is a "bundled transaction' that includes "advertising and promotion direct mail," this section applies only if the primary purpose of the transaction is the sale of products or services that meet the definition of "advertising and promotional direct mail."

3. Nothing in this section shall limit any purchaser's:

a. Obligation for sales or use tax to any state to which the direct mail is delivered,

b. Right under local, state, federal or constitutional law, to a credit for sales or use taxes legally due and paid to other jurisdictions, or

c. Right to a refund of sales or use taxes overpaid to any jurisdiction.

4. This section applies for purposes of uniformly sourcing "direct mail" transactions and does not impose requirements on states regarding the taxation of products that meet the definition of "direct mail" or to the application of sales for resale or other exemptions.

Compiler's note: On September 30, 2009 Section 313 was replaced in its entirety. The following is the section as it was previously:

A. "Notwithstanding Section 310, a purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a Direct Mail Form or information to show the jurisdictions to which the direct mail is delivered to recipients.

1. Upon receipt of the Direct Mail Form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A Direct Mail Form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

2. Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the delivery information provided by the purchaser.

B. If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a Direct Mail Form or delivery information, as required by subsection (A) of this section, the seller

shall collect the tax according to Section 310, subsection (A)(5). Nothing in this paragraph shall limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.

C. If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a Direct Mail Form or delivery information to the seller."

The amendment to this section became effective upon its adoption.

Section 313.1: ELECTION FOR ORIGIN-BASED DIRECT MAIL SOURCING

A. Notwithstanding Sections 310, 310.1 and 313, a member state may elect to source the sale of all direct mail delivered or distributed from a location within the state and delivered or distributed to a location within the state pursuant to the provisions of this section.

B. If the purchaser provides the seller with a direct pay permit or an Agreement certificate of exemption claiming direct mail (or other written statement approved, authorized or accepted by the state), the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit the applicable tax on any transaction involving "direct mail." The purchaser must report and pay any applicable tax due. An Agreement certificate of exemption claiming direct mail shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

C. Except as provide in subsection (B) and the second sentence of this subsection, the seller shall collect the tax according to Section 310 A.5. To the extent the seller knows that a portion of the sale of direct mail will be delivered or distributed to a location in another state, the seller shall collect the tax on that portion according to Section 313.

D. Notwithstanding subsection (C) of this section, a seller may elect to use the provisions of Section 313 to source all sales of "advertising and promotional direct mail."

E. Nothing in this section limits a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered, except that a purchaser whose direct mail is sourced under the first sentence of subsection (C) of this section shall owe no

additional sales or use tax to that state based on where the purchaser uses or delivers the direct mail in the state.

F. A member state that elects to source the sale of direct mail pursuant to the provisions of this section shall inform the governing board in writing at least sixty days prior to the beginning of the calendar quarter such election begins.

Compiler's note: On September 5, 2008 Section 313.1 was adopted. This section became effective upon its approval.

Compiler's note: On September 30, 2009 a new subsection D was added, those subsections following were renumbered and subsections B and C were amended as follows:

B. If the purchaser provides the seller with a direct pay permit or ~~an exemption~~ an Agreement certificate of exemption claiming direct mail (or other written statement approved, authorized or accepted by the state), the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit the applicable tax ~~and~~ on any transaction involving "direct mail." ~~the~~ The purchaser ~~is obligated to pay or remit the~~ must report and pay any applicable tax ~~on a direct pay basis~~ due. ~~An exemption~~ An Agreement certificate of exemption claiming direct mail shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

C. Except as provide in subsection (B) and the second sentence of this subsection, the seller shall collect the tax according to Section 310~~, subsection (A)(5)~~ A.5. To the extent the seller knows that a portion of the sale of direct mail will be delivered or distributed to a location in another state, the seller shall collect the tax on that portion according to Section 313."

Section 314: TELECOMMUNICATION AND RELATED SERVICES SOURCING RULE

A. Except for the defined telecommunication services in subsection (C), the sale of telecommunication service sold on a call-by-call basis shall be sourced to (i) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (ii) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

B. Except for the defined telecommunication services in subsection (C), a sale of telecommunications services sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

C. The sale of the following telecommunication services shall be sourced to each level of taxing jurisdiction as follows:

1. A sale of mobile telecommunications services other than air-to-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act.
2. A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either (i) the seller's telecommunications system, or (ii) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.
3. A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with Section 310. Provided however, in the case of a sale of prepaid wireless calling service, the rule provided in Section 310, subsection (A)(5) shall include as an option the location associated with the mobile telephone number.
4. A sale of a private communication service is sourced as follows:
    a. Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.
    b. Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.
    c. Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.
    d. Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

D. The sale of Internet access service is sourced to the customer’s place of primary use.

E. The sale of an ancillary service is sourced to the customer's place of primary use.

Compiler's note: On April 16, 2005 Section 314, subdivision (C)(3) was amended by inserting "or a sale of a prepaid wireless calling service" after "service" in the first line; and by deleting "mobile telecommunications service that is a prepaid telecommunications" and inserting "prepaid wireless calling" in its place. Member states shall comply with this amendment no later than January 1, 2008.

Compiler's note: On December 14, 2006 Section 314 was amended by the addition of D and E.

Section 315: TELECOMMUNICATION SOURCING DEFINITIONS

For the purpose of Section 314, the following definitions apply:

A. "Air-to-Ground Radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

B. "Ancillary services" means services that are associated with or incidental to the provision of "telecommunications services", including but not limited to "detailed telecommunications billing", "directory assistance", "vertical service", and "voice mail services".

C. "Call-by-call Basis" means any method of charging for telecommunications services where the price is measured by individual calls.

D. "Communications Channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

E. "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under Section 314. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

F. "Customer Channel Termination Point" means the location where the customer either inputs or receives the communications.

G. "End user" means the person who utilizes the telecommunication service. In the case of an entity, “end user” means the individual who utilizes the service on behalf of the entity.

H. "Home service provider" means the same as that term is defined in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

I. "Mobile telecommunications service" means the same as that term is defined in Section 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

J. "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

K. "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunication service.

L. "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

M. “Prepaid wireless calling service” means a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services, including the download of digital products delivered electronically, content

and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

N. "Private communication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

O. "Service address" means:

1. The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.
2. If the location in subsection (O)(1) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.
3. If the location in subsection (O)(1) and subsection (O)(2) are not known, the service address means the location of the customer's place of primary use.

Compiler's note: On April 16, 2005 Section 315 (J) was amended by inserting ", except a prepaid wireless calling service," after "telecommunications service in the second sentence. The former 315 (L) and (M) were renumbered 315 (M) and (N) and a new Section 315 (L) was inserted. The cross references in 315 (N) were changed to account for the renumbering. Member states shall comply with amendments to this section no later than January 1, 2008. Compiler's note: On December 14, 2006 Section 315 was amended to add a new subsection B "ancillary services" and a renumbering of the remaining subsections and cross references.

Section 316: ENACTMENT OF EXEMPTIONS

A. A member state shall enact entity-based, use-based and product-based exemptions in accordance with the provisions of this section and shall utilize common definitions in

accordance with the provisions of Section 327 and Library of Definitions in Appendix C of this Agreement.

B. (1) A member state may enact a product-based exemption without restriction if Part II of the Library of Definitions does not have a definition for such product.

(2) A member state may enact a product-based exemption for a product if Part II of the Library of Definitions has a definition for such product and the member state utilizes in the exemption the product definition in a manner consistent with Part II of the Library of Definitions and Section 327 of this Agreement.

(3) A member state may enact a product-based exemption exempting all items included within a definition in Part II of the Library of Definitions but shall not exempt specific items included within the product definition unless the product definition sets out an exclusion for such item.

C. (1) A member state may enact an entity-based or a use-based exemption for a product without restriction if Part II of the Library of Definitions does not have a definition for such product.

(2) A member state may enact an entity-based or a use-based exemption for a product if Part II of the Library of Definitions has a definition for such product and the member state utilizes in the exemption the product definition in a manner consistent with Part II of the Library of Definitions and Section 327 of this Agreement.

(3) A member state may enact an entity-based exemption for an item if Part II of the Library of Definitions does not have a definition for such item but has a definition for a product that includes such item.

(4) A member state may not enact a use-based exemption for an item which effectively constitutes a product-based exemption if Part II of the Library of Definitions has a definition for a product that includes such item.

(5) A member state may enact a use-based exemption for an item if Part II of the Library of Definitions has a definition for a product that includes such item, if not prohibited in Subsection (C) (4) of this section and if consistent with the definition in Part II of the Library of Definitions.

For purposes of complying with the requirements in this section, the inclusion of a product within the definition of tangible personal property is disregarded.

Compiler's note: On October 1, 2005 all of Section 316 was repealed and replaced with the current language. The following language was repealed:

A member state may enact a product-based exemption without restriction if the Agreement does not have a definition for the product or for a term that includes the product. If the Agreement has a definition for the product or for a term that includes the product, a member state may exempt all items included within the definition but shall not exempt only part of the items included within the definition unless the Agreement sets out the exemption for part of the items as an acceptable variation.

A member state may enact an entity-based or a use-based exemption without restriction if the Agreement does not have a definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the Agreement has a definition for the product whose use or specific purchase is exempt, a member state may enact an entity-based or a use-based exemption that applies to that product as long as the exemption utilizes the Agreement definition of the product. If the Agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, a member state may enact an entity-based or a use-based exemption for the product without restriction.

For purposes of complying with the requirements in this section, the inclusion of a product within the definition of tangible personal property is disregarded.

The following was the section prior to January 1, 2008.

A. A member state may enact a product-based exemption without restriction if the Agreement does not have a definition for the product or for a term that includes the product. If the Agreement has a definition for the product or for a term that includes the product, a member state may exempt all items included within the definition but shall not exempt only part of the items included within the definition unless the Agreement sets out the exemption for part of the items as an acceptable variation.

B. A member state may enact an entity-based or a use-based exemption without restriction if the Agreement does not have a definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the Agreement has a definition for the product whose use or specific purchase is exempt, a member state may enact an entity-based or a use-based exemption that applies to that product as long as the exemption utilizes the Agreement definition of the product. If the Agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, a member state may enact an entity-based or a use-based exemption for the product without restriction.

C. For purposes of complying with the requirements in this section, the inclusion of a product within the definition of tangible personal property is disregarded.

Section 317: ADMINISTRATION OF EXEMPTIONS

A. Each member state shall observe the following provisions when a purchaser claims an exemption:

1. The seller shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase as determined by the governing board.
2. A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used.
3. The seller shall use the standard form for claiming an exemption electronically as adopted by the governing board.
4. The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.
5. A member state may utilize a system wherein the purchaser exempt from the payment of the tax is issued an identification number that shall be presented to the seller at the time of the sale.
6. The seller shall maintain proper records of exempt transactions and provide them to a member state when requested.
7. A member state shall administer use-based and entity-based exemptions when practicable through a direct pay permit, an exemption certificate, or another means that does not burden sellers.
8. In the case of drop shipment sales, member states must allow a third party vendor (e.g., drop shipper) to claim a resale exemption based on an exemption certificate provided by its customer/re-seller or any other acceptable information available to the third party vendor evidencing qualification for a resale exemption, regardless of whether the customer/re-seller is registered to collect and remit sales and use tax in the state where the sale is sourced.

B. Each member state shall relieve sellers that follow the requirements of this section from the tax otherwise applicable if it is determined that the purchaser improperly claimed an

exemption and to hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply to a seller who fraudulently fails to collect tax; to a seller who solicits purchasers to participate in the unlawful claim of an exemption; to a seller who accepts an exemption certificate when the purchaser claims an entity-based exemption when (1) the subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller and (2) the state in which that location resides provides an exemption certificate that clearly and affirmatively indicates (graying out exemption reason types on the uniform form and posting it on a state's web site is an indicator) that the claimed exemption is not available in that state.

C. Each state shall relieve a seller of the tax otherwise applicable if the seller obtains a fully completed exemption certificate or captures the relevant data elements required under the Agreement within 90 days subsequent to the date of sale. A member state may provide for a period longer than 90 days for the seller to obtain necessary information.

D.

1. If the seller has not obtained an exemption certificate or all relevant data elements as provided in Section 317, subsection (C) a member state shall provide the seller with 120 days subsequent to a request for substantiation by a member state, to either:
   a. Obtain a fully completed exemption certificate from the purchaser, taken in good faith which means that the seller obtain a certificate that claims an exemption that (i) was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced, (ii) could be applicable to the item being purchased, and (iii) is reasonable for the purchaser's type of business; or
   b. Obtain other information establishing that the transaction was not subject to the tax.

   A member state may provide for a period longer than 120 days for sellers to obtain the necessary information.

2. If the seller obtains the information described in subsection D 1 of this section, the member state shall relieve the seller of any liability for the tax o the transaction unless it is discovered through the audit process that the seller had knowledge or had reason to know at the time such information was provided that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due o the transaction. The state must establish that the seller had knowledge or had reason to know at the time the information was provided that the information was materially false.

E. Nothing in this section shall affect the ability of member states to require purchasers to update exemption certificate information or to reapply with the state to claim certain exemptions.

F. Each member state shall relieve a seller of the tax otherwise applicable if it obtains a blanket exemption certificate from a purchaser with which the seller has a recurring business relationship. Notwithstanding the provisions of subsection E of this section, a member state may not request from the seller renewal of blanket certificates or updates of exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this section a recurring business relationship exists when a period of no more than twelve months elapses between sales transactions.

G. Each state shall post on its website the uniform paper exemption certificate (streamlined sales and use tax exemption certificate) as revised and adopted by the Governing Board, with any applicable graying out of non-applicable exemption types (pursuant to subsection B of this Section and Rule 317.1.A.5.a.). Every state shall conform to the amendment in subdivision D of this section by July 31, 2010.

Compiler's note: On April 16, 2005 Subsection (A)(8) was added. Subsection (B) was amended to delete "any" and insert "the" after "from" in the first sentence and by inserting all the material after "claim an exemption" in the second sentence. Subsection (C) was inserted. Each member state shall comply with the April 16, 2005 amendments to this section no later than January 1, 2008.

Compiler's note: On December 14, 2006 Section 312 was repealed making the last clause in the January 1, 2008 version of Section 317 B obsolete.

Compiler's note: On April 30, 2010 "After December 31, 2007," was deleted from subsection A 8;" ; or to a seller who accepts an exemption certificate claiming multiple points of use for tangible personal property other than computer software for which an exemption claiming multiple points of use is acceptable under Section 312" was deleted from the last sentence of subsection B; "A member state may provide for a period longer than 90 days for the seller to obtain necessary information." was added to the end of subsection C; subsection G was added; and subsection C was changed as follows:

C. Each state shall relieve a seller of the tax otherwise applicable if the seller obtains a fully completed exemption certificate or captures the relevant data elements required under the Agreement within 90 days subsequent to the date of sale. A member state may provide for a period longer than 90 days for the seller to obtain necessary information.

D.

1. If the seller has not obtained an exemption certificate or all relevant data elements as provided in Section 317, subsection (C) a member state shall provide the seller ~~may, within~~ with 120 days subsequent to a request for substantiation by a member state, to either ~~prove that the transaction was not subject to tax by other means or obtain~~:

a. Obtain a fully completed exemption certificate from the purchaser, taken in good faith~~.~~ ~~For purposes of this section, member states may continue to apply their own standards of good faith until such time as a uniform standard for good faith is defined in the Agreement~~ which means that the seller obtain a certificate that claims an exemption that (i) was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced, (ii) could be applicable to the item being purchased, and (iii) is reasonable for the purchaser's type of business; or

b. Obtain other information establishing that the transaction was not subject to the tax.

A member state may provide for a period longer than 120 days for sellers to obtain the necessary information.

2. If the seller obtains the information described in subsection D 1 of this section, the member state shall relieve the seller of any liability for the tax o the transaction unless it is discovered through the audit process that the seller had knowledge or had reason to know at the time such information was provided that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due o the transaction. The state must establish that the seller had knowledge or had reason to know at the time the information was provided that the information was materially false.

E. Nothing in this section shall affect the ability of member states to require purchasers to update exemption certificate information or to reapply with the state to claim certain exemptions.

F. ~~Notwithstanding the aforementioned, each~~ Each member state shall relieve a seller of the tax otherwise applicable if it obtains a blanket exemption certificate ~~for~~ from a purchaser with which the seller has a

recurring business relationship. ~~States~~ Notwithstanding the provisions of subsection E of this section, a member state may not request from the seller renewal of blanket certificates or updates of exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this section a recurring business relationship exists when a period of no more than twelve months elapses between sales transactions.

The amendments to this section became effective upon their adoption.

Section 318: UNIFORM TAX RETURNS

Each member state shall:

A. Require that only a single tax return for each taxing period for each seller be filed for the member state to include all the taxing jurisdictions within the member state.

B.

1. Require that returns be due no sooner than the twentieth day of the month following the month in which the transaction occurred.
2. When the due date for a return falls on a Saturday or Sunday or legal holiday in the subject member state, the return shall be due on the next succeeding business day. If the return is filed in conjunction with a remittance and the remittance cannot be made pursuant to Section 319.E.2, the return shall be accepted as timely filed on the same day as the remittance under that subsection.

C. Make available to all sellers, whether or not registered under the Agreement, except sellers of products qualifying for exclusion from the provisions of Section 308 of this Agreement, a simplified return that is filed electronically as follows:

1. The simplified electronic return (hereinafter SER) shall be in a form approved by the governing board and shall contain only those fields approved by the governing board. The SER shall contain two parts. Part 1 shall contain information relating to remittances and allocations and part 2 shall contain information relating to exempt sales.
2. Each member state must notify the governing board if it requires the submission of the part 2 information. Provided, no state may require the submission of part 2

information from a model 4 seller which has no legal requirement to register in such state.

3. Returns shall be required as follows;

a. Certified service providers must file a SER in all member states on behalf of model 1 sellers. Certified service providers, on behalf of such sellers, shall file the audit reports provided for in Article V of the governing board's rules and procedures for such states, and in addition, shall be required to file part 1 of the SER each month for each member state. A state shall allow a model 1 seller to file both part 1 and the part 2 of the SER. A model 1 seller which chooses to file both part 1 and the part 2 of the SER shall still be required to file the audit reports provided for in Article V of the governing board's rules and procedures.

b. Model 2 and model 3 sellers must file a SER in all member states other than states for which they have indicated that they anticipate making no sales. Such sellers shall file part 1 of the SER every month for all states in which they anticipate making sales. Such sellers need not file part 2 information until January 1, 2012. After such date they shall have the following options for meeting their obligation to furnish part 2 information:

i) File part 2 of the SER together with part 1 of the SER every month; or

ii) File part 2 of the SER at the same time part 1 of the SER for the month of December is due. Part 2 information filed pursuant to this option shall cover the month of December and all previous months of the same calendar year and shall only require annual and not monthly totals.

Such sellers shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information pursuant to paragraph 2 of this subsection.

c. No later than January 1, 2011, every member state shall allow model 4 sellers to file a SER. Such sellers shall file part 1 of the SER every month unless a state allows less frequent filing. Model 4 sellers which have a legal requirement to register in such state shall have the following options for meeting their obligation to furnish part 2 information:

i) File part 2 of the SER together with part 1 of the SER; or

ii) File part 2 of the SER at the same time part 1 of the SER for the month of December is due. Part 2 information filed pursuant to this option shall cover the months of December and all previous months of the same calendar year and shall only require annual and not monthly totals.

Such sellers shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information pursuant to paragraph 2 of this subsection. Model 4 sellers which elect not to file a SER shall file returns in the form and pursuant to schedules afforded to sellers not registered under the Agreement according to the requirements of each member state.

d. No later than January 1, 2013 every member state shall allow sellers not registered under the Agreement that are registered in the state to file a SER. Such sellers shall file part 1 of the SER every month unless a state allows less frequent filing and shall have the following options for meeting their obligation to furnish part 2 information:

i) File part 2 of the SER together with part 1 of the SER; or

ii) File part 2 of the SER at the same time part 1 of the SER for the month of December is due. Part 2 information filed pursuant to this option shall cover the month of December and all

previous months of the same calendar year and shall only require annual and not monthly totals.

Such sellers shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information pursuant to paragraph 2of this subsection.

4. A state which requires the submission of part 2 information pursuant to paragraph 2 of this subsection may provide an exemption from this requirement to a seller under terms and conditions set out by the state.

5. A state may require a seller which elects to file a SER to give at least three months notice of the seller's intent to discontinue filing a SER.

D. Not after January 1, 2010 require the filing of a return from a seller that is registered under the Agreement which has indicated at the time of registration that it anticipates making no sales which would be sourced to the state under the Agreement. A seller shall lose such exemption upon making any taxable sales into such state and shall file a return in the month following such sale. A state may, but is not required to, allow a seller to regain such filing exemption upon such terms and condition as the state may impose.

E. Adopt a standardized transmission process to allow for receipt of uniform tax returns and other formatted information as approved by the governing board. Such a process will provide for the filing of separate returns for multiple legal entities in a single transmission for each state and will not include any requirement for manual entry or input by the seller of any of the aforementioned information. This process will allow a certified service provider, a tax preparer, or any other person authorized to do so, to file returns for more than one seller in a single electronic transmission. However, sellers filing returns for multiple legal entities may only do so for affiliated legal entities.

F. After January 1, 2010 give notice to a seller registered under this Agreement which has no legal requirement to register in the state, or a failure to file a required return and a minimum of thirty days to file thereafter prior to establishing a liability amount for taxes based solely on the seller's failure to timely file a return. Provided, a member state may establish a

liability amount for taxes based solely on the seller's failure to timely file a return if such seller has a history of non-filing or late filing.

G. Nothing in this section shall prohibit a state from allowing additional return options or the filing of returns less frequently.

Compiler's note: On September 20, 2009 Section 318 was amended as follows: "Each member state shall:

A. Require that only ~~one~~ a single tax return for each taxing period for each seller be filed for the member state ~~and~~ to include all the taxing jurisdictions within the member state.

B. Require that returns be due no sooner than the twentieth day of the month following the month in which the transaction occurred.

C. ~~Allow any Model 1, Model 2, or Model 3 seller to submit its sales and use tax returns in a simplified format that does not include more data fields than permitted by the governing board. A member state may require additional informational returns to be submitted not more frequently than every six months under a staggered system developed by the governing board.~~ Make available to all sellers, whether or not registered under the Agreement, except sellers of products qualifying for exclusion from the provisions of Section 308 of this Agreement, a simplified return that is filed electronically as follows:

1. The simplified electronic return (hereinafter SER) shall be in a form approved by the governing board and shall contain only those fields approved by the governing board. The SER shall contain two parts. Part 1 shall contain information relating to remittances and allocations and part 2 shall contain information relating to exempt sales.

2. Each member state must notify the governing board if it requires the submission of the part 2 information. Provided, no state may require the submission of part 2 information from a model 4 seller which has no legal requirement to register in such state.

3. Returns shall be required as follows;

a) Certified service providers must file a SER in all member states on behalf of model 1 sellers. Certified service providers, on behalf of such sellers, shall file the audit reports provided for in Article V of the governing board's rules and procedures for such states, and in addition, shall be required to file part 1 of the SER each month for each member state. A state shall allow a model 1 seller to file both part 1 and the part 2 of the SER. A model 1 seller which chooses to file both part 1 and the part 2 of the SER shall still be required to file the audit reports provided for in Article V of the governing board's rules and procedures.

b) Model 2 and model 3 sellers must file a SER in all member states other than states for which they have indicated that they anticipate making no sales. Such sellers shall file part 1 or the SER every month for all states in which they anticipate making

sales. Such sellers need not file part 2 information until January 1, 2012. After such date they shall have the following options for meeting their obligation to furnish part 2 information:

i. File part 2 of the SER together with part 1 of the SER every month; or

ii. File part 2 of the SE at the same time part 1 of the SER for the month of December is due. Part 2 information filed pursuant to this option shall cover the month of December and all previous months of the same calendar year and shall only require annual and not monthly totals.

Such sellers shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information pursuant to paragraph 2 of this subsection.

C. No later than January 1, 2011, every member state shall allow model 4 sellers to file a SER. Such sellers shall file part 1 of the SER every month unless a state allows less frequent filing. Model 4 sellers which have a legal requirement to register in such state shall have the following options for meeting their obligation to furnish part 2 information:

i) File part 2 of the SER together with part 1 of the SER; or

ii) File part 2 of the SER at the same time part 1 of the SER for the month of December is due. Part 2 information filed pursuant to this option shall cover the months of December and all previous months of the same calendar year and shall only require annual and not monthly totals.

Such sellers shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information pursuant to paragraph 2 of this subsection. Model 4 sellers which elect not to file a SER shall file returns in the form and pursuant to schedules afforded to sellers not registered under the Agreement according to the requirements of each member state.

d. No later than January 1, 2013 every member state shall allow sellers not registered under the Agreement that are registered in the state to file a SER. Such sellers shall file part 1 of the SER every month unless a state allows less frequent filing and shall have the following options for meeting their obligation to furnish part 2 information:

i) File part 2 of the SER together with part 1 of the SER; or

ii) File part 2 of the SER at the same time part 1 of the SER for the month of December is due. Part 2 information filed pursuant to this option shall cover the month of December and all previous months of the same calendar year and shall only require annual and not monthly totals.

Such seller shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information pursuant to paragraph 2of this subsection.

4. A state which requires the submission of part 2 information pursuant to paragraph 2 of this subsection may provide an exemption from this requirement to a seller under terms and conditions set out by the state.

5. A state may require a seller which elects to file a SER to give at least three months notice of the seller's intent to discontinue filing a SER.

~~D. Allow any~~ Not after January 1, 2010 require the filing of a return from a seller that is registered under the Agreement which has indicated at the time of registration that it anticipates making no sales which would be sourced to the state under the Agreement. A seller shall lose such exemption upon making any taxable sales into such state and shall file a return in the month following such sale. A state may, but is not required to, allow a seller to regain such filing exemption upon such terms and condition as the state may impose~~, which does not have a legal requirement to register in the member state, and is not a Model 1, 2, or 3 seller, to submit its sales and use tax returns as follows:

~~1. Upon registration, a member state shall provide to the seller the returns required by that state.~~

~~2. A member state may require a seller to file a return anytime within one year of the month of initial registration, and future returns may be required on an annual basis in succeeding years.~~

~~3. In addition to the returns required in subsection (D)(2), a member state may require sellers to submit returns in the month following any month in which they have accumulated state and local tax funds for the state in the amount of one thousand dollars or more~~.

~~E. Participate with other member states in developing a more~~ Adopt a standardized transmission process to allow for receipt of uniform ~~sales and use~~ tax ~~return that, when completed, would be available to all sellers~~ returns and other formatted information as approved by the governing board. Such a process will provide for the filing of separate returns for multiple legal entities in a single transmission for each state and will not include any requirement for manual entry or input by the seller of any of the aforementioned information. This process will allow a certified service provider, a tax preparer, or any other person authorized to do so, to file returns for more than one seller in a single electronic transmission. However, sellers filing returns for multiple legal entities may only do so for affiliated legal entities.

~~F. Require, at each member state's discretion, all Model 1, 2, and 3 sellers to file returns electronically. It is the intent of the member states that all member states have the capability of receiving electronically filed returns by January 1, 2004~~ After January 1, 2010 give notice to a seller registered under this Agreement which has no legal requirement to register in the state, or a failure to file a required return and a minimum of thirty days to file thereafter prior to establishing a liability amount for taxes based solely on the seller's

failure to timely file a return. Provided, a member state may establish a liability amount for taxes based solely on the seller's failure to timely file a return if such seller has a history of non-filing or late filing.

G. Nothing in this section shall prohibit a state from allowing additional return options or the filing of returns less frequently." The amendment to this section became effective upon adoption.

Compiler's note: On December 13, 2010 subsection B was amended as follows:

1. *Require that returns be due no sooner than the twentieth day of the month following the month in which the transaction occurred.*
2. *When the due date for a return falls on a Saturday or Sunday or legal holiday in the subject member state, the return shall be due on the next succeeding business day. If the return is filed in conjunction with a remittance and the remittance cannot be made pursuant to Section 319.E.2, the return shall be accepted as timely filed on the same day as the remittance under that subsection.*

Section 319: UNIFORM RULES FOR REMITTANCES OF FUNDS

Each member state shall:

A. Require only one remittance for each return except as provided in this subsection. If any additional remittance is required, it may only be required from sellers that collect more than thirty thousand dollars in sales and use taxes in the member state during the preceding calendar year as provided herein. The state shall allow the amount of any additional remittance to be determined through a calculation method rather than actual collections. Any additional remittances shall not require the filing of an additional return.

B. Require, at each member state's discretion, all remittances in payment of taxes reported on the approved simplified return format to be remitted electronically.

C. Allow for electronic payments by all remitters by both ACH Credit and ACH Debit.

D. Provide an alternative method for making "same day" payments if an electronic funds transfer fails.

E.

1. Provide that if a due date for a payment falls on a Saturday, Sunday, or legal holiday in a member state, the payment, including any related payment voucher information, is due to that state on the next succeeding business day.

2. Additionally, if the Federal Reserve Bank is closed on a due date that prohibits a person from being able to make a payment by ACH Debit or Credit, the payment shall be accepted as timely if made on the next day the Federal Reserve Bank is open.

F. Require that any data that accompanies a remittance be formatted using uniform tax type and payment type codes approved by the governing board.

G. Adopt a standardized transmission process approved by the governing board that allows for the remittance in a single electronic transmission of a single (bulk) payment for taxes reported on multiple SERs by affiliated entities, certified service providers or preparers. Each state shall comply with this provision no later than two years after the governing board approves such a standardized transmission process.

Compiler's note: On October 1, 2005 the second sentence in subsection A was amended as follows: "The state shall allow the amount of ~~the~~ any additional remittance ~~shall~~ to be determined through a calculation method rather than actual collections. Any additional remittances ~~and~~ shall not require the filing of an additional return." The amendment to this section became effective upon adoption.

Compiler's note: On September 30, 2009 subsection G was added and subsections B and C were amended as follows

"A. Require, at each member state's discretion, all remittances ~~from sellers under Models 1, 2, and 3~~ in payment of taxes reported on the approved simplified return format to be remitted electronically.

B. Allow for electronic payments by all remitters by both ACH Credit and ACH Debit."

The amendment so this section became effective upon adoption.

Compiler's note: On December 13, 2010 subsection E was amended as follows:

1. *Provide that if a due date for a payment falls on a Saturday, Sunday, or legal ~~banking~~ holiday in a member state, the payment, including any related payment voucher information, is ~~taxes are~~ due to that state on the next succeeding business day.*
2. *Additionally, if the Federal Reserve Bank is closed on a due date that prohibits a person from being able to make a payment by ACH Debit or Credit, the payment shall be accepted as timely if made on the next day the Federal Reserve Bank is open.*

Section 320: UNIFORM RULES FOR RECOVERY OF BAD DEBTS

Each member state shall use the following to provide a deduction for bad debts to a seller. To the extent a member state provides a bad debt deduction to any other party, the same procedures will apply. Each member state shall:

A. Allow a deduction from taxable sales for bad debts. Any deduction taken that is attributed to bad debts shall not include interest.

B. Utilize the federal definition of "bad debt" in 26 U.S.C. Sec. 166 as the basis for calculating bad debt recovery. However, the amount calculated pursuant to 26 U.S.C. Sec. 166 shall be adjusted to exclude: financing charges or interest; sales or use taxes charged on the purchase price; uncollectable amounts on property that remain in the possession of the seller until the full purchase price is paid; expenses incurred in attempting to collect any debt, and repossessed property.

C. Allow bad debts to be deducted on the return for the period during which the bad debt is written off as uncollectable in the claimant's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this subsection, a claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectable in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.

D. Require that, if a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.

E. Provide that, when the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed within the member state's otherwise applicable statute of limitations for refund claims; however, the statute of limitations shall be measured from the due date of the return on which the bad debt could first be claimed.

F. Where filing responsibilities have been assumed by a CSP, allow the service provider to claim, on behalf of the seller, any bad debt allowance provided by this section. The CSP

must credit or refund the full amount of any bad debt allowance or refund received to the seller.

G. Provide that, for the purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges.

H. In situations where the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among the member states, permit the allocation.

Section 321: CONFIDENTIALITY AND PRIVACY PROTECTIONS UNDER MODEL 1

A. The purpose of this section is to set forth the member states' policy for the protection of the confidentiality rights of all participants in the system and of the privacy interests of consumers who deal with Model 1 sellers.

B. As used in this section, the term "confidential taxpayer information" means all information that is protected under a member state's laws, regulations, and privileges; the term "personally identifiable information" means information that identifies a person; and the term "anonymous data" means information that does not identify a person.

C. The member states agree that a fundamental precept in Model 1 is to preserve the privacy of consumers by protecting their anonymity. With very limited exceptions, a CSP shall perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers.

D. The governing board may certify a CSP only if that CSP certifies that:

1. Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected;
2. That personally identifiable information is only used and retained to the extent necessary for the administration of Model 1 with respect to exempt purchasers and proper identification of taxing jurisdictions;
3. It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the

information, how long, if at all, it retains the information and whether it discloses the information to member states. Such notice shall be satisfied by a written privacy policy statement accessible by the public on the official web site of the CSP;

4. Its collection, use and retention of personally identifiable information will be limited to that required by the member states to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased and for documentation of the correct assignment of taxing jurisdictions; and
5. It provides adequate technical, physical, and administrative safeguards so as to protect personally identifiable information from unauthorized access and disclosure.

E. Each member state shall provide public notification to consumers, including their exempt purchasers, of the state's practices relating to the collection, use and retention of personally identifiable information.

F. When any personally identifiable information that has been collected and retained is no longer required for the purposes set forth in subsection (D)(4), such information shall no longer be retained by the member states.

G. When personally identifiable information regarding an individual is retained by or on behalf of a member state, such state shall provide reasonable access by such individual to his or her own information in the state's possession and a right to correct any inaccurately recorded information.

H. If anyone other than a member state, or a person authorized by that state's law or the Agreement, seeks to discover personally identifiable information, the state from whom the information is sought should make a reasonable and timely effort to notify the individual of such request.

I. This privacy policy is subject to enforcement by member states' attorneys general or other appropriate state government authority.

J. Each member states' laws and regulations regarding the collection, use, and maintenance of confidential taxpayer information remain fully applicable and binding. Without limitation, the Agreement does not enlarge or limit the member states' authority to:

1. Conduct audits or other review as provided under the Agreement and state law.
2. Provide records pursuant to a member state's Freedom of Information Act, disclosure laws with governmental agencies, or other regulations.
3. Prevent, consistent with state law, disclosures of confidential taxpayer information.
4. Prevent, consistent with federal law, disclosures or misuse of federal return information obtained under a disclosure agreement with the Internal Revenue Service.
5. Collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.

K. This privacy policy does not preclude the governing board from certifying a CSP whose privacy policy is more protective of confidential taxpayer information or personally identifiable information than is required by the Agreement.

Compiler's note: On September 5, 2008 Section 321(D)(2) was amended to add "and proper identification of taxing jurisdictions" after "purchasers" and Section 321(D)(4) was amended to add "and for documentation of the correct assignment of taxing jurisdictions" after "purchased." The amendment became effective upon its adoption.

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 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.

B. A member state may establish a sales tax holiday that utilizes price thresholds set by such state and the provisions of the Agreement on the use of thresholds shall not apply to exemptions provided by a state during a sales tax holiday. In order to

provide uniformity, a price threshold established by a member state for exempt items shall include only items priced below the threshold. A member state shall not exempt only a portion of the price of an individual item during a sales tax holiday.

C. The following procedures are to be used by member states in administering a sales tax holiday exemption:

1. Layaway sales - A sale of eligible property under a layaway sale qualifies for exemption if:

   a. final payment on a layaway order is made by, and the property is given to, the purchaser during the exemption period; or

   b. the purchaser selects the property and the retailer accepts the order for the item during the exemption period, for immediate delivery upon full payment, even if delivery is made after the exemption period.

2. Bundled sales - Member states will follow the same procedure during the sales tax holiday as agreed upon for handling a bundled sale at other times.

3. Coupons and discounts - A discount by the seller reduces the sales price of the property and the discounted sales price determines whether the sales price is within a sales tax holiday price threshold of a member state. A coupon that reduces the sales price is treated as a discount if the seller is not reimbursed for the coupon amount by a third-party. If a discount applies to the total amount paid by a purchaser rather than to the sales price of a particular item and the purchaser has purchased both eligible property and taxable property, the seller should allocate the discount based on the total sales prices of the taxable property compared to the total sales prices of all property sold in that same transaction.

4. Splitting of items normally sold together - Articles that are normally sold as a single unit must continue to be sold in that manner. Such articles cannot be priced separately and sold as individual items in order to obtain the exemption. For example, a pair of shoes cannot have each shoe sold

separately so that the sales price of each shoe is within a sales tax holiday price threshold.

5. Rain checks - A rain check allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock. Eligible property that customers purchase during the exemption period with use of a rain check will qualify for the exemption regardless of when the rain check was issued. Issuance of a rain check during the exemption period will not qualify eligible property for the exemption if the property is actually purchased after the exemption period.

6. Exchanges - The procedure for an exchange in regards to a sales tax holiday is as follows:

   a. If a customer purchases an item of eligible property during the exemption period, but later exchanges the item for a similar eligible item, even if a different size, different color, or other feature, no additional tax is due even if the exchange is made after the exemption period.

   b. If a customer purchases an item of eligible property during the exemption period, but after the exemption period has ended, the customer returns the item and receives credit on the purchase of a different item, the appropriate sales tax is due on the sale of the newly purchased item.

   c. If a customer purchases an item of eligible property before the exemption period, but during the exemption period the customer returns the item and receives credit on the purchase of a different item of eligible property, no sales tax is due on the sale of the new item if the new item is purchased during the exemption period.

7. Delivery charges - Delivery charges, including shipping, handling and service charges, are part of the sales price of eligible property unless a member state defines "sales price" to exclude such charges. For the purpose of determining

a sales tax holiday price threshold, if all the property in a shipment qualifies as eligible property and the sales price for each item in the shipment is within the sales tax holiday price threshold, then the seller does not have to allocate the delivery, handling, or service charge to determine if the price threshold is exceeded. The shipment will be considered a sale of eligible products. If the shipment includes eligible property and taxable property (including an eligible item with a sales price in excess of the price threshold), the seller should allocate the delivery charge by using:

a. a percentage based on the total sales prices of the taxable property compared to the total sales prices of all property in the shipment; or

b. a percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment.

The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the eligible property.

8. Order date and back orders - For the purpose of a sales tax holiday, eligible property qualifies for exemption if:

a. the item is both delivered to and paid for by the customer during the exemption period; or

b. the customer orders and pays for the item and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. The seller accepts an order when the seller has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an "in date" stamp on a mail order or assignment of an "order number" to a telephone order. An order is for immediate shipment when the customer does not request delayed shipment. An order is for immediate shipment notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the seller.

9. Returns - For a 60-day period immediately after the sales tax holiday exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice that shows tax was paid, or the seller has sufficient documentation to show that tax was paid on the specific item. This 60-day period is set solely for the purpose of designating a time period during which the customer must provide documentation that shows that sales tax was paid on returned merchandise. The 60-day period is not intended to change a seller's policy on the time period during which the seller will accept returns.

10. Different time zones - The time zone of the seller's location determines the authorized time period for a sales tax holiday when the purchaser is located in one time zone and a seller is located in another.

Compiler's note: On September 5, 2008 Section 322(A)(1) was amended to delete the obsolete date and to replace "the Agreement" with "Part II or Part III(B) of the Library of Definitions." In addition, subdivisions 3 and 4 were added. The amendment became effective upon its adoption.

Section 323: CAPS AND THRESHOLDS

A. No member state may have caps or thresholds on the application of state sales or use tax rates or exemptions that are based on the value of the transaction or item or have caps that are based on the application of the rates unless the member state assumes the administrative responsibility in a manner that places no additional burden on the retailer.

B. No member state that has local jurisdictions that levy a sales or use tax may place caps or thresholds on the application of local rates or use tax rates or exemptions that are based on the value of the transaction or item.

C. The provisions of this section do not apply to sales or use taxes levied on the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes or to instances where the burden of administration has been shifted from the retailer.

D. For states that have a cap or threshold on clothing before January 1, 2006 the provisions of this section do not apply to sales or use tax thresholds for exemptions that are based on the value of "essential clothing" except as provided in the Library of Definitions.

Compiler's note: On February 26, 2009 Section 323C was amended as follows:

~~A Each~~ No member state ~~shall:~~

~~1. Not~~ may have caps or thresholds on the application of state sales or use tax rates or exemptions that are based on the value of the transaction or item ~~after December 31, 2005. A member state may continue to have caps and thresholds until that date.~~

2. ~~Not~~ or have caps that are based on the application of the rates unless the member state assumes the administrative responsibility in a manner that places no additional burden on the retailer.

B ~~Each~~ No member state that has local jurisdictions that levy a sales or use tax ~~shall not~~ may place caps or thresholds on the application of local rates or use tax rates or exemptions that are based on the value of the transaction or item ~~after December 31, 2005. A member state may continue to have caps and thresholds until that date~~.

C The provisions of this section do not apply to sales or use taxes levied on the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes or to instances where the burden of administration has been shifted from the retailer.

D For states that have a cap or threshold on clothing before January 1, 2006 the provisions of this section do not apply to sales or use tax thresholds for exemptions that are based on the value of "essential clothing" except as provided in the Library of Definitions.

This provision became effective upon its approval.

Section 324: ROUNDING RULE

A. After December 31, 2005, each member state shall adopt a rounding algorithm that meets the following criteria:

1. Tax computation must be carried to the third decimal place, and

2. The tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.

B. Each state shall allow sellers to elect to compute the tax due on a transaction on an item or an invoice basis, and shall allow the rounding rule to be applied to the aggregated state and local taxes. No member state shall require a seller to collect tax based on a bracket system.

Section 325: CUSTOMER REFUND PROCEDURES

A. These customer refund procedures are provided to apply when a state allows a purchaser to seek a return of over-collected sales or use taxes from the seller.

B. Nothing in this section shall either require a state to provide, or prevent a state from providing, a procedure by which a purchaser may seek a refund directly from the state arising out of sales or use taxes collected in error by a seller from the purchaser. Nothing in this section shall operate to extend any person's time to seek a refund of sales or use taxes collected or remitted in error.

C. These customer refund procedures provide the first course of remedy available to purchasers seeking a return of over-collected sales or use taxes from the seller. A cause of action against the seller for the over-collected sales or use taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had sixty days to respond. Such notice to the seller must contain the information necessary to determine the validity of the request.

D. In connection with a purchaser's request from a seller of over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice, if in the collection of such sales or use taxes, the seller: i) uses either a provider or a system, including a proprietary system, that is certified by the state; and ii) has remitted to the state all taxes collected less any deductions, credits, or collection allowances.

Section 326: DIRECT PAY PERMITS

Each member state shall provide for a direct pay authority that allows the holder of a direct pay permit to purchase otherwise taxable goods and services without payment of tax to the supplier at the time of purchase. The holder of the direct pay permit will make a determination of the taxability and then report and pay the applicable tax due directly to the tax jurisdiction. Each state can set its own limits and requirements for the direct pay permit. The governing board shall advise member states when setting state direct pay limits and requirements, and shall consider

use of the Model Direct Payment Permit Regulation as developed by the Task Force on EDI Audit and Legal Issues for Tax Administration.

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. 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.

Compiler's note: The Governing Board issued an interpretation of Section 327C on August 29, 2006. That interpretation can be found in the Library of Interpretations.

Compiler's note: On September 5, 2008 Section 327C was amended by adding "and 332" in the first line; by adding "Part II or Part III(B)" after "each" in line three; by adding "such" after "each" in line four; and by adding the last sentence. This amendment became effective upon its adoption.

Section 328: TAXABILITY MATRIX

A. To ensure uniform application of terms defined in the Library of Definitions each member state shall complete a taxability matrix adopted by the governing board. The member state's entries in the matrix shall be provided and maintained in a database that is in a

downloadable format approved by the governing board. A member state shall provide notice of changes in the taxability of the products or services listed in the taxability matrix as required by the governing board.

B. A member state shall relieve sellers and CSPs from liability to the member state and its local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or CSP relying on erroneous data provided by the member state in the taxability matrix.

C. If a state levies sales and use tax on a specified digital product and provides an exemption for an item within the definition of such specified digital product pursuant to Section 332 (H) of this Agreement, such exemption must be noted in the taxability matrix.

D. Each state that provides for a sales tax holiday pursuant to Section 322 of this Agreement shall, in a format approved by the Governing Board, give notice in the taxability matrix of the products for which a tax exemption is provided.

Compiler's note: On September 20, 2007 Section 328 was amended as follows. The amendment was effective on January 1, 2008:

A. To ensure uniform application of terms defined in the Library of Definitions each member state shall complete a taxability matrix adopted by the governing board. The member state's entries in the matrix shall be provided and maintained in a database that is in a downloadable format approved by the governing board. A member state shall provide notice of changes in the taxability of the products or services listed in the taxability matrix as required by the governing board.

B. ~~Until such time as sufficient additional definitions are adopted to provide for a uniform application of the definition of tangible personal property, each member state shall certify to the Governing Board its tax treatment of photographs delivered electronically. This information shall be included in the taxability matrix. A uniform application of the definition of tangible personal property requires an amendment to Section 327 of this Agreement. Notice of changes in the taxability of such goods shall be made in the same manner as required for notice of changes in the taxability of other products or services listed in the taxability matrix.~~

~~C.~~ A member state shall relieve sellers and CSPs from liability to the member state and its local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or CSP relying on erroneous data provided by the member state in the taxability matrix ~~or in the certification of the state's tax treatment of photographs delivered electronically~~.

D. If a state levies sales and use tax on a specified digital product and provides an exemption for an item within the definition of such specified digital product pursuant to Section 332 (H) of this Agreement, such exemption must be noted in the taxability matrix.

E. Each state that provides for a sales tax holiday pursuant to Section 322 of this Agreement shall, in a format approved by the Governing Board, give notice in the taxability matrix of the products for which a tax exemption is provided.

F. For purposes of this section, the term "transferred electronically" means obtained by the purchaser by means other than tangible storage media.

Compiler's note: On September 5, 2008 subsection (F) was repealed. This amendment became effective upon its adoption.

Section 329: EFFECTIVE DATE FOR RATE CHANGES

Each member state shall provide that the effective date of rate changes for services covering a period starting before and ending after the statutory effective date shall be as follows:

A. For a rate increase, the new rate shall apply to the first billing period starting on or after the effective date.

B. For a rate decrease, the new rate shall apply to bills rendered on or after the effective date.

Section 330: BUNDLED TRANSACTIONS

A. A member state shall adopt and utilize to determine tax treatment, the core definition for a "bundled transaction" in Appendix C, Part I of the Library of Definitions in the Agreement.

B. Member states are not restricted in their tax treatment of bundled transactions except as otherwise provided in the Agreement. Member states are not restricted in their ability to treat some bundled transactions differently from other bundled transactions.

C. In the case of a bundled transaction that includes any of the following: telecommunication service, ancillary service, internet access, or audio or video programming service:

1. If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards

such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.

2. If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.

3. The provisions of this section shall apply unless otherwise provided by federal law.

D. In the case of a transaction that includes an "optional computer software maintenance contract" for prewritten computer software and the state otherwise has not specifically imposed tax on the retail sale of computer software maintenance contracts, the following provisions apply:

1. If an optional computer software maintenance contract only obligates the vendor to provide upgrades and updates, it will be characterized as a sale of prewritten computer software.
2. If an optional computer software maintenance contract only obligates the vendor to provide support services, it will be characterized as a sale of services and a state may use any of the methods provided under subsection (D)(3) to determine the taxable and nontaxable or exempt portions.
3. If an optional computer software maintenance contract is a bundled transaction in which both taxable and nontaxable or exempt products that are not separately itemized on the invoice or similar billing document, then states shall elect one of the following tax treatments:
    a. The contract shall be characterized as all taxable;
    b. The contract shall be characterized as all taxable unless the seller can demonstrate, using a reasonable method as of the time of sale, the portion of the contract that is for nontaxable or exempt products;
    c. The contract shall be characterized as all nontaxable or exempt; or

d. The contract shall be characterized as twenty, thirty, forty or fifty percent taxable or eighty, seventy, sixty and fifty percent nontaxable or exempt respectively, as selected by each member state.

4. With respect to states that elect the method described in subparagraph 3(b):

a. Such states may prescribe the use of such reasonable methods as it deems appropriate, and

b. The method selected by the seller shall be binding on the purchaser.

Compiler's note: On April 16, 2005 Section 330 was added. Member States shall comply with the provisions of this Section no later than January 1, 2008.

Compiler's note: On December 6, 2008 Section 330 D was added. This provision became effective upon its adoption.

Section 331: RELIEF FROM CERTAIN LIABILITY FOR PURCHASERS

A. A member state shall relieve a purchaser from liability for penalty to that member state and its local jurisdictions for having failed to pay the correct amount of sales or use tax in the following circumstances:

1. A purchaser's seller or CSP relied on erroneous data provided by that member state on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix completed by that member state pursuant to Section 328; or

2. A purchaser holding a direct pay permit relied on erroneous data provided by that member state on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix completed by that member state pursuant to Section 328.

3. A purchaser relied on erroneous data provided by that member state in the taxability matrix completed by that member state pursuant to Section 328.

4. A purchaser using databases pursuant to subsections (F), (G) and (H) of Section 305 relied on erroneous data provided by that member state on tax rates, boundaries, or taxing jurisdiction assignments. After providing adequate notice as determined by the governing board, a member state that provides an address-based database for assigning taxing jurisdictions pursuant to Section 305, subsection (G) or (H) may cease providing liability relief for errors resulting from

the reliance on the database provided by the member state under the provisions of Section 305, subsection (F).

B. Except where prohibited by a member state's constitution, a member state shall also relieve a purchaser from liability for tax and interest to that member state and its local jurisdictions for having failed to pay the correct amount of sales or use tax in the circumstances described in Section 331 A, provided that, with respect to reliance on the taxability matrix completed by that member state pursuant to Section 328, such relief is limited to the state's erroneous classification in the taxability matrix of terms included in the Library of Definitions as "taxable" or "exempt," "included in sales price" or "excluded from sales price" or "included in the definition" or "excluded from the definition".

C. For purposes of this section, the term "penalty" means an amount imposed for noncompliance that is not fraudulent, willful, or intentional which is in addition to the correct amount of sales or use tax and interest.

D. A member state may allow relief on terms and conditions more favorable to a purchaser than the terms required by this section.

E. The provisions of this section are effective on and after January 1, 2009, however, to the extent any relief under this section does not require a legislative change in a member state, such relief must be granted effective immediately.

Compiler's note: On August 29, 2006 Section 331 was added. Member States shall comply with the provisions of this Section no later than January 1, 2009.

Compiler's note: On December 14, 2006 Section 331 was amended by inserting "provided that" in lieu of "except" after "Section 331 A," and to add the clause following "Section 328" in B, and by adding the clause starting with "however" in E.

Section 332: SPECIFIED DIGITAL PRODUCTS

A. A member state shall not include "specified digital products", "digital audio-visual works", "digital audio works" or "digital books" within its definition of "ancillary services", "computer software", "telecommunication services" or "tangible personal property." This restriction shall apply regardless of whether the "specified digital

product" is sold to a purchaser who is an end user or with less than the right of permanent use granted by the seller or use which is conditioned upon continued payment from the purchaser. Until January 1, 2010, the exclusion of "specified digital products" from the definition of "tangible personal property" shall have no implication on the classification of products "transferred electronically" which are not included within the definition of "specified digital products" as being included in, or excluded from, the definition of "tangible personal property."

B. For purpose of Section 327(C) and the taxability matrix, "Digital Audio-Visual Works", "Digital Audio Works", and "Digital Books" are separate definitions.

C. If a state imposes a sales or use tax on products "transferred electronically" separately from its imposition of tax on "tangible personal property", that state will not be required to use the terms "specified digital products", "digital audio visual works", "digital audio works", or "digital books", or enact an additional or separate sales or use tax levy on any "specified digital product."

D.

1. A statute imposing a tax on "specified digital products," "digital audio-visual works," "digital audio works" or "digital books" and, after January 1, 2010, on any other product "transferred electronically" shall be construed as only imposing the tax on a sale to a purchaser who is an end user unless the statute specifically imposes and separately enumerates the tax on a sale to a purchaser who is not an end user. For purposes of this paragraph, an "end user" includes any person other than a person who receives by contract a product "transferred electronically" for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition of the product, in whole or in part, to another person or persons.

A person that purchases products "transferred electronically" or the code for "specified digital products" for the purpose of giving away such products or code shall not be considered to have engaged in the distribution or redistribution of such products or code and shall be treated as an end user.

2. A statute imposing a tax on "specified digital products," "digital audio-visual works," "digital audio works" or "digital books" and, after January 1, 2010, on any other product "transferred electronically" shall be construed as only imposing tax on a sale with the right of permanent use granted by the seller unless the statute specifically imposes and separately enumerates the tax on a sale with the right of less than permanent use granted by the seller. For purposes of this paragraph "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use shall be presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

3. A statute imposing a tax on "specified digital products," "digital audio-visual works," "digital audio works" or "digital books" and, after January 1, 2010, on any other product "transferred electronically" shall be construed as only imposing tax on a sale which is not conditioned upon continued payment from the purchaser unless the statute specifically imposes and separately enumerates the tax on a sale which is conditioned upon continued payment from the purchaser.

4. A member state which imposes a sales or use tax on the sale of a product "transferred electronically" to a person other than end user or on a sale with the right of less than permanent use granted by the seller or which is conditioned upon continued payment from the purchaser shall so indicate in its taxability matrix in a format approved by the Governing Board.

E. Nothing in this section or the definition of "specified digital products" shall limit a state's right to impose a sales or use tax or exempt from sales or use tax any products or services that are outside the definition of "specified digital products."

F. A state may treat a subscription to products "transferred electronically" differently than a non-subscription purchase of such product. For purposes of this section, "subscription" means an agreement with a seller that grants a consumer the right to obtain products

transferred electronically from within one or more product categories having the same tax treatment, in a fixed quantity or for a fixed period of time, or both.

G. The tax treatment of a "digital code" shall be the same as the tax treatment of the "specified digital product" or product "transferred electronically" to which the "digital code" relates. The retail sale of the "digital code" shall be considered the transaction for purposes of the Agreement. For purposes of this section, "digital code" means a code, which provides a purchaser with a right to obtain one or more such products having the same tax treatment. A "digital code" may be obtained by any means, including email or by tangible means regardless of its designation as "song code", "video code", or "book code."

H. Notwithstanding the provisions of Section 316 of this Agreement, a member state may provide a product based exemption for specific items within the definition of "specified digital products", provided such items which are not "transferred electronically" must also be granted a product based exemption by the member state.

I. For purposes of this section, the term "transferred electronically" means obtained by the purchaser by means other than tangible storage media.

Compiler's note: On September 20, 2007 Section 332 was added and became effective on January 1, 2008.

Compiler's note: On April 2, 2008 Subsection G was amended by adding "or product "transferred electronically"" after "specified digital product" in the first sentence and by deleting ""specified digital products" from within one or more specified digital product categories" and inserting "such products" in the third sentence.

Section 333: USE OF SPECIFIED DIGITAL PRODUCTS (Effective January 1, 2010)

A member state shall not include any product transferred electronically in its definition of "tangible personal property." "Ancillary services", "computer software", and "telecommunication services" shall be excluded from the term "products transferred electronically." For purposes of this section, the term "transferred electronically" means obtained by the purchaser by means other than tangible storage media.

Compiler's note: On September 20, 2007 Section 332 was added and became effective on January 1, 2010.

Section 334: PROHIBITED REPLACEMENT TAXES

No state may have a prohibited replacement tax on any product defined in Part II or Part III(B) of the Library of Definitions which has the effect of avoiding the intent of this Agreement.

Compiler's note: On May 12, 2009 Section 334 was added and became effective upon its approval.

ARTICLE IV
SELLER REGISTRATION

Section 401: SELLER PARTICIPATION

A. The member states shall provide an online registration system that will allow sellers to register in all the member states.

B. By registering, the seller agrees to collect and remit sales and use taxes for all taxable sales into the member states, including member states joining after the seller's registration. Withdrawal or revocation of a member state shall not relieve a seller of its responsibility to remit taxes previously or subsequently collected on behalf of the state.

C. In member states where the seller has a requirement to register prior to registering under the Agreement, the seller may be required to provide additional information to complete the registration process or the seller may choose to register directly with those states.

D. A member state or a state that has withdrawn or been expelled shall not use registration with the central registration system and the collection of sales and use taxes in the member states as a factor in determining whether the seller has nexus with that state for any tax at any time.

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 registered.

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.

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.

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.

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

Compiler's note: The Governing Board issued interpretations of Section 402B and 402C on April 18, 2006. Those interpretations can be found in the Library of Interpretation. The Governing Board issued an interpretation of Section 402 on August 29, 2006. That interpretation can be found in the Library of Interpretations. The Governing Board issued two interpretations of Section 402 on December 14, 2006. Those interpretations can be found in the Library of Interpretations.

Section 403: METHOD OF REMITTANCE

When registering, the seller may select one of the following methods of remittances or other method allowed by state law to remit the taxes collected:

A. MODEL 1, wherein a seller selects a CSP as an agent to perform all the seller's sales or use tax functions, other than the seller's obligation to remit tax on its own purchases.

B. MODEL 2, wherein a seller selects a CAS to use which calculates the amount of tax due on a transaction.

C. MODEL 3, wherein a seller utilizes its own proprietary automated sales tax system that has been certified as a CAS.

Section 404: REGISTRATION BY AN AGENT

A seller may be registered by an agent. Such appointment shall be in writing and submitted to a member state if requested by the member state.

ARTICLE V

PROVIDER AND SYSTEM CERTIFICATION

Section 501: CERTIFICATION OF SERVICE PROVIDERS AND AUTOMATED SYSTEMS

A. The governing board shall certify automated systems and service providers to aid in the administration of sale and use tax collections.

B. The governing board may certify a person as a CSP if the person meets all of the following requirements:

1. The person uses a CAS;
2. The person integrates its CAS with the system of a seller for whom the person collects tax so that the tax due on a sale is determined at the time of the sale;
3. The person agrees to remit the taxes it collects at the time and in the manner specified by the member states;
4. The person agrees to file returns on behalf of the sellers for whom it collects tax;
5. The person agrees to protect the privacy of tax information it obtains in accordance with Section 321 of the Agreement; and
6. The person enters into a contract with the member states and agrees to comply with the terms of the contract.

C. The governing board may certify a software program as a CAS if the governing board determines that the program meets all of the following requirements:

1. It determines the applicable state and local sales and use tax rate for a transaction, in accordance with Sections 309 to 315, inclusive;
2. It determines whether or not an item is exempt from tax;
3. It determines the amount of tax to be remitted for each taxpayer for a reporting period;
4. It can generate reports and returns as required by the governing board; and
5. It can meet any other requirement set by the governing board.

D. The governing board may establish one or more sales tax performance standards for Model 3 sellers that meet the eligibility criteria set by the governing board and that developed a proprietary system to determine the amount of sales and use tax due on transactions.

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

A. Each member state shall review software submitted to the governing board for certification as a CAS under Section 501. Such review shall include a review to determine that the program accurately reflects the taxability of the product categories included in the program. Upon approval by the state, the state shall certify to the governing board its acceptance of the determination of the taxability of the product categories included in the program.

B. Each member state shall relieve CSPs and model 2 sellers from liability to the member state and local jurisdictions for not collecting sales or use taxes resulting from the CSP or model 2 seller relying on the certification provided by the member state.

C. Each member state shall provide relief from liability to CSPs for not collecting sales and use taxes in the same manner as provided to sellers under the provisions of section 317.

D. The governing board and the member states shall not be responsible for classification of an item or transaction within the product categories certified. The relief from liability provided in this section shall not be available for a CSP or model 2 seller that has incorrectly classified an item or transaction into a product category certified by a member state. This paragraph shall not apply to the individual listing of items or transactions within a product definition approved by the governing board or the member states.

E. If a member state determines that an item or transaction is incorrectly classified as to its taxability, it shall notify the CSP or model 2 seller of the incorrect classification. The CSP or model 2 seller shall have ten (10) days to revise the classification after receipt of notice from the member state of the determination. Upon expiration of the ten (10) days,

CSP or model 2 seller shall be liable for the failure to collect the correct amount of sales or use taxes due and owing to the member state.

Compiler's note: On January 13, 2006 Section 502 was added. Member States shall comply with the provisions of this Section no later than January 1, 2008.

Compiler's note: On June 23, 2007 subsections A and D were amended as follows:

2. Each member state shall review software submitted to the governing board for certification as a CAS under Section 501. Such review shall include a review to determine that the program ~~adequately classifies the state's product-based exemptions~~ accurately reflects the taxability of the product categories included in the program. Upon ~~completion of the review~~ approval by the state, the state shall certify to the governing board its acceptance of the ~~classifications made by the system~~ determination of the taxability of the product categories included in the program.

5. *The governing board and the member states shall not be responsible for classification of an item or transaction within the ~~product-based exemptions~~ product categories certified. The relief from liability provided in this section shall not be available for a CSP or model 2 seller that has incorrectly classified an item or transaction into a ~~product-based exemption~~ product category certified by a member state. This paragraph shall not apply to the individual listing of items or transactions within a product definition approved by the governing board or the member states.*

ARTICLE VI

MONETARY ALLOWANCES FOR NEW TECHNOLOGICAL MODELS FOR SALES TAX COLLECTION

Section 601: MONETARY ALLOWANCE UNDER MODEL 1

A. Each member state shall provide a monetary allowance to a CSP in Model 1 in accordance with the terms of the contract between the governing board and the CSP. The details of the monetary allowance will be provided through the contract process. The governing board shall require that such allowance be funded entirely from money collected in Model 1.

B. The contract between the governing board and a CSP may base the monetary allowance to a CSP on one or more of the following:

1. A base rate that applies to taxable transactions processed by the CSP.
2. For a period not to exceed twenty-four months following a voluntary seller's registration through the Agreement's central registration process, a percentage of tax revenue generated for a member state by the voluntary seller for each member state for which the seller does not have a requirement to register to collect the tax.

Section 602: MONETARY ALLOWANCE FOR MODEL 2 SELLERS

The member states initially anticipate that they will provide a monetary allowance to sellers under Model 2 based on the following:

A. All sellers shall receive a base rate for a period not to exceed twenty-four months following the commencement of participation by a seller. The base rate will be set after the base rate has been established for Model 1. This allowance will be in addition to any discount afforded by each member state at the time.

B. The member states anticipate a monetary allowance to a Model 2 Seller based on the following:

1. For a period not to exceed twenty-four months following a voluntary seller's registration through the Agreement's central registration process, a percentage of tax

revenue generated for a member state by the voluntary seller for each member state for which the seller does not have a requirement to register to collect the tax.

2. Following the conclusion of the twenty-four month period, a seller will only be entitled to a vendor discount afforded under each member state's law at the time the base rate expires.

Section 603: MONETARY ALLOWANCE FOR MODEL 3 SELLERS AND ALL OTHER SELLERS THAT ARE NOT UNDER MODELS 1 OR 2 (REPEALED)

Compiler's note: The following was repealed on October 7, 2010.

The member states anticipate that they will provide a monetary allowance to sellers under Model 3 and to all other sellers that are not under Models 1 or 2 based on the following:

A. For a period not to exceed twenty-four months following a voluntary seller's registration through the Agreement's central registration process, a percentage of tax revenue generated for a member state by the voluntary seller for each member state for which the seller does not have a requirement to register to collect the tax.

B. Vendor discounts afforded under each member state's law.

Section 604: ADDITIONAL MONETARY ALLOWANCE REQUIRED FOR MEMBERS MAKING CERTAIN ELECTION (REPEALED)

Compiler's note: This section was adopted on December 12, 2007, became effective on January 1, 2010 and was repealed on October 7, 2010.

In addition to the monetary allowance provided pursuant to Sections 601, 602 and 603 of this Agreement, each state that makes the election by Section 310.1 of this Agreement, upon becoming a full member state, shall provide reasonable compensation for the incremental expenses incurred in establishing or maintaining a uniform origin system for administering, collection and remitting sales and use taxes on origin-based sales.

Section 605: VENDOR COMPENSATION DEFINITIONS

The following definitions apply to Sections 606 through Sections 613, inclusive.

A. "Remote sales" are sales into a state in which the seller would not legally be required to collect sales or use tax, but for the ability of that state to require such "remote seller" to collect sales or use tax under federal authority.

B. "Remote seller" is a seller that would not register in a state but for the ability of that state to require such "remote seller" to collect sales or use tax under federal authority.

C. "In-state seller" is any seller that is not a "remote seller" in a state and is legally required to collect sales or use tax in that state.

D. "New remote seller" is a "remote seller" who registers with the online registration system established pursuant to Section 303 and was not previously required to collect sales or use taxes. A seller merely reincorporating, changing its name or having a change in ownership or any other similar change in its business structure or operations does not constitute a "new remote seller."

Compiler's note: This section was adopted on October 7, 2010 and became effective upon its adoption.

Section 606: COMPENSATION REQUIREMENT

A. 1. A member state may require "remote sellers" to collect state and local sales and use tax on "remote sales" provided such member state authorizes compensation to all sellers in accordance with the requirements of Section 605 through Section 613, inclusive.

2. A member state shall not be required to comply with the requirements for compensation in Section 605 through Section 613, inclusive, but if such member state does not comply with the requirements for compensation, it shall not exercise collection authority over "remote sellers".

Compiler's note: This section was adopted on October 7, 2010 and became effective on its adoption.

Section 607: PETITION FOR COLLECTION AUTHORITY AND COMPENSATION COMPLIANCE DETERMINIATIONS

A. Upon a petition by the member state, the governing board shall certify which member states are in compliance with the compensation requirements of the Agreement and shall reevaluate such certification on an annual basis. The process for certification is as follows:

1. A member state shall petition the governing board for certification that it meets all the compensation requirements of this section. The petition must include the most recent certificate of compliance showing such member state to be in full compliance with the minimum simplification requirements of the Agreement, other than compensation.

2. A petition for collection authority may be submitted to the governing board at any time but the governing board shall not grant state specific authorization to begin remote seller collections until at least 6 months after the general remote seller collection authority has been granted by federal authority.

3. Upon certification by the governing board, the member state will be authorized to require collection by remote sellers. This authority will commence for such state on the first day of the next calendar quarter at least 60 days after the date the governing board makes its compensation determination. Such collection authority will continue as long as the member state provides the minimum compensation to all sellers as required or permitted under the Agreement and consistent with subdivision C of this section and maintains its certification and compliance with the Agreement.

B. The governing board shall establish within its bylaws a compensation certification and review committee comprised of no less than 11 members. Membership shall be drawn from the business advisory council, the state and local advisory council and delegates to the governing board. The chair of the compliance review and interpretations committee shall be ex officio.

The purpose of this committee is to:

1. Review each member state's petition pursuant to subdivision A of this section;
2. Perform annual reviews of state compensation plans; and
3. Provide timely recommendations to the governing board for action on member states' petitions made pursuant to subdivision 1 of this section.

C. At any time after the governing board has made the determinations required by the Agreement to grant remote seller collection authority to a member state, any person affected by the Agreement may petition the governing board for a determination of a member state's compliance with the Agreement. Such request shall be deemed a petition for matters of compliance under Section 1002 of the Agreement and shall comply with the rules and procedures for issue resolution in Section 1001 of the Agreement.

D. Upon final determination by the governing board that a member state's compensation is not in compliance with the compensation requirements of the Agreement, a member state's authority to require collection by remote sellers shall automatically terminate 30 days following the date of such final determination.

E. Upon final determination by the governing board that a member state is not in compliance with the minimum simplification parts of the Agreement, other than compensation, that member state shall lose its remote seller collection authority on the earlier of:

1. The date specified by the governing board, or
2. The later of the first day of January at least 2 years after the governing board finally determined the member state was not in compliance or the first day of a calendar quarter following the end of one full session of the member state's legislature beginning after the governing board finally determined the state was not in compliance.

F. Any member state that loses its collection authority must file a petition with the governing board to have its remote seller collection authority restored. The petition, which may be submitted at any time, should identify how the issues which caused loss of certification have been addressed and why certification should be restored. Restoration of collection authority, if granted, will commence for such state on the first day of the next calendar quarter at least 60 days after the governing board makes its compensation determination.

Compiler's note: This section was adopted on October 7, 2010 and became effective upon its adoption.

Section 608: STANDARDS FOR COMPENSATION

A. The member state shall provide at least the minimum compensation to all sellers for expenses incurred in administering, collecting, and remitting sales and use taxes (other than taxes paid on goods and services purchased for consumption by the seller) to that member state that is reasonably related to actual costs incurred in collecting and remitting sales and use taxes.

The governing board may allow compensation to:

1. Vary from state to state;
2. Vary according to collection costs of sellers of different sizes;
3. Vary according to the complexity of a state's laws, including having a single state rate versus many local jurisdictions, clothing caps or thresholds, intra-state origin sourcing;
4. Exceed the minimum standard;
5. Be reasonably capped;
6. Be adjusted in relationship to changes in the size of the small business exemption adopted by the governing board;
7. Be decreased as additional simplifications and improvements in technology reduce collection costs;
8. Be increased if provisions of the Agreement are adopted that increase collection costs.

B. Compensation will be paid as a percentage applied to tax remitted on a return. The governing board shall promulgate rules to provide appropriate adjustments to accommodate differing filing periods of member states.

C. Each member state shall establish three rates of compensation which shall be a percentage of a portion of sales and use taxes remitted by a seller in the reported month. Rate 1 shall be paid on the first $6,250.00 of the sales and use tax remitted by a seller in the reported month. Rate 2, which shall not be less than fifty percent (50%) of a rate 1, shall be paid on the amount of sales and use tax remitted in the reported month exceeding $6,250.00 and less than or equal to $62,500.00. Rate 3, which shall not be less than twenty-five percent (25%) of rate 1, shall be paid on the sales and use tax remitted by a seller in the reported month exceeding $62,500.00.

Each member state shall establish rates 1, 2, 3 to provide total compensation not less than:

1. Three-fourths of one percent (0.75%) of state and local sales and use tax collections for states that require sellers to report tax by local jurisdiction; or
2. One-half of one percent (0.5%) of sales and use tax collections for states that do not require sellers to report tax by local jurisdiction.

Calculation of the compensation rate for the next succeeding calendar year shall be based on remittances for the previous 12 months ending June 30 of the immediately prior calendar year and the methodology prescribed in the rules to be promulgated by the governing board.

D. No member state shall be required by the Agreement to pay compensation to a seller in any month on sales and use taxes remitted for such month in excess of:

1. Seven hundred fifty thousand dollars ($750,000.00) for member states with sales and use tax collections in the twelve month period ending June 30 of the previous calendar year of not more than one billion dollars ($1,000,000,000.00); or

2. One million dollars ($1,000,000.00) for states with sales and use tax collections in the twelve month period ending June 30 of the previous calendar year of more than one billion dollars ($1,000,000,000.00) and not more than two billion five hundred million dollars ($2,500,000,000.00); or

3. Three million dollars ($3,000,000.00) for states with sales and use tax collections in the twelve month period ending June 30 of the previous calendar year of more than two billion five hundred million dollars ($2,500,000,000.00) and not more than five billion dollars ($5,000,000,000.00); or

4. Five million dollars ($5,000,000.00) for states with sales and use tax collections in the twelve month period ending June 30 of the previous calendar year of more than five billion dollars ($5,000,000,000.00) and not more than seven billion five hundred million dollars ($7,500,000,000.00); or

5. Seven million dollars ($7,000,000.00) for states with sales and use tax collections in the twelve month period ending June 30 of the previous calendar year of more than seven billion five hundred million dollars ($7,500,000,000.00) and not more than ten billion dollars ($10,000,000,000.00); or

6. Ten million dollars ($10,000,000.00) for member states with sales and use tax collections in the twelve month period ending June 30 of the previous calendar year of more than ten billion dollars ($10,000,000,000.00).

The governing board may adjust the above caps as necessary due to inflation, growth in sales tax revenues or other relevant factors. The compensation certification and review committee must review any proposed adjustments to these caps and make a recommendation to the governing board on such proposed adjustments prior to any vote by the governing board on changes to the above caps.

E. Member states that have a second state rate on groceries or drugs or clothing thresholds will be required to pay additional compensation as provided by rule adopted by the governing board.

F. Rules setting forth calculations of minimum compensation amounts and procedures to facilitate payment of compensation shall be approved by the governing board prior to any member state exercising its collection authority.

G. All rules relating to compensation or changes to the minimum compensation amounts shall be reviewed every two years by the governing board in time for member states to incorporate any changes into their next legislative session.

H. Member states may restrict sellers from altering the number of returns filed in order to enhance their own compensation or that of another person.

I. Compensation, addressed by this amendment, is applicable only to sales and use taxes.

J. Compensation shall be paid for any period that a return is timely filed and fully paid. No member state is required to pay compensation for an untimely or partially paid return. Absent fraud, a return filed and fully paid in good faith does not constitute a partially paid return if it is subsequently determined that additional tax is due from the seller. A member state is not required to provide compensation on additional tax found due.

K. Member states will not be required to pay compensation on sales for which a seller is using a certified service provider and such certified service provider is being compensated for that service by the state.

L. Member states are not required to provide compensation for transactions in which the seller is not responsible for collecting and remitting the tax, and for persons with direct pay permits.

M. Member states shall not assess penalty or interest on tax due pursuant to paragraph A 3 of Section 607 on remote sales transactions occurring during the first six months following commencement of remote seller collection authority.

N. Each member state, at its option, shall be permitted to lower, reduce, or eliminate the amount or rate of compensation otherwise provided for by this section paid to public utilities providing gas, electric, water or sewer services.

Compiler's note: This section was adopted on October 7, 2010 and became effective upon its adoption.

Section 609: OBLIGATION TO PAY

A. For purposes of this section the term "small remote seller" shall mean a new remote seller which has gross national remote sales of no more than five million dollars ($5,000,000.00) as calculated pursuant to Section 610 of this Agreement and shall include sellers which would be "new remote sellers" but for the fact that they had gross national remote sales of less than five hundred thousand dollars ($500,000.00) as calculated pursuant to Section 610 of this Agreement.

B. Member states shall begin paying compensation to a "new remote seller" upon submission of the seller's initial return filed after the effective date of the member state's authorization for compensation that meets the standards of Section 608. Notwithstanding the rates of compensation established by a member state pursuant to Section 608, a "small remote seller" may elect to receive twenty percent (20%) of the tax collected and due (except for the compensation amount to be retained by the small remote seller) to a state in a month not to exceed compensation of eighty-five dollars ($85.00) in any month in lieu of compensation

calculated using the rates of compensation established by a member state pursuant to Section 608. Such election shall be for a six month period beginning with the first month that such seller collects a member state's tax. After such six month period, the rates used to calculate compensation for such seller shall be those rates established by the member state pursuant to Section 608. The increased amount of compensation allowed by this subsection shall be available to a "small remote seller" which begins collecting tax for a member state within the first 12 months following the date of the member state's authorization for the collection of taxes on remote sales.

A seller subsequently found not to meet the qualifications of a "small remote seller" may be denied and assessed, including any applicable penalties and interest, for any compensation it was not qualified to claim.

The provisions of this section shall apply to each state which is currently a full member of the Agreement and to each state which becomes a full member of the Agreement after the adoption of this section.

C. If a member state determines that a "new remote seller" had previously been registered in that state, compensation for that seller may be delayed until the state is required to pay compensation for all "in-state sellers" as set forth in subsection D of this section.

D. A member state shall elect one of the following methods (Option1, Option 2, or Option 3) for commencing payment of compensation for "in-state sellers" or "new remote sellers" previously registered in that state.

1. Option 1. Pay "in-state sellers" and "new remote sellers" previously registered in that state when tax collections from "new remote sellers" reaches the dollar threshold established by the following method:

a) A state utilizing this option shall track and report its total collections from "new remote sellers to the governing board.

b) When the amount of monthly collections received from such sellers for each of four consecutive months occurring sometime after the date remote seller collection authority began meets or exceeds the amount that would be required to pay the approved average monthly level of compensation for all other sellers, then compensation will be due and owing beginning the first day of the following quarter and thereafter for all sellers.

c) In a state that is already compensating its sellers, only the difference above the currently paid amount and the amount that would be required to pay the approved average monthly level of compensation for all other sellers will be required to accumulate before implementing the approved compensation.

2. Option 2. Begin paying "in-state sellers" and "remote sellers" that had been previously registered in that state on the next return remitted fifteen months following the grant of collection authority.

3. Option 3. Continue paying compensation to all the sellers previously receiving such payment as long as such compensation meets the requirements of this section.

E. A member state that does not receive sufficient sales and use tax collections from remote sellers to justify the state's continued participation may notify the governing board that its remote collection authority should expire and may terminate its obligation to pay compensation at the governing board-approved rate. A member state which exercises this option shall give not less than 60 days' notice of its intent to relinquish remote collection authority.

Compiler's note: This section was adopted on October 7, 2010 and became effective upon its adoption.

Compiler's note: On December 13, 2010 this section was amended as follows:

A. For purposes of this section the term "small remote seller" shall mean a new remote seller which has gross national remote sales of no more than five million dollars ($5,000,000.00) as calculated pursuant to Section 610 of

this Agreement and shall include sellers which would be "new remote sellers" but for the fact that they had gross national remote sales of less than five hundred thousand dollars ($500,000.00) as calculated pursuant to Section 610 of this Agreement.

B. Member states shall begin paying compensation to a "new remote seller" upon submission of the seller's initial return filed after the effective date of the member state's authorization for compensation that meets the standards of Section 608. Notwithstanding the rates of compensation established by a member state pursuant to Section 608, ~~compensation paid to~~ a "~~new~~ small remote seller~~s~~" may elect to receive ~~for a six months period beginning with the first month that such sellers collect a Member State's tax shall be calculated based on the following rates: Rate 1 shall be three percent (3%), rate 2 shall be one and one-half percent (1.5%) and rate3 shall three-fourths of one percent (0.75%)~~ twenty percent (20%) of the tax collected and due(except for the compensation amount to be retained by the small remote seller) to a state in a month not to exceed compensation of eighty-five dollars ($85.00) in any month in lieu of compensation calculated using the rates of compensation established by a member state pursuant to Section 608. Such election shall be for a six month period beginning with the first month that such seller collects a member state's tax. After such six month period, the rates used to calculate compensation for such seller~~s~~ shall be those rates established by the member state pursuant to Section 608. The increased amount of compensation allowed by this subsection shall be available to a "small remote seller" which begins collecting tax for a member state within the first 12 months following the date of the member state's authorization for the collection of taxes on remote sales.

A seller subsequently found not to meet the qualifications of a "~~new~~ small remote seller" may be denied and assessed, including any applicable penalties and interest, for any compensation it was not qualified to claim.

The provisions of this section shall apply to each state which is currently a full member of the Agreement and to each state which becomes a full member of the Agreement after the adoption of this section.

~~B.~~ C. If a member state determines that a "new remote seller" had previously been registered in that state, compensation for that seller may be delayed until the state is required to pay compensation for all "in-state sellers" as set forth in ~~subdivision 3~~ subsection D of this section ~~of Section 609~~." The remaining subsections were renumbered.

Section 610: SMALL SELLER EXCEPTION

A. The governing board shall develop a sales volume threshold for determining which small "remote sellers" qualify for an exemption from the requirement to collect sales or use taxes on "remote sales." In making such a determination the governing board shall consider whether:

1. The sales are occasional or isolated;
2. The sales are of such low volume that the administrative expense of collection imposes too great a burden on both seller and member state;
3. The collection burden on the remote seller is offset by compensation;
4. The remote seller has a monthly filing requirement in a member state;
5. Certified service providers for sellers in that industry group are readily available; and
6. Technology solutions are available to mitigate the filing burden.

In making such determination, the governing board shall identify the total annual dollar volume of gross remote sales nationwide of the seller above which would trigger a collection responsibility for remote sellers. The exemption threshold shall be set at a relatively low level and over time adjusted downward so that only sellers making isolated or occasional sales are excluded from the collection requirement.

The threshold shall be based on national remote sales volume.

B. "Remote sellers" shall be required to annually determine if the small seller exemption applies based on (1) sales volume of the seller and (2) the annual policy determination of the governing board. To determine whether a remote seller qualifies for the small seller exception, the seller computes the total gross national remote sales volume for the most recent 12-month period beginning July 1 of one calendar year and ending June 30 of the next calendar year. If the total gross national remote sales volume for such period exceeds the exemption threshold amount in effect for such period, then the remote seller shall begin collection and remittance of sales and use tax on remote sales on January 1 of the following year.

C. Once a seller has exceeded the exemption threshold, the seller must be allowed until the beginning of the first calendar quarter commencing within 60 days following the date such threshold is exceeded in order to prepare before the collection obligation becomes effective. If gross national remote sales volume for a seller that is currently collecting and remitting sales and use tax on remote sales falls below the small seller exemption threshold amount then in effect, such seller shall continue to collect and remit such taxes until the end of the following calendar quarter.

D. In determining whether a "remote seller" has exceeded the small seller exemption threshold, the remote sales of such seller should be totaled with the remote sales of any affiliated business owned in whole or substantial part by another "remote seller" selling the same or substantially similar products and doing business under the same or substantially similar business. No "remote seller" that is part of an affiliated group with a gross national remote sales volume above the small seller exemption threshold is eligible to qualify for the small seller exemption, even if such seller's gross national remote sales volume is below such threshold.

E. The governing board shall post information about the small seller exception on its website at least 90 days prior to the date on which it becomes effective on the first day of a calendar quarter.

F. The governing board shall review the small seller exemption threshold every two years, and such threshold may be adjusted no more frequently than annually with not less than 90 days notice. Remote sellers claiming the small seller exemption must file an exemption certificate with the online registration system, stating that they qualify for the small seller exception and meet such threshold. Prior to the implementation of remote collection authority in any state, the governing board shall enact rules that provide for the registration of remote sellers and the implementation of the requirement for remote sellers to begin collecting.

G. The governing board shall adopt rules to establish the amount of annual gross remote sales necessary to require a seller to register with the online registration system and the amount of annual gross remote sales necessary to require a seller to collect sales and use tax.

Compiler's note: This section was adopted on October 7, 2010 and became effective upon its adoption.

Compiler's note: Subsection G was adopted on November 8, 2010 and became effective upon its adoption.

Section 611: REPEAL

Sections 605 through Sections 613, inclusive, are repealed twenty four months after their adoption by the governing board if Congress has not granted states authority to require remote sellers to collect sales and use tax.

Compiler's note: This section was adopted on October 7, 2010 and became effective upon its adoption.

Section 612: VOLUNTARY COMPENSATION FOR REMOTE SELLERS

States may choose to compensate remote sellers as a measure of good faith, and offer such compensation as an inducement to registering to collect through the online registration system.

Compiler's note: This section was adopted on October 7, 2010 and became effective upon its adoption.

Section 613: OPTIONAL COMPENSATION FOR REMOTE SELLERS

States may choose to not compensate remote sellers until such time federal legislation authorizes states to require remote sellers to collect sales and use tax.

Compiler's note: This section was adopted on October 7, 2010 and became effective upon its adoption.

ARTICLE VII

AGREEMENT ORGANIZATION

Section 701: EFFECTIVE DATE

The Agreement shall become binding and take effect when at least ten states comprising at least twenty percent of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax as of October 1, 2005 have petitioned for membership and have either been found to be in compliance with the requirements of the Agreement pursuant to Section 805 or have been found to be an associate member pursuant to Section 704. The Agreement shall take effect on the first day of a calendar quarter at least sixty days after the tenth state is found in compliance or is found to be an associate member.

Compiler's note: On April 16, 2005 Section 701 was amended by inserting "either" after "and have" in the first sentence; inserting "or have been found to be an associate member pursuant to Section 704" at the end of the first sentence; and deleting ", but cannot take effect prior to July 1, 2003" and inserting "or is found to be an associate member" at the end of the second sentence. The April 16, 2005 amendments to this section were effective upon adoption.

Compiler's note: On April 18, 2006 Section 701 was amended by inserting "as of October 1, 2005" after "sales tax." The April 18, 2006 amendment to this section was effective upon adoption.

Section 702: APPROVAL OF INITIAL STATES (Repealed on December 17, 2009)

Compiler's note: On April 16, 2005 this section was amended by deleting "that has adopted changes to its statutes, rules, regulations, or other authorities necessary to bring a state into compliance as provided in Section 805," after "a state" in the first sentence; inserting the second sentence; inserting "to a state's statutes, rules, regulations, or other authorities" after "changes" in the third sentence; and deleting ", but shall not be earlier than the date the relevant statutes, rules, regulations, or other authorities of the requisite number of petitioning states are effective" after "Section 701" in the second sentence in the second paragraph. The April 16, 2005 amendments to this section were effective upon adoption.

Compiler's note: On December 17, 2009 this section was repealed. The following is the section when it was repealed:

Section 702: APPROVAL OF INITIAL STATES

Prior to the effective date of the Agreement, a state may seek membership by forwarding a petition for membership and certificate of compliance to the Co-Chairs of the Streamlined Sales Tax Implementing States. The certificate of compliance shall meet the requirements of Section 802. If some changes to a state's statutes, rules, regulations, or other authorities have been adopted, but are not yet in effect, the petition for membership shall include the date on which those changes will be effective. A petitioning state shall also provide a copy of its petition for membership and certificate of compliance to each of

the Streamlined Sales Tax Implementing States. A petitioning state shall also post a copy of its petition for membership and certificate of compliance on that state's web site.

Upon receipt of the requisite number of petitions as provided in Section 701, the Co-Chairs shall convene and preside over a meeting of the petitioning states for the purpose of determining if the petitioning states are in compliance with the Agreement. The meeting shall be convened as soon as practicable after receipt of the requisite number of petitions provided in Section 701. An affirmative vote of three-fourths of the other petitioning states is necessary for a petitioning state to be found in compliance with the Agreement. A petitioning state shall not vote on its own petition for membership.

The Co-Chairs shall provide the public with an opportunity to comment prior to any vote on a state's petition for membership.

Section 703: STREAMLINED SALES TAX IMPLEMENTING STATES (Repealed on December 17, 2009)

Compiler's note: On April 16, 2005 Section 703 was amended by inserting the second sentence in 703 (A) and inserting "without the use of associate members" after "are met" in 703 (C). The April 16, 2005 amendments to this section were effective upon adoption. On August 29, 2006 Section 703 was amended by inserting subsection D. The August 29, 2006 amendment to this section was effective upon adoption.

Compiler's note: On December 17, 2009 this section was repealed. The following is the section when it was repealed:

Section 703: STREAMLINED SALES TAX IMPLEMENTING STATES

A. From the time of ratification of this Agreement until the provisions of Section 701 have been met, the Streamlined Sales Tax Implementing States shall maintain responsibility for the Agreement, including the disposition of all proposed amendments to the Agreement. If the provisions of Section 701 have been met with the use of associate members as defined in Section 704, the Streamlined Sales Tax Implementing States shall be responsible for the disposition of all proposed amendments to and interpretations of the Agreement until such time as the provisions of Section 701 have been met without the use of associate members.

B. Amendments to the Agreement considered by the Streamlined Sales Tax Implementing States shall follow the provisions as set forth in Article IX, Section 901.

C. For a period of not less than six months nor longer than one year after the provisions of Section 701 are met without the use of associate members, the Streamlined Sales Tax Implementing States shall provide advice to the governing board of the Agreement and shall be consulted by the governing board before amending the Agreement.

D. Upon the expiration of the duties of the Streamlined Sales Tax Implementing States as set forth in subsection C, any state that previously held Implementing State status shall become an advisor state to the governing board.

1. Advisor states shall serve in an ex officio capacity on the governing board, with non-voting status, but may speak to any matter presented to the governing board for consideration.

2. Each state's delegation to the Streamlined Sales Tax Implementing States may serve as the state's delegation to the governing board as established herein or the state may appoint a new delegation, of up to four representatives, who shall be members of state or local government.

3. Representatives of advisor states may serve on standing committees of the governing board except they may not serve as officers or directors on the executive committee or as members on the finance committee or the compliance review and interpretations committee.

4. A state that was not previously an implementing state may become an advisor state by:

a. Enacting legislation authorizing the state's participation in interstate discussions to develop a simplified sales and use tax system; or

b. Executing a memorandum of understanding or similar written document by the governor and legislative leaders expressing the intent of the state to participate in interstate discussions to develop a simplified sales and use tax system.

Any question over whether or not a state qualifies as an advisor state shall be resolved by a majority vote of the governing board.

E. Neither the governing board nor a member state may share or grant any advisor state access to any seller information from the seller's registration pursuant to Section 401. Neither the governing board nor a member state may share or grant any advisor state access to any seller information from an audit conducted by the governing board or a member state on behalf of the governing board.

F. An advisor state may not participate in a closed session of the governing board or a governing board committee.

Section 704: CONSIDERATION OF PETITIONS (Repealed on December 17, 2009)

Compiler's note: On April 16, 2005 Section 704 was added and was effective upon adoption.

Compiler's note: On December 17, 2009 this section was repealed. The following is the section when it was repealed:

Section 704: CONSIDERATION OF PETITIONS

A. A petitioning state that is found to be in compliance pursuant to Section 805 of the Agreement and the changes to their statutes, rules, regulations or other authorities necessary to bring them into compliance are in effect shall be designated a member state.

B. A petitioning state that is found to be in compliance pursuant to Section 805 of the Agreement and the changes to their statutes, rules, regulations or other authorities necessary to bring them into compliance are not in effect, but are scheduled to take effect on or before January 1, 2008, shall be designated an associate member. Provided the statutes, rules, regulations or other authorities remain in effect, the state shall automatically become a member state upon the effective date of the conforming legislation.

C. A petitioning state that fails to receive an affirmative vote of three-fourths of the petitioning states as required under Section 702 may request associate membership. If such a request is made, the petitioning states may grant such membership by majority vote upon a finding that the state has achieved substantial compliance with the terms

of the Agreement taken as a whole, but not necessarily each provision as required by Section 805, measured qualitatively, and there is a reasonable expectation that the state will achieve compliance by January 1, 2008. A state that is granted associate membership by this section shall be required to re-petition for full membership under the requirements of the Agreement.

Section 705: ASSOCIATE MEMBERSHIP (Repealed on December 17, 2009)

Compiler's note: On April 16, 2005 Section 705 was added and was effective upon adoption.

Compiler's note: On June 23, 2007 Section 705 was amended as follows:

"A. An associate member shall have all the rights and privileges of a member state except that:

1. An associate member may not vote on amendments to or interpretations of the Agreement when the provisions of Section 701 have been met without the use of associate members; and

2. An associate member may not vote to determine if a petitioning state is in compliance with the Agreement pursuant to Section 804 of the Agreement.~~ Associate members may vote on amendments to or interpretations of the Agreement as an Implementing State under Section 703 (A).~~

3. A representative of an associate member state shall not be eligible to serve on the compliance review and interpretations committee.

B. ~~An associate member~~ A state which is an associate member on January 1, 2007, shall retain such status until the Governing Board finds such state to be in compliance pursuant to Section 805 or December 31, 2007, whichever is earlier, without regard to whether the population requirement of Section 701 has been met. Any such associate member that has not been found in compliance by December 31, 2007 shall forfeit its status as an associate member. ~~No state may be an associate member after December 31, 2007.~~ The ~~Co-Chairs of the Streamlined Sales Tax Implementing States~~ president of the governing board shall provide an associate member state with the reasons why such state is not in compliance with the Agreement. Forfeiture of its status as an associate member does not preclude a state from re-petitioning for membership pursuant to Section 801.

F. An associate member state shall provide amnesty pursuant to the provisions of Section 402, provided, the amnesty shall be in effect from the date the associate member status is attained until 12 months after the associate member state ~~has been found to be in compliance with the Agreement~~ becomes a full member state."

The June 23, 2007 amendments became effective upon their adoption.

Compiler's note: On December 12, 2007 Section 705 B was amended by changing the dates from "December 31, 2007" to "July 1, 2009" and deleting ", without regard to whether the population requirement of Section 701 has been met" at the end of the first sentence.

On September 30, 2009 Section 705 B was amended as follows:

"B. A state which is an associate member on January 1, 2007, shall retain such status until: 1) the state rescinds its election under Section 310.1 and the governing board finds such state to be in compliance pursuant to Section 805, at which time the state shall become a full member state; 2) the state has become a full member state pursuant to Section 310.1 D. 2;

or 3) the governing board determines that the state is not in substantial compliance with the Agreement, as amended by Section 310.1 at which time the state ~~or July 1, 2009, whichever is earlier. Any such associate member that has not been found in compliance by July 1, 2009~~ shall forfeit its status as an associate member. The president of the governing board shall provide an associate member state with the reasons why such state is not in compliance with the Agreement. Forfeiture of its status as an associate member does not preclude a state from re-petitioning for membership pursuant to Section 801." The amendment was effective upon its adoption.

Compiler's note: On December 17, 2009 this section was repealed. The following is the section when it was repealed:

Section 705: ASSOCIATE MEMBERSHIP

A. An associate member shall have all the rights and privileges of a member state except that:

1. An associate member may not vote on amendments to or interpretations of the Agreement when the provisions of Section 701 have been met without the use of associate members; and

2. An associate member may not vote to determine if a petitioning state is in compliance with the Agreement pursuant to Section 804 of the Agreement.

3. A representative of an associate member state shall not be eligible to serve on the compliance review and interpretations committee.

B. A state which is an associate member on January 1, 2007, shall retain such status until: 1) the state rescinds its election under Section 310.1 and the governing board finds such state to be in compliance pursuant to Section 805, at which time the state shall become a full member state; 2) the state has become a full member state pursuant to Section 310.1 D. 2; or 3) the governing board determines that the state is not in substantial compliance with the Agreement, as amended by Section 310.1 at which time the state shall forfeit its status as an associate member. The president of the governing board shall provide an associate member state with the reasons why such state is not in compliance with the Agreement. Forfeiture of its status as an associate member does not preclude a state from re-petitioning for membership pursuant to Section 801.

C. Notwithstanding any provision of this Agreement to the contrary, a seller may, but is not required to collect sales or use tax on sales into an associate member state unless the seller is otherwise required to collect such taxes under applicable law. Notwithstanding the provisions of Section 401 (B), a seller that volunteers to collect tax in an associate member state is not required to collect tax in any other associate member state. An associate member shall be responsible for payment of costs as provided in Article VI for those sellers that volunteer to collect tax in an associate member state.

D. Neither the governing board nor a member state may share or grant access to an associate member state any seller information from the seller's registration pursuant to Section 401. Neither the governing board nor a member state may share or grant access to an associate member state any seller information from an audit conducted by the governing board or a member state on behalf of the governing board unless the associate member state is a party to the audit.

E. An associate member shall be responsible for the payment of the petition fee and the annual cost allocation as determined by the Streamlined Sales Tax Implementing States or governing board.

F. An associate member state shall provide amnesty pursuant to the provisions of Section 402, provided, the amnesty shall be in effect from the date the associate member status is attained until 12 months after the associate member state becomes a full member state.

ARTICLE VIII
STATE ENTRY AND WITHDRAWAL

Section 801: ENTRY INTO AGREEMENT

A. A state may apply to become a full member, a contingent member, or an associate member of the governing board by submitting a petition for membership and certificate of compliance to the governing board. The president shall provide the public with an opportunity to comment prior to any vote on a state's petition for membership.

B. The governing board shall provide a copy of petitioning state's petition for membership and certificate of compliance to all member states when the petitioning state submits its petition for membership to the governing board. A petitioning state shall post a copy of its petition for membership and certificate of compliance on that state's web site. The governing board shall post a copy of the state's petition for membership and certificate of compliance on the governing board's web site.

Compiler's note: On June 23, 2007 subsections A and B were numbered and subsections C and D were added. These changes became effective upon their adoption.

Compiler's note: On December 17, 2009 this section was amended as follows:

A. ~~After the effective date of the Agreement, a~~ A state may apply to become a ~~party to~~ full member, a contingent member, or an associate member of the ~~Agreement~~ governing board by submitting a petition for membership and certificate of compliance to the governing board. ~~The petition for membership shall include such state's proposed date of entry. The petitioning state's proposed date of entry shall be on the first day of a calendar quarter. The proposed date of entry shall be a date on which all provisions necessary for the state to be in compliance with the Agreement are in place and effective.~~ The president shall provide the public with an opportunity to comment prior to any vote on a state's petition for membership.

B. The ~~petitioning state~~ governing board shall provide a copy of ~~it's~~ petitioning state's petition for membership and ~~the~~ certificate of compliance to ~~each~~ all member ~~state~~ states when the petitioning state submits its petition for membership to the governing board. A petitioning state shall ~~also~~ post a copy of its petition for membership and certificate of compliance on that state's web site. The governing board shall post a copy of the state's petition for membership and certificate of compliance on the governing board's web site.

~~C. A state that petitions for membership after January 1, 2007, that is found to be in compliance pursuant to Sections 804 and 805 of the Agreement except that the changes to their statutes, rules, regulations or other authorities necessary to bring them into compliance are not yet in effect, shall be designated an associate member~~

~~*effective on the first day of the calendar quarter that is not more than twelve months before its proposed date of entry as a member state. Such twelve month period may be extended to eighteen months if the governing board, by unanimous vote approves such extension. Such extension shall be granted only if the petitioning state can present adequate justification of the necessity for the future effective date and that the application of the future effective date beyond twelve months is limited to the provisions of the law for which such necessity is demonstrated. Such states shall be subject to the annual recertification requirement set forth in Section 803 of this Agreement for all issues other than the delayed effective date issues identified at the time the state becomes an associate member. Extensions of effective date delays beyond those identified at the time the state becomes an associate member shall require the state to submit a statement of non-compliance pursuant to Section 803. Provided the statues, rules, regulations or other authorities remain in effect, the state shall automatically become a member state on the state's proposed date of entry.*~~

~~*D. A state which becomes an associate member after January 1, 2007 shall forfeit its status as an associate member on the date provided for compliance pursuant to subsection C of this section, if the state's laws are not in compliance at that time. A state that forfeits its status as an associate member because it has extended its effective date for required law changes beyond the date set forth in its petition for membership may not file another petition for membership for a period of twelve months after such state forfeits its status as an associate member.*~~

This amendment became effective upon its adoption.

Section 801.1: FULL MEMBERSHIP

A full member is a state that has been found in compliance pursuant to Sections 804 and 805 and the changes to their statutes, rules, regulations or other authorities necessary to bring them into compliance are in effect. The petition for full membership shall include such state's proposed date of entry. The petitioning state's proposed date of entry shall be on the first day of a calendar quarter. The proposed date of entry shall be a date on which all provisions necessary for the state to be in compliance with the Agreement are in place and effective.

Compiler's note: On December 17, 2009 this section was adopted. This section became effective upon its adoption.

Section 801.2: CONTINGENT MEMBERSHIP

A. A contingent member is a state that is found to be in compliance pursuant to Sections 804 and 805 of the Agreement except that the changes to their statutes, rules, regulations or other authorities necessary to bring them into compliance are not yet in effect. Such state shall be admitted as a contingent member if their statutes, rules, regulations or other authorities necessary to bring them into compliance are scheduled to become effective no later than the first day of a calendar quarter that is not

more than twelve months subsequent to its proposed date of entry as a contingent member state. The petition for contingent membership shall include such state's proposed dates of entry as a contingent member and a full member. Its proposed date of entry as a contingent member shall be on the first day of a calendar quarter that is no more than twelve months prior to the date on which all provisions necessary for the state to be in compliance with the Agreement are in place and effective. Provided the statutes, rules, regulations or other authorities remain in effect and the statutes, rules, regulations or other authorities with delayed effective dates go into effect, the state shall automatically become a full member state on the state's proposed date of entry as a full member. A state which is admitted as a contingent member shall become an associate member on such proposed date of entry if the state's statutes, rules, regulations or other authorities are not in compliance at that time.

B. A contingent member shall have all the rights and privileges of a full member state, except as provided in this subsection. A contingent member shall be responsible for the payment of the petition fee and the annual cost allocation as determined by the governing board. Notwithstanding any provision of this Agreement to the contrary, a seller may, but is not required to collect sales or use tax on sales into a contingent member state unless the seller is otherwise required to collect such taxes under applicable law. Notwithstanding the provisions of Section 401 (B), a seller that volunteers to collect tax in a contingent member state is not required to collect tax in any other contingent member state. A contingent member shall be responsible for payment of costs as provided in Article VI for those sellers that volunteer to collect tax in a contingent member state. Neither the governing board nor a member state may share or grant access to a contingent member state any seller information from the seller's registration pursuant to Section 401. Neither the governing board nor a member state may share or grant access to a contingent member state any seller information from an audit conducted by the governing board or a member state on behalf of the governing board unless the contingent member state is a party to the audit.

C. A contingent member state shall provide amnesty pursuant to the provisions of Section 402, provided, the amnesty shall be in effect from the date the contingent member status is attained until 12 months after the contingent member state becomes a full member state.

D. Contingent member states shall be subject to the annual recertification requirement set forth in Section 803 of this Agreement for all issues other than the delayed effective date issues identified at the time the state becomes a contingent member.

Compiler's note: On December 17, 2009 this section was adopted. This section became effective upon its adoption.

Section 801.3: ASSOCIATE MEMBERSHIP

An associate state is a state that has achieved substantial compliance with the terms of the Agreement taken as a whole, but not necessarily each provision as required by Section 805, measured qualitatively. The petition for associate membership shall include such state's proposed date of entry. The petitioning state's proposed date of entry shall be on the first day of a calendar quarter. An associate member state shall become a full member when such state has been found in compliance pursuant to Sections 804 and 805 and the changes to their statutes, rules, regulations or other authorities necessary to bring them into compliance are in effect.

A. An associate member shall have all the rights and privileges of a member state except that:

1. An associate member may not vote on amendments to or interpretations of the Agreement;
2. An associate member may not vote to determine if a petitioning state is in compliance with the Agreement pursuant to Section 804 of the Agreement; and
3. A representative of an associate member state shall not be eligible to serve on the compliance review and interpretations committee.

B. Notwithstanding any other provision of this section or any lapse occurring after July 1, 2009, a state that was an associate member on January 1, 2007, shall be an associate state until or unless the governing board finds or has found such state to be in compliance pursuant to Section 805 or finds such state to no longer be eligible for associate member status.

C. Notwithstanding any provision of this Agreement to the contrary, a seller may, but is not required to collect sales or use tax on sales into an associate member state unless the seller is otherwise required to collect such taxes under applicable law. Notwithstanding the provisions of Section 401 (B), a seller that volunteers to collect tax in an associate member state is not required to collect tax in any

other associate member state. An associate member shall be responsible for payment of costs as provided in Article VI for those sellers that volunteer to collect tax in an associate member state.

D. Neither the governing board nor a member state may share or grant access to an associate member state any seller information from the seller's registration pursuant to Section 401. Neither the governing board nor a member state may share or grant access to an associate member state any seller information from an audit conducted by the governing board or a member state on behalf of the governing board unless the associate member state is a party to the audit.

E. An associate member shall be responsible for the payment of the petition fee and the annual cost allocation as determined by the governing board.

F. An associate member state shall provide amnesty pursuant to the provisions of Section 402, provided, the amnesty shall be in effect from the date the associate member status is attained until 12 months after the associate member state becomes a full member state.

G. An associate member state shall be subject to an annual recertification requirement set forth by the compliance review and interpretations committee.

Compiler's note: On December 17, 2009 this section was adopted. This section became effective upon its adoption.

Section 801.4: ADVISOR MEMBERSHIP

Any state that held Implementing State status before October 1, 2005 and has not become a full, contingent or associate state member shall become an advisor state to the governing board.

1. Advisor states shall serve in an *ex officio* capacity on the governing board, with non-voting status, but may speak to any matter presented to the governing board for consideration.
2. Each state's delegation to the former Streamlined Sales Tax Implementing States may serve as the state's delegation to the governing board as established herein or the state may appoint a new delegation, of up to four representatives, who shall be members of state or local government.
3. Representatives of advisor states may serve on standing committees of the governing board except they may not serve as officers or directors on the executive committee or as members on the finance committee or the compliance review and interpretations committee.

4. A state that was not previously an implementing state may become an advisor state by:

a. Enacting legislation authorizing the state's participation in interstate discussions to develop a simplified sales and use tax system; or

b. Executing a memorandum of understanding or similar written document by the governor and legislative leaders expressing the intent of the state to participate in interstate discussions to develop a simplified sales and use tax system.

Any question over whether or not a state qualifies as an advisor state shall be resolved by a majority vote of the governing board.

Neither the governing board nor a member state may share or grant any advisor state access to any seller information from the seller's registration pursuant to Section 401. Neither the governing board nor a member state may share or grant any advisor state access to any seller information from an audit conducted by the governing board or a member state on behalf of the governing board.

An advisor state may not participate in a closed session of the governing board or a governing board committee.

Compiler's note: On December 17, 2009 this section was adopted. This section became effective upon its adoption.

Section 802: CERTIFICATE OF COMPLIANCE

The certificate of compliance shall be signed by the chief executive of the state's tax agency. The certificate of compliance shall document compliance with the provisions of the Agreement and cite applicable statutes, rules, regulations, or other authorities evidencing such compliance.

Section 803: ANNUAL RE-CERTIFICATION OF MEMBER STATES

Each member state shall annually re-certify that such state is in compliance with the Agreement. Each member state shall make a re-certification to the governing board on or before August 1 of each year after the year of the state's entry. In its annual re-certification, the state shall include any changes in its statutes, rules, regulations, or other authorities that could affect its compliance with the terms of the Agreement. The re-certification shall be signed by the chief executive of the state's tax agency.

A member state that cannot re-certify its compliance with the Agreement shall submit a statement of non-compliance to the governing board. The statement of non-compliance shall include any action or decision that takes such state out of compliance with the Agreement and the steps it will take to return to compliance. The governing board shall promulgate rules and procedures to respond to statements of noncompliance in accordance with Section 809.

Each member state shall post its annual re-certification or statement of non-compliance on that state's web site.

Section 804: REQUIREMENTS FOR MEMBERSHIP APPROVAL

The governing board shall determine if a petitioning state is in compliance with the Agreement. A three-fourths vote of the entire governing board is required to approve a state's petition for membership. The governing board shall provide public notice and opportunity for comment prior to voting on a state's petition for membership. A state's membership is effective on the proposed date of entry in its petition for membership or the first day of the calendar quarter after its petition is approved by the governing board, whichever is later, and is at least sixty days after its petition is approved.

Section 805: COMPLIANCE

A 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.

Section 806: AGREEMENT ADMINISTRATION

Authority to administer the Agreement shall rest with the governing board comprised of representatives of each member state. Each member state may appoint up to four representatives to the governing board. The representatives shall be members of the executive or legislative branches of the state or of a local government of that state. Each member state shall be entitled to one vote on the governing board. Except as otherwise provided in the Agreement, all actions taken by the governing board shall require an affirmative vote of a majority of the governing board present and voting. The governing board shall determine its meeting schedule, but shall meet at least once annually. The governing board shall provide

a public comment period at each meeting to provide members of the public an opportunity to address the board on matters relevant to the administration or operation of the Agreement. The governing board shall provide public notice of its meetings at least thirty days in advance of such meetings. The governing board shall promulgate rules establishing the public notice requirements for holding emergency meetings on less than thirty day's notice. The governing board may meet electronically.

The governing board is responsible for the administration and operation of the Agreement, including the appointment of all manner of committees. The governing board may employ staff, advisors, consultants or agents. The governing board may issue interpretive opinions and promulgate such rules it deems necessary to carry out its responsibilities. Rules may take one of two forms: procedural rules, which shall require an affirmative vote of a majority of the governing board present and voting to adopt; and interpretative rules which shall require an affirmative vote of three-fourths of the entire governing board to adopt. The governing board may take any action that is necessary and proper to fulfill the purposes of the Agreement. The governing board may allocate the cost of administration of the Agreement among the member states.

The governing board may assign committees certain duties, including, but not limited to:

A. Responding to questions regarding the administration of the Agreement;

B. Preparing certification requirements and coordinating the certification process for CSPs;

C. Coordinating joint audits;

D. Issuing requests for proposals;

E. Coordinating contracts with member states and providers; and

F. Maintaining records for the governing board.

Compiler's note: On August 29, 2006 the second paragraph of Section 806 was amended as follows:

"The governing board is responsible for the administration and operation of the Agreement, including the appointment of all manner of committees. The governing board may employ staff, advisors, consultants or agents. The governing board may issue interpretive opinions and promulgate such rules ~~and procedures~~ it deems necessary to carry out its responsibilities. Rules may take one of two forms: procedural rules, which shall require an affirmative vote of a majority of the governing board present and voting to adopt; and interpretative rules which shall require an affirmative vote of three-fourths of the entire governing board to adopt. The governing board may take any action that is necessary and proper to fulfill the

purposes of the Agreement. The governing board may allocate the cost of administration of the Agreement among the member states." The amendment to this section became effective upon its approval.

Compiler's note: On May 12, 2009 the phrase "or of a local government in that state" was added at the end of the third sentence. The amendment to this section became effective upon its approval.

Section 807: OPEN MEETINGS

Each meeting of the governing board and the minutes thereof shall be open to the public except as provided herein. Meetings of the governing board may be closed only for one or more of the following:

A. Personnel issues.

B. Information required by the laws of any member state to be protected from public disclosure. In the meeting, the governing board shall excuse any attendee to whom confidential taxpayer information cannot be disclosed under the law of any member state.

C. Proprietary information requested by any business to be protected from disclosure.

D. The consideration of issues incident to competitive bidding, requests for information, or certification, the disclosure of which would defeat the public interest in a fair and competitive process.

E. The consideration of pending litigation in a member state the discussion of which in a public session would, in the judgment of the member state engaged in the litigation, adversely affect its interests. In the meeting, the governing board shall excuse any attendee to whom confidential taxpayer information cannot be disclosed under the law of any member state.

F. The consideration of pending litigation in which the governing board is a party the discussion of which in a public session would, in the judgment of the governing board, adversely affect its interests. In the meeting, the governing board shall excuse any attendee to whom confidential taxpayer information cannot be disclosed under the law of any member state.

A closed session of the governing board may be convened by the chair or by a majority vote of the governing board. When a closed session is convened, the reason for the closed session shall be noted in a public session. Any actions taken in the closed session shall be reported immediately upon the reconvening of a public session.

Compiler's note: On April 16, 2005 Section 807 (F) was added and was effective upon its adoption.

Section 808: WITHDRAWAL OF MEMBERSHIP OR EXPULSION OF A MEMBER

With respect to each member state, the Agreement shall continue in full force and effect until a member state withdraws its membership or is expelled. A member state's withdrawal or expulsion cannot be effective until the first day of a calendar quarter after a minimum of sixty days' notice. A member state shall submit notice of its intent to withdraw from the Agreement to the governing board and the chief executive of each member state's tax agency. The member state shall provide public notice of its intent to withdraw and post its notice of intent to withdraw on its web site. The withdrawal by or expulsion of a state does not affect the validity of the Agreement among other member states. A state that withdraws or is expelled from the Agreement remains liable for its share of any financial or contractual obligations that were incurred by the governing board prior to the effective date of that state's withdrawal or expulsion. The appropriate share of any financial or contractual obligation shall be determined by the state and the governing board in good faith based on the relative benefits received and burdens incurred by the parties.

Section 809: SANCTION OF MEMBER STATES

A. If a member state is found to be out of compliance with the Agreement, the governing board may consider sanctions against the state. The sanctions that the governing board may impose include expulsion from the Agreement, or other penalties as determined by the governing board. The adoption of a resolution to sanction a member state for noncompliance with the Agreement shall require the affirmative vote of three-fourths of the entire governing board, excluding the state that is the subject of the resolution. The member state that is the subject of the resolution shall not vote on such resolution. Resolutions seeking sanctions shall be acted upon by the governing board within a reasonable period of time as set forth in the governing board's rules. The governing board shall provide an opportunity for public comment prior to action on a proposed sanction.

B. No member state shall be sanctioned for failing to comply with any amendment to the Agreement adopted under section 901 of the Agreement or an interpretation or interpretative rule adopted under section 902 of the Agreement, if 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 or interpretive rule or the first day of a calendar quarter following the end of one full session of the state's legislature.

C. No member state shall be sanctioned for failing to be in compliance with any term of the Agreement that the state has adopted, in substantially identical form, in its statutes 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 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.

Compiler's note: On December 14, 2006 Section 809 was amended by adding subsections B and C. The amendment to this section was effective upon its adoption.

Section 810: STATE AND LOCAL ADVISORY COUNCIL

The governing board shall create a State and Local Government Advisory Council to advise the governing board on matters pertaining to the administration of the Agreement. The membership shall include at least one representative from each state that is a participating member of the Streamlined Sales Tax Project pursuant to the Operating Rules of the Project as designated by that state. In addition, the governing board shall appoint local government officials to the State and Local Government Advisory Council. The governing board may appoint other state officials as it deems appropriate. Matters pertaining to the administration of the Agreement shall include, but not be limited to, admission of states into membership, noncompliance, and interpretations, revisions or additions to the Agreement. The State and Local Government Advisory Council shall advise and assist the Business Advisory Council in the functions noted in Section 811.

Compiler's note: On April 16, 2005 Section 810 was amended by deleting "and Taxpayer" after "Business" in the last sentence. The amendment to this section was effective upon its adoption.

Section 811: BUSINESS ADVISORY COUNCIL

The governing board shall recognize a Business Advisory Council from the private sector to advise the governing board on matters pertaining to the administration of the Agreement. These matters shall

include, but not be limited to, admission of states into membership, noncompliance, and interpretations, revisions or additions to the Agreement. The Business Advisory Council shall advise and assist the State and Local Government Advisory Council in the functions noted in Section 810.

Compiler's note: On April 16, 2005 Section 811 was amended by deleting "AND TAXPAYER" from the title line; deleting "create" and inserting "recognize" after "shall" in the first sentence and deleting "and Taxpayer" after "Business" from the first and third sentences. The amendments to this section were effective upon its adoption.

ARTICLE IX

AMENDMENTS AND INTERPRETATIONS

Section 901: AMENDMENTS TO AGREEMENT

Amendments to the Agreement may be brought before the governing board by any member state. The Agreement may be amended by a three-fourths vote of the entire governing board. The governing board shall give the Governor and presiding officer of each house of each member state notice of proposed amendments to the Agreement at least thirty days prior to consideration. The governing board shall give public notice of proposed amendments to the Agreement at least thirty days prior to consideration. The governing board shall provide an opportunity for public comment prior to action on an amendment to the Agreement.

Compiler's note: On June 18, 2008 Section 901 was amended by deleting "sixty" in the second and third sentences and inserting "thirty." The amendment to this section was effective upon its adoption.

Section 902: INTERPRETATIONS OF AGREEMENT

Matters involving interpretation of the Agreement, including all definitions in the Library of Definitions, may be brought before the governing board by any member state or by any other person. Interpretations may take the form of interpretive opinions, or interpretive rules. An interpretive opinion is issued when the requester submits specific facts and asks how certain provisions in the Agreement would apply to those facts, similar to a private letter ruling. An interpretive rule is issued to clarify language in the Agreement and applies more generally, similar to rules and regulations issued to clarify statutory language. Both forms of interpretations shall require a three-fourths vote of the entire governing board. The governing board shall publish all interpretations issued under this section. Interpretations shall be considered part of the Agreement and shall have the same effect as the Agreement. The governing board shall act on requests for interpretation of the Agreement within a reasonable period of time and under guidelines and procedures as set forth in the governing board's rules. The governing board may determine that it will not issue an interpretation. The governing board shall provide an opportunity for public comment prior to issuing an interpretation of the Agreement. The governing board shall give notice of a proposed interpretive rule to the member states and the public as provided in Section 901 of the Agreement, except that notice must be given at least thirty days prior to consideration.

Compiler's note: On August 29, 2006 Section 902 was amended by adding the second, third, fourth, and last sentences. The fifth sentence was amended as follows: "~~All~~ Both forms of". The August 29, 2006 amendment to this section became effective upon its approval.

Compiler's note: On September 5, 2008 Section 902 was amended by adding ",including all definitions in the Library of Definitions," after "Agreement" in the first line. The amendment to this section was effective upon its adoption.

Section 903: DEFINITION REQUESTS

In addition to the requests for interpretations authorized under Section 902 of this Agreement, any member state or any other person may make requests for additional definitions or for interpretations on how an individual product or service fits within a Part II or Part III(B) definition. Requests shall be submitted in writing as determined by the governing board. Such requests shall be referred to the Advisory Council created in Section 810 or other group under guidelines and procedures as set forth in the governing board's rules. The entity to which the request was referred shall post notice of the request and provide for input from the public and the member states as directed by the governing board. Within one hundred eighty days after receiving the request, they shall report to the governing board one of the following recommendations:

A. That no action be taken on the request;

B. That a proposed amendment to the Library be submitted;

C. That an interpretation request be submitted; or

D. That additional time is needed to review the request.

If either an amendment or an interpretation is recommended, the entity to which the request was referred shall provide the appropriate language as required by the governing board. The governing board shall take action on the recommendation of the entity to which the request was referred at the next meeting of the governing board pursuant to the notice requirements of Section 806. Action by the governing board to approve a recommendation for no action shall be considered the final disposition of the request. Nothing in this paragraph shall prohibit a state from directly submitting a proposed amendment or an interpretation request to the governing board pursuant to Section 901 or Section 902.

Compiler's note: On September 5, 2008 Section 903 was amended by adding "In addition to the requests for interpretations authorized under Section 902 of this Agreement, any" at the beginning and "Part II or Part III(B)" before "definition" at the end of the first sentence. The amendment to this section was effective upon its adoption.

ARTICLE X

ISSUE RESOLUTION PROCESS

Section 1001: RULES AND PROCEDURES FOR ISSUE RESOLUTION

The governing board shall promulgate rules creating an issue resolution process. The rules shall govern the conduct of the process, including the participation by any petitioner, affected state, and other interested party, the disposition of a petition to invoke the process, the allocation of costs for participating in the process, the possible involvement of a neutral third party or non-binding arbitration, and such further details as the governing board determines necessary and appropriate.

Section 1002: PETITION FOR RESOLUTION

Any member state or person may petition the governing board to invoke the issue resolution process to resolve matters of:

A. Membership of a state under Article VIII;

B. Matters of compliance under Section 805;

C. Possibilities of sanctions of a member state under Section 809;

D. Amendments to the Agreement under Section 901;

E. Interpretation issues, including differing interpretations among the member states, under Section 902; or

F. Other matters at the discretion of the governing board.

Section 1003: FINAL DECISION OF GOVERNING BOARD

The governing board shall consider any recommendations resulting from the issue resolution process before making its decision, which decision shall, as with all other matters under the Agreement, be final and not subject to further review.

Section 1004: LIMITED SCOPE OF THIS ARTICLE

Nothing in this Article shall be construed to substitute for, stay or extend, limit, expand, or otherwise affect, in any manner, any right or duty that any person or governmental body has

under the laws of any member state or local government body. This Article is specifically subject to the terms of Article XI and shall not be construed as taking precedence over Article XI.

ARTICLE XI

RELATIONSHIP OF AGREEMENT TO MEMBER STATES AND PERSONS

Section 1101: COOPERATING SOVEREIGNS

This Agreement is among individual cooperating sovereigns in furtherance of their governmental functions. The Agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

Section 1102: RELATIONSHIP TO STATE LAW

No provision of the Agreement in whole or part invalidates or amends any provision of the law of a member state. Adoption of the Agreement by a member state does not amend or modify any law of the state. Implementation of any condition of the Agreement in a member state, whether adopted before, at, or after membership of a state, must be by the action of the member state. All member states remain subject to Article VIII.

Section 1103: LIMITED BINDING AND BENEFICIAL EFFECT

A. This Agreement binds and inures only to the benefit of the member states. No person, other than a member state, is an intended beneficiary of this Agreement. Any benefit to a person other than a state is established by the laws of the member states and not by the terms of this Agreement.

B. Consistent with subsection (A), no person shall have any cause of action or defense under the Agreement or by virtue of a member state's approval of the Agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of any member state, or any political subdivision of a member state on the ground that the action or inaction is inconsistent with the Agreement.

C. No law of a member state, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement.

Section 1104: FINAL DETERMINATIONS

The determinations pertaining to the Agreement that are made by the member states are final when rendered and are not subject to any protest, appeal, or review.

ARTICLE XII

REVIEW OF COSTS AND BENEFITS ASSOCIATED WITH THE AGREEMENT

Section 1201: REVIEW OF COSTS AND BENEFITS

The governing board will review costs and benefits of administration and collection of sales and use taxes incurred by states and sellers under the existing sales and use tax laws at the time of adoption of the Agreement and the proposed Streamlined Sales Tax Agreement.

APPENDIX A

STREAMLINED SALES AND USE TAX AGREEMENT

PETITION FOR MEMBERSHIP

WHEREAS, it is in the interest of the private sector and of state and local governments to simplify and modernize sales and use tax administration;

WHEREAS, such simplification and modernization will result in a substantial reduction in the costs and complexity for sellers of personal property and services in conducting their commercial enterprises;

WHEREAS, such simplification and modernization will also result in additional voluntary compliance with the sales and use tax laws;

WHEREAS, such simplification and modernization of sales and use tax administration is best conducted in cooperation and coordination with other states; and

WHEREAS, the State of _____ levies a sales tax and levies a use tax. "Sales tax" means the tax levied under (CITE SPECIFIC STATUTE) and "use tax" means the tax levied under (CITE SPECIFIC STATUTE).

NOW, the undersigned representative hereby petitions the governing board of the Streamlined Sales and Use Tax Agreement for membership into the Agreement.

_____

NAME

_____

TITLE

STATE OF _____

Appendix B

INDEX OF DEFINITIONS

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Certified service provider	Article II, Section 203
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Appendix C

LIBRARY OF DEFINITIONS

Part I Administrative definitions including tangible personal property. Terms included in this Part are core terms that apply in imposing and administering sales and use taxes.

Part II Product definitions. Terms included in this Part are used to impose sales and use taxes, exempt items from sales and use taxes or to impose tax on items by narrowing an exemption that otherwise includes these items.

Compiler's note: On September 5, 2008 the description of Part II was amended to add "impose sales and use taxes" before the comma. The amendment became effective upon its adoption.

Part III Sales tax holiday definitions. Terms included in this Part are core terms that apply in imposing and administering sales and use taxes during sales tax holidays.

PART I

Administrative Definitions

A **"bundled transaction"** is the retail sale of two or more products, except real property and services to real property, where (1) the products are otherwise distinct and identifiable, and (2) the products are sold for one non-itemized price. A "bundled transaction" does not include the sale of any products in which the "sales price" varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

(A) "Distinct and identifiable products" does not include:

1. Packaging – such as containers, boxes, sacks, bags, and bottles – or other materials – such as wrapping, labels, tags, and instruction guides – that accompany the "retail sale" of the products and are incidental or immaterial to

the "retail sale" thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags and express delivery envelopes and boxes.

2. A product provided free of charge with the required purchase of another product. A product is "provided free of charge" if the "sales price" of the product purchased does not vary depending on the inclusion of the product "provided free of charge."

3. Items included in the member state's definition of "sales price," pursuant to Appendix C of the Agreement.

(B) The term "one non-itemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

(C) A transaction that otherwise meets the definition of a "bundled transaction" as defined above, is not a "bundled transaction" if it is:

(1) The "retail sale" of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service; or

(2) The "retail sale" of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service; or

(3) A transaction that includes taxable products and nontaxable products and the "purchase price" or "sales price" of the taxable products is de minimis.

(a) De minimis means the seller's "purchase price" or "sales price" of the taxable products is ten percent (10%) or less of the total "purchase price" or "sales price" of the bundled products.

(b) Sellers shall use either the "purchase price" or the "sales price" of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the

"purchase price" and "sales price" of the products to determine if the taxable products are de minimis.

(c) Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or

(4) The "retail sale" of exempt tangible personal property and taxable tangible personal property where:

(a) the transaction includes "food and food ingredients", "drugs", "durable medical equipment", "mobility enhancing equipment", "over-the-counter drugs", "prosthetic devices" (all as defined in Appendix C) or medical supplies; and

(b) where the seller's "purchase price" or "sales price" of the taxable tangible personal property is fifty percent (50%) or less of the total "purchase price" or "sales price" of the bundled tangible personal property. Sellers may not use a combination of the "purchase price" and "sales price" of the tangible personal property when making the fifty percent (50%) determination for a transaction.

Compiler's note: On April 16, 2005 the definition of a" bundled transaction" was added. Member States shall comply with this definition no later than January 1, 2008.

"Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.

A. A member state may exclude all delivery charges from the sales price of all personal property and services, or choose to exclude from the sales price of personal property or services one or more of the following components, and may amend the definition of delivery charges accordingly:

1. Handling, crating, packing, preparation for mailing or delivery, and similar charges; or

2. Transportation, shipping, postage, and similar charges.

B. In addition, a member state may treat "delivery charges" for "direct mail" differently than it treats "delivery charges" for other personal property or services. A member state may exclude all "delivery charges" from the "sales price" for "direct mail" or choose to exclude from the

"sales price" of "direct mail" one or more of the following components, an may amend the definition of "delivery charges" accordingly:

1. Handling, crating, packing, preparation for mailing or delivery, and similar charges;
2. Transportation, shipping, and similar charges; or
3. Postage.

C. Unless a seller separately states the "delivery charges" or components of "delivery charges" on the invoice or similar billing document given to the purchaser, those non-separately stated charges will not qualify for the exclusion from "sales price." No member state may require a seller to separately state any "delivery charge" or component thereof.

D. The exclusion of "delivery charges" for "direct mail" shall apply to any sale involving the delivery or mailing of: "direct mail;" printed material that would otherwise be "direct mail" that results from a transaction that a state considers the sale of a service; or printed material delivered or mailed to a mass audience when the costs of the printed materials are not billed directly to the recipients and is the result of a transaction that includes the development of billing information or the provision of data processing services.

E. If a shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using:

1. A percentage based on the total sales prices of the taxable property compared to the total sales prices of all property in the shipment; or
2. A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment.

The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property.

Compiler's note: On September 20, 2007 the definition of "delivery charges" was amended as follows: "A member state may exclude from "delivery charges" <u>any of the following,</u> ~~the charges for delivery of "direct mail"~~ if the charges are separately stated on an invoice or similar billing document given to the purchaser<u>:</u>

<u>A Handling, crating, packing, preparation for mailing or delivery, and similar charges;</u>

<u>B Transportation, shipping, postage, and similar charges, or</u>

<u>C The "delivery charges" for "direct mail."</u>

This amendment became effective upon its adoption.

Compiler's note: On December 6, 2008 the definition of "delivery charges" was amended b y adding the following to subsection C: "The exclusion of "delivery charges" for "direct mail" shall apply to any sale involving the delivery or mailing of "direct mail" or printed material that would otherwise be direct mail that results from a transaction that a state considers the sales of a service." This provision became effective upon its adoption.

Compiler's note: On May 12, 2009 the definition of "delivery charges" was amended as follows:

***"Delivery charges"** means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.*

A. A member state may exclude ~~from "delivery charges" any of the following, if the charges are separately stated on an invoice or similar billing document given to the purchaser~~ all delivery charges from the sales price of all personal property and services, or choose to exclude from the sales price of personal property or services one or more of the following components, and may amend the definition of delivery charges accordingly:

~~A.~~1. Handling, crating, packing, preparation for mailing or delivery, and similar charges; or

~~B.~~2. Transportation, shipping, postage, and similar charges, ~~or~~

~~C. The "delivery charges" for "direct mail." The exclusion of "delivery charges" for "direct mail" shall apply to any sale involving the delivery or mailing of "direct mail" or printed material that would otherwise be direct mail that results from a transaction that a state considers the sales of a service.~~

B. In addition, a member state may treat "delivery charges" for "direct mail" differently than it treats "delivery charges" for other personal property or services. A member state may exclude all "delivery charges" from the "sales price" for "direct mail" or choose to exclude from the "sales price" of "direct mail" one or more of the following components, an may amend the definition of "delivery charges" accordingly:

1. Handling, crating, packing, preparation for mailing or delivery, and similar charges;

2. Transportation, shipping, and similar charges; or

3. Postage.

C. Unless a seller separately states the "delivery charges" or components of "delivery charges" on the invoice or similar billing document given to the purchaser, those non-separately stated charges will not qualify for the exclusion from "sales price." No member state may require a seller to separately state any "delivery charge" or component thereof.

D. The exclusion of "delivery charges" for "direct mail" shall apply to any sale involving the delivery or mailing of: "direct mail;" printed material that would otherwise be "direct mail" that results from a transaction that a state considers the sale of a service; or printed material delivered or mailed to a mass audience when the costs of the printed materials are not billed directly to the recipients and is the result of a transaction that includes the development of billing information or the provision of data processing services.

E. If a shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using:

~~A.~~1. a percentage based on the total sales prices of the taxable property compared to the total sales prices of all property in the shipment; or

~~B.~~ 2. a percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment.

The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property."

This amendment became effective upon its adoption.

"**Direct mail**" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

Compiler's note: The Governing Board issued interpretations of "direct mail" on December 14, 2006 and September 5, 2008. Those interpretations can be found in the Library of Interpretations.

"Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

A. Lease or rental does not include:

1. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
2. A transfer or possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or
3. Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this

subsection, an operator must do more than maintain, inspect, or set-up the tangible personal property.

B. Lease or rental does include agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 USC 7701(h)(1).

C. This definition shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the [state commercial code], or other provisions of federal, state or local law.

D. This definition will be applied only prospectively from the date of adoption and will have no retroactive impact on existing leases or rentals. This definition shall neither impact any existing sale-leaseback exemption or exclusions that a state may have, nor preclude a state from adopting a sale-leaseback exemption or exclusion after the effective date of the Agreement.

"Purchase price" applies to the measure subject to use tax and has the same meaning as sales price.

"**Retail sale or Sale at retail**" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

"**Sales price**" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

A. The seller's cost of the property sold;

B. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

D. Delivery charges;

E. Installation charges; and

F. Credit for any trade-in, as determined by state law.

States may exclude from "sales price" the amounts received for charges included in paragraphs (C) through (F) above, if they are separately stated on the invoice, billing, or similar document given to the purchaser. States may exclude from (C) above, "telecommunications nonrecurring" charges if they are separately stated on the invoice, billing, or similar documents. A state doing so must define "telecommunications nonrecurring charges" as follows:

Compiler's note: The following was in effect through December 31, 2007.

*"**Sales price**" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:*

A. The seller's cost of the property sold;

B. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

D. Delivery charges;

E. Installation charges;

F. The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and

G. Credit for any trade-in, as determined by state law.

States may exclude from "sales price" the amounts received for charges included in paragraphs (C) through (G) above, if they are separately stated on the invoice, billing, or similar document given to the purchaser.

"Sales price" shall not include:

A. Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

B. Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; and

C. Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.

"**Telecommunications nonrecurring charges**" means an amount billed for the installation, connection, change or initiation of "telecommunications service" received by the customer.

"Sales price" shall not include:

A. Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

B. Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; and

C. Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.

"Sales price" shall include consideration received by the seller from third parties if:

A. The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

B. The seller has an obligation to pass the price reduction or discount through to the purchaser;

C. The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

D. One of the following criteria is met:

1. The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the

third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

2. The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a "preferred customer" card that is available to any patron does not constitute membership in such a group), or
3. The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

States may also exclude from "sales price" either employee discounts that are reimbursed by a third party on sales of motor vehicles, or manufacturer rebates on motor vehicles, or both.

Compiler's note: On April 16, 2005 the following amendments were made to the definition of "Sales Price".

Deleting "F. The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise;" and renumbering "G" to "F".

Changing the cross reference to reflect the renumbering, inserting the second and third sentences in the paragraph following (F), and inserting the definition of "telecommunications nonrecurring charges".

Inserting all of the material starting with "Sales price" shall include consideration received by the seller from third parties".

Member states shall comply with the changes to this definition no later than January 1, 2008.

"Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software.

Compiler's note: The Governing Board issued an interpretation of the definition of "tangible personal property" on May 12, 2009. That interpretation can be found in the Library of Interpretations.

PART II

Product Definitions

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:

1. Aprons, household and shop;
2. Athletic supporters;
3. Baby receiving blankets;
4. Bathing suits and caps;
5. Beach capes and coats;
6. Belts and suspenders;
7. Boots;
8. Coats and jackets;
9. Costumes;
10. Diapers, children and adult, including disposable diapers;
11. Ear muffs;
12. Footlets;
13. Formal wear;
14. Garters and garter belts;
15. Girdles;
16. Gloves and mittens for general use;
17. Hats and caps;
18. Hosiery;
19. Insoles for shoes;
20. Lab coats;
21. Neckties;
22. Overshoes;

23. Pantyhose;
24. Rainwear;
25. Rubber pants;
26. Sandals;
27. Scarves;
28. Shoes and shoe laces;
29. Slippers;
30. Sneakers;
31. Socks and stockings;
32. Steel toed shoes;
33. Underwear;
34. Uniforms, athletic and non-athletic; and
35. Wedding apparel.

B. "Clothing" shall not include:

1. Belt buckles sold separately;
2. Costume masks sold separately;
3. Patches and emblems sold separately;
4. Sewing equipment and supplies including, but not limited to, knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles; and
5. Sewing materials that become part of "clothing" including, but not limited to, buttons, fabric, lace, thread, yarn, and zippers.

Compiler's note: The Governing Board issued an interpretation of the definition of clothing on August 29, 2006. That interpretation can be found in the Library of Interpretations.

"Clothing accessories or equipment" means incidental items worn on the person or in conjunction with "clothing." "Clothing accessories or equipment" are mutually exclusive of and may be taxed differently than apparel within the definition of "clothing," "sport or recreational equipment," and "protective equipment." The following list contains examples and is not intended to be an all-inclusive list. "Clothing accessories or equipment" shall include:

1. Briefcases;
2. Cosmetics;

3. Hair notions, including, but not limited to, barrettes, hair bows, and hair nets;
4. Handbags;
5. Handkerchiefs;
6. Jewelry;
7. Sun glasses, non-prescription;
8. Umbrellas;
9. Wallets;
10. Watches; and
11. Wigs and hair pieces.

"**Essential clothing**" means any article of "clothing" with a sales price below a dollar threshold set by a member state if that state chooses to tax "essential clothing" differently from "clothing." A state electing to tax "essential clothing" differently from "clothing" may not exempt the portion of the price of any individual item of clothing below its dollar threshold and shall administer the "essential clothing" threshold consistent with the provisions of Section 322, subsections B, C3, C4 and C7.

Compiler's note: On February 26, 2009 the definition of "essential clothing" was approved.

"**Fur clothing**" means "clothing" that is required to be labeled as a fur product under the Federal Fur Products Labeling Act (15 U.S.C. §69), and the value of the fur components in the product is more than three times the value of the next most valuable tangible component. "Fur clothing" is human wearing apparel suitable for general use but may be taxed differently from "clothing." For the purposes of the definition of "fur clothing" the term "fur" means any animal skin or part thereof with hair, fleece, or fur fibers attached thereto, either in its raw or processed state, but shall not include such skins that have been converted into leather or suede, or which in processing, the hair, fleece, or fur fiber has been completely removed.

Compiler's note: On December 14, 2006 the definition of "fur clothing" was approved.

"Protective equipment" means items for human wear and designed as protection of the wearer against injury or disease or as protections against damage or injury of other persons or property but not suitable for general use. "Protective equipment" are mutually exclusive of and may be taxed differently than apparel within the definition of "clothing," "clothing accessories or

equipment," and "sport or recreational equipment." The following list contains examples and is not intended to be an all-inclusive list. "Protective equipment" shall include:

1. Breathing masks;
2. Clean room apparel and equipment;
3. Ear and hearing protectors;
4. Face shields;
5. Hard hats;
6. Helmets;
7. Paint or dust respirators;
8. Protective gloves;
9. Safety glasses and goggles;
10. Safety belts;
11. Tool belts; and
12. Welders gloves and masks.

"Sport or recreational equipment" means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. "Sport or recreational equipment" are mutually exclusive of and may be taxed differently than apparel within the definition of "clothing," "clothing accessories or equipment," and "protective equipment." The following list contains examples and is not intended to be an all-inclusive list. "Sport or recreational equipment" shall include:

1. Ballet and tap shoes;
2. Cleated or spiked athletic shoes;
3. Gloves, including, but not limited to, baseball, bowling, boxing, hockey, and golf;
4. Goggles;
5. Hand and elbow guards;
6. Life preservers and vests;
7. Mouth guards;
8. Roller and ice skates;
9. Shin guards;

10. Shoulder pads;
11. Ski boots;
12. Waders; and
13. Wetsuits and fins.

COMPUTER RELATED

"**Computer**" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

"Computer software" means a set of coded instructions designed to cause a "computer" or automatic data processing equipment to perform a task.

Compiler's note: On May 12, 2009 the Governing Board issued an interpretation of the definition of "computer software." That interpretation can be found in the Library of Interpretations.

"Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

"**Electronic**" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Load and leave" means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

"Prewritten computer software" means "computer software," including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more "prewritten computer software" programs or prewritten portions thereof does not cause the combination to be other than "prewritten computer software." "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances "computer software" of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software;" provided, however, that where there is a reasonable, separately

stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software."

A member state may exempt "prewritten computer software" "delivered electronically" or by "load and leave."

Compiler's note: On May 12, 2009 the Governing Board issued an interpretation of the definition of "prewritten computer software." That interpretation can be found in the Library of Interpretations.

Software Maintenance Contract Definitions:

A "**computer software maintenance contract**" is a contract that obligates a vendor of computer software to provide a customer with future updates or upgrades to computer software, support services with respect to computer software or both.

A "**mandatory computer software maintenance contract**" is a computer software maintenance contract that the customer is obligated by contract to purchase as a condition to the retail sale of computer software.

An "**optional computer maintenance contract**" is a computer software maintenance contract that a customer is not obligated to purchase as a condition to the retail sale of computer software.

A member state may limit the definition of "computer maintenance contract" to one or more of the following:

1. Computer software maintenance contracts with respect to prewritten computer software;
2. Optional computer software maintenance contracts;
3. Mandatory computer software maintenance contracts;
4. Optional computer software maintenance contracts that do not include upgrades and updates delivered electronically, by load and leave, or both;
5. Computer software maintenance contracts that only obligate a vendor of computer software to provide a customer with future updates or upgrades to computer software;

6. Computer software maintenance contracts that only obligate a vendor of computer software to provide a customer with support services with respect to computer software.

A member state may include within its definition of "computer software maintenance contracts" contracts sold by a person other than the vendor of the computer software to which the contract relates.

Compiler's note: On December 6, 2008 software maintenance contract definitions were adopted. This provision became effective upon its adoption.

Compiler's note: On April 30, 2010 the last sentence was added. This provision became effective upon its adoption.

DIGITAL PRODUCTS DEFINITIONS

"**Specified digital products**" means electronically transferred:

"**Digital Audio-Visual Works**" which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any,

"**Digital Audio Works**" which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones, and

"**Digital Books**" which means works that are generally recognized in the ordinary and usual sense as "books".

For purposes of the definition of "digital audio works", "ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.

For purposes of the definitions of "specified digital products", "transferred electronically" means obtained by the purchaser by means other than tangible storage media.

Compiler's note: The Digital Product Definitions were adopted on September 20, 2007 and became effective on January 1, 2008.

FOOD AND FOOD PRODUCTS

"**Alcoholic Beverages**" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

“Bottled water” means water that is placed in a safety sealed container or package for human consumption. Bottled water is calorie free and does not contain sweeteners or other additives except that it may contain: (i) antimicrobial agents; (ii) fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen; (vi) preservatives; and (vii) only those flavors, extracts, or essences derived from a spice or fruit. "Bottled water" includes water that is delivered to the buyer in a reusable container that is not sold with the water.

Compiler’s note: The bottled water definition was adopted on April 30, 2010 and became effective upon its adoption.

“Candy” means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. “Candy” shall not include any preparation containing flour and shall require no refrigeration.

Compiler’s note: On September 20, 2007 the Governing Board issued an interpretation of the definition of “candy.” That interpretation can be found in the Library of Interpretations.

“Dietary supplement” means any product, other than “tobacco,” intended to supplement the diet that:

A. Contains one or more of the following dietary ingredients:
   1. A vitamin;
   2. A mineral;
   3. An herb or other botanical;
   4. An amino acid;
   5. A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
   6. A concentrate, metabolite, constituent, extract, or combination of any ingredient described in above; and

B. Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

C. Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required pursuant to 21 C.F.R § 101.36.

"**Food and food ingredients**" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include "alcoholic beverages" or "tobacco." A member state may exclude "bottled water," "candy," "dietary supplements" and "soft drinks" from this definition, which items are mutually exclusive of each other.

Notwithstanding the foregoing requirements of this definition or any other provision of the Agreement, a member state may maintain its tax treatment of food in a manner that differs from the definitions provided herein, provided its taxation or exemption of food is based on a prohibition or requirement of that state's Constitution that exists on the effective date of the Agreement.

Compiler's note: On April 30, 2010 this definition was amended by adding "bottled water" in the third sentence. This change became effective upon its adoption.

Compiler's note: On October 7, 2010 the Governing Board issued an interpretation of the definition of "food and food ingredients." That interpretation can be found in the Library of Interpretations.

"**Food sold through vending machines**" means food dispensed from a machine or other mechanical device that accepts payment.

"Prepared food" means:

A. Food sold in a heated state or heated by the seller;

B. Two or more food ingredients mixed or combined by the seller for sale as a single item; or

C. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

"Prepared food" in B does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its Food Code so as to prevent food borne illnesses.

The following items may be taxed differently than "prepared food" and each other, if sold without eating utensils provided by the seller, but may not be taxed differently than the same item when classified under "food and food ingredients."

1. Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries).
2. Food sold in an unheated state by weight or volume as a single item.
3. Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas.

Substances within "food and food ingredients" may be taxed differently if sold as "prepared food." A state shall tax or exempt from taxation "bottled water," "candy," dietary supplements," and "soft drinks" that are sold as "prepared food" in the same manner as it treats other substances that are sold as "prepared food."

Compiler's note: On April 18, 2006 the Governing Board issued an interpretation of the definition of "prepared food." That interpretation can be found in the Library of Interpretations. Compiler's note: The Governing Board issued an interpretation of "prepared food" on December 14, 2006. That interpretation can be found in the Library of Interpretations.

Compiler's note: On April 30, 2010 this definition was amended by adding "bottled water" in the last sentence. This change became effective upon its adoption.

"Soft drinks" means non-alcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

"Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

HEALTH-CARE

"Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation, other than "food and food ingredients," "dietary supplements" or "alcoholic beverages:"

A. Recognized in the official United State Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them; or

B. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

C. Intended to affect the structure or any function of the body.

A member state may independently:

A. Limit the definition of "drug" to human use (as opposed to both human and animal use) in the administration of its exemption;

B. Draft its exemption for "drug" to specifically add insulin and/or medical oxygen so that no prescription is required, even if a state requires a prescription under its exemption for drugs;

C. Determine the taxability of the sales of drugs and prescription drugs to hospitals and other medical facilities;

D. Determine the taxability of free samples of drugs; and

E. Determine the taxability of bundling taxable and nontaxable drug, if uniform treatment of bundled transactions is not otherwise defined in the Agreement.

Compiler's note: On June 23, 2007 the Governing Board issued an interpretation of "drug." That interpretation can be found in the Library of Interpretations.

"Durable medical equipment" means equipment including repair and replacement parts for same, but does not include "mobility enhancing equipment," which:

A. Can withstand repeated use; and

B. Is primarily and customarily used to serve a medical purpose; and

C. Generally is not useful to a person in the absence of illness or injury; and

D. Is not worn in or on the body.

A member state may limit its exemption to "durable medical equipment:"

A. By requiring a prescription;

B. Based on Medicare or Medicaid payments or reimbursement; or

C. For home use.

A member state may limit the exemption using any combination of the above but in no case shall an exemption certificate be required.

Repair and replacement parts as used in this definition include all components or attachments used in conjunction with the "durable medical equipment." A member state may exclude from repair and replacement parts items which are for single patient use only.

A member state may exclude from the product definition of "durable medical equipment" any of the following for purposes enacting a product-based exemption:

1. Oxygen delivery equipment not worn in or on the body, including repair and replacement parts;
2. Kidney dialysis equipment not worn in or on the body, including repair and replacement parts; or
3. Enteral feeding systems not worn in or on the body, including repair and replacement parts.

A member state choosing to enact a product-based exemption for oxygen delivery equipment, kidney dialysis equipment, or enteral feeding systems, if those items are not worn in or on the body, must also enact a product-based exemption for oxygen delivery equipment, kidney dialysis equipment, or enteral feeding systems, if those are worn in or on the body.

A member state may limit the product-based exemption for oxygen delivery equipment, kidney dialysis equipment, or enteral feeding systems using any combination of the following:

a. By requiring a prescription;
b. Based on Medicare or Medicaid payments or reimbursement; or
c. For home use.

Compiler's note: On October 1, 2005 the durable medical equipment definition was amended by deleting: "~~A member state may limit its exemption to "durable medical equipment" used for home use only. A member state may limit the application of this definition by requiring a "prescription," or limit an exemption based on Medicare or Medicaid payments or reimbursements~~" after D and inserting:

"A member state may limit its exemption to "durable medical equipment:"

A. By requiring a prescription;

B Based on Medicare or Medicaid payments or reimbursement; or

C. For home use.

A member state may limit the exemption using any combination of the above but in no case shall an exemption certificate be required."

Member states shall adopt and utilize this definition no later than January 1, 2008.

Compiler's note: On August 29, 2006 the durable medical equipment definition was amended by adding all the language starting with "A member state may exclude…" The August 29, 2006 amendment to this section became effective upon its approval.

Compiler's note: On June 23, 2007 the definition of durable medical equipment was amended by adding: "Repair and replacement parts as used in this definition include all components or attachments used in conjunction with the "durable medical equipment." A member state may exclude from repair and replacement parts items which are for single patient use only."

Compiler's note: The following is the definition effective through December 31, 2007.

"Durable medical equipment" *means equipment including repair and replacement parts for same, but does not include "mobility enhancing equipment," which:*

A. Can withstand repeated use; and

B. Is primarily and customarily used to serve a medical purpose; and

C. Generally is not useful to a person in the absence of illness or injury; and

D. Is not worn in or on the body.

A member state may limit its exemption to "durable medical equipment" used for home use only. A member state may limit the application of this definition by requiring a "prescription," or limit an exemption based on Medicare or Medicaid payments or reimbursements.

A member state may exclude from the product definition of "durable medical equipment" any of the following for purposes enacting a product-based exemption:

1. *Oxygen delivery equipment not worn in or on the body, including repair and replacement parts;*
2. *Kidney dialysis equipment not worn in or on the body, including repair and replacement parts; or*
3. *Enteral feeding systems not worn in or on the body, including repair and replacement parts.*

A member state choosing to enact a product-based exemption for oxygen delivery equipment, kidney dialysis equipment, or enteral feeding systems, if those items are not worn in or on the body, must also enact a product-based exemption for oxygen delivery equipment, kidney dialysis equipment, or enteral feeding systems, if those are worn in or on the body.

A member state may limit the product-based exemption for oxygen delivery equipment, kidney dialysis equipment, or enteral feeding systems using any combination of the following:

a. By requiring a prescription;

b. Based on Medicare or Medicaid payments or reimbursement; or

c. For home use.

"Grooming and hygiene products" are soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and screens, regardless of whether the items meet the definition of "over-the-counter-drugs."

"Mobility enhancing equipment" means equipment including repair and replacement parts to same, but does not include "durable medical equipment," which:

A. Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle; and

B. Is not generally used by persons with normal mobility; and

C. Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

A member state may limit the application of this definition by requiring a "prescription," or limit an exemption based on Medicare or Medicaid payments or reimbursements.

"Over-the-counter-drug" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. A member state may exclude "grooming and hygiene products" from this definition. The "over-the-counter-drug" label includes:

A. A "Drug Facts" panel; or

B. A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance or preparation.

"Prescription" means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of the member state.

"Prosthetic device" means a replacement, corrective, or supportive device including repair and replacement parts for same worn on or in the body to:

A. Artificially replace a missing portion of the body;

B. Prevent or correct physical deformity or malfunction; or

C. Support a weak or deformed portion of the body.

A member state may exclude any or all of the following from the definition of "prosthetic device:"

A. Corrective eyeglasses;

B. Contact lenses;

C. Hearing aids; and

D. Dental prosthesis.

A member state may limit the application of this definition by requiring a "prescription," or limit an exemption based on Medicare or Medicaid payments or reimbursements.

TELECOMMUNICATIONS

Tax Base/Exemption Terms:

"Ancillary services" means services that are associated with or incidental to the provision of "telecommunications services", including but not limited to "detailed telecommunications billing", "directory assistance", "vertical service", and "voice mail services".

"Conference bridging service" means an "ancillary service" that links two or more participants of an audio or video conference call and may include the provision of a telephone number. "Conference bridging service" does not include the "telecommunications services" used to reach the conference bridge.

"Detailed telecommunications billing service" means an "ancillary service" of separately stating information pertaining to individual calls on a customer's billing statement.

"Directory assistance" means an "ancillary service" of providing telephone number information, and/or address information.

"Vertical service" means an "ancillary service" that is offered in connection with one or more "telecommunications services", which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including "conference bridging services".

“Voice mail service” means an “ancillary service” that enables the customer to store, send or receive recorded messages. “Voice mail service” does not include any “vertical services” that the customer may be required to have in order to utilize the “voice mail service”.

“Telecommunications service” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term “telecommunications service” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. “Telecommunications service” does not include:

A. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser’s primary purpose for the underlying transaction is the processed data or information;
B. Installation or maintenance of wiring or equipment on a customer’s premises;
C. Tangible personal property;
D. Advertising, including but not limited to directory advertising.
E. Billing and collection services provided to third parties;
F. Internet access service;
G. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;
H. “Ancillary services”; or
I. Digital products “delivered electronically”, including but not limited to software, music, video, reading materials or ring tones.

“800 service” means a “telecommunications service” that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name “800”, “855”, “866”, “877”, and “888” toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

“900 service” means an inbound toll “telecommunications service” purchased by a subscriber that allows the subscriber’s customers to call in to the subscriber’s prerecorded announcement or live service. “900 service” does not include the charge for: collection services provided by the seller of the “telecommunications services” to the subscriber, or service or product sold by the subscriber to the subscriber’s customer. The service is typically marketed under the name “900” service, and any subsequent numbers designated by the Federal Communications Commission.

“Fixed wireless service” means a “telecommunications service” that provides radio communication between fixed points.

“Mobile wireless service” means a “telecommunications service” that is transmitted, conveyed or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance or routing are not fixed, including, by way of example only, “telecommunications services” that are provided by a commercial mobile radio service provider.

“Paging service” means a “telecommunications service” that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

Compiler’s note: On August 17, 2010 the Governing Board issued an interpretation of “paging service.” That interpretation can be found in the Library of Interpretations.

“Prepaid calling service” means the right to access exclusively “telecommunications services”, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

“Prepaid wireless calling service” means a “telecommunications service” that provides the right to utilize “mobile wireless service” as well as other non-telecommunications services including the download of digital products “delivered electronically”, content and “ancillary services”, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

Compiler's note: On May 19, 2011 the "prepaid wireless calling service" definition was changed to correct a typographical error. The phrase "units of dollars" in the last clause was incorrect. The correct phrase is "units or dollars." The word "of" was changed to the correct word "or."

"Private communications service" means a "telecommunications service" that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

"Value-added non-voice data service" means a service that otherwise meets the definition of "telecommunications services" in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing.

Modifiers of Sales Tax Base/Exemption Terms:

The following terms can be used to further delineate the type of "telecommunications service" to be taxed or exempted. The terms would be used with the broader terms and subcategories delineated above.

"Coin-operated telephone service" means a "telecommunications service" paid for by inserting money into a telephone accepting direct deposits of money to operate.

"International" means a "telecommunications service" that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.

"Interstate" means a "telecommunications service" that originates in one United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession.

"Intrastate" means a "telecommunications service" that originates in one United States state or a United States territory or possession, and terminates in the same United States state or a United States territory or possession.

"Pay telephone service" means a "telecommunications service" provided through any pay telephone.

“Residential telecommunications service” means a “telecommunications service” or “ancillary services” provided to an individual for personal use at a residential address, including an individual dwelling unit such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, “telecommunications service” is considered residential if it is provided to and paid for by an individual resident rather than the institution.

The terms “ancillary services” and “telecommunications service” are defined as a broad range of services. The terms “ancillary services” and “telecommunications service” are broader than the sum of the subcategories. Definitions of subcategories of “ancillary services” and “telecommunications service” can be used by a member state alone or in combination with other subcategories to define a narrower tax base than the definitions of “ancillary services” and “telecommunications service” would imply. The subcategories can also be used by a member state to provide exemptions for certain subcategories of the more broadly defined terms. A member state that specifically imposes tax on, or exempts from tax, local telephone or local telecommunications service may define “local service” in any manner in accordance with Section 327 of the Agreement, except as limited by other sections of this Agreement.

Compiler’s note: On April 16, 2005 the telecommunications definitions were added to the Agreement. Member states shall adopt and utilize these definitions no later than January 1, 2008.

PART III

Sales Tax Holiday Definitions

The definitions in this Part are only applicable for the purpose of administration of a sales tax holiday, as defined in Section 322 (A).

A. Administrative Definitions:

"**Eligible property**" means an item of a type, such as clothing, that qualifies for a sales tax holiday exemption in a member state.

"**Layaway sale**" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller, when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser.

"**Rain check**" means the seller allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock.

B. Product Definitions:

"Disaster Preparedness Supply" means an item purchased in preparation or response to a disaster, including any fire, flood, storm, tidal wave, earthquake, or similar public calamity, whether mane-made, resulting from war, or resulting from natural causes. "Disaster Preparedness Supply" shall include the following categories of items: 1) general disaster preparedness supplies; 2) disaster preparedness safety supplies; 3) disaster preparedness food-related supplies; and 4) disaster preparedness fastening supplies.

A member state that wishes to exempt "disaster preparedness supplies" during a sales tax holiday may:

1. exempt all disaster preparedness qualified supplies; or
2. exempt specified classifications of supplies.

A member state may not exempt specific items within a classification, without exempting the entire classification of supplies.

"Disaster Preparedness General Supply" is a general purpose item that may be used in preparation or response to a disaster. The term is mutually exclusive of the terms "disaster preparedness safety supplies," "disaster preparedness food-related supplies," and "disaster preparedness fastening supplies," and may be taxed differently. The following is an all-inclusive list:

1. Batteries (excluding automobile and marine batteries) AAA, AA, C, D, 6 volt or 9 volt;
2. Cellular telephone batteries and chargers;
3. Satellite phones;
4. Self-powered light sources;
5. Portable self-powered radios, two-way radios, weather-band radios and NOAA weather radios;
6. Gas or diesel fuel containers;
7. Non-electric food storage coolers;
8. Portable generators; and
9. Storm shutter devices.

"Disaster Preparedness Safety Supply," is a safety item that may be used in preparation or response to a disaster. The term is mutually exclusive of the terms "disaster preparedness general supplies," "disaster preparedness food-related supplies," and "disaster preparedness fastening supplies," and may be taxed differently. The following is an all-inclusive list:

1. Carbon monoxide detectors;
2. Smoke detectors;
3. Fire extinguishers; and
4. First aid kits.

"Disaster Preparedness Food-Related Supply" is a food or food related item that may be used in preparation or response to a disaster. The term is mutually exclusive of the terms "disaster preparedness general supplies," "disaster preparedness safety supplies," and "disaster

preparedness fastening supplies," and may be taxed differently. The following is an all-inclusive list:

1. Artificial ice;
2. Water storage container;
3. Manual can opener; and
4. Bottled water.

"Disaster Preparedness Fastening Supply" is a fastening item or an item used for securing property or covering property that may be used in preparation or response to a disaster. The term is mutually exclusive of the terms "disaster preparedness general supplies," "disaster preparedness safety supplies," and "disaster preparedness food-related supplies," and may be taxed differently. The following is an all-inclusive list:

1. Bungee cords;
2. Rope;
3. Ratchet straps;
4. Duct tape;
5. Boat anchor;
6. Fender, anchor chain, dock line or similar device;
7. Tarpaulins and other flexible waterproof sheeting; and
8. Ground anchor or tie down kits.

Compiler's note: On September 30, 2009 the disaster preparedness definitions were adopted and became effective upon adoption.

"Energy Star Qualified Product" means a product that meets the energy efficient guidelines set by the United States Environmental Protection Agency and the United States Department of Energy that are authorized to carry the Energy Star label. Covered products are those listed at www.energystar.gov or successor address.

A member state that wishes to exempt "Energy Star qualified products" during a sales tax holiday may:

1. exempt all Energy Star Qualified Products, or
2. exempt specified Energy Star Qualified Products, or
3. exempt specified classifications as categorized on the Energy Star product listing.

"School supply" is an item commonly used by a student in a course of study. The term is mutually exclusive of the terms "school art supply," "school instructional material," and "school computer supply," and may be taxed differently. The following is an all-inclusive list:

1. Binders;
2. Book bags;
3. Calculators;
4. Cellophane tape;
5. Blackboard chalk;
6. Compasses;
7. Composition books;
8. Crayons;
9. Erasers;
10. Folders; expandable, pocket, plastic, and manila;
11. Glue, paste, and paste sticks;
12. Highlighters;
13. Index cards;
14. Index card boxes;
15. Legal pads;
16. Lunch boxes;
17. Markers;
18. Notebooks;
19. Paper; loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper;
20. Pencil boxes and other school supply boxes;
21. Pencil sharpeners;
22. Pencils;
23. Pens;
24. Protractors;
25. Rulers;

26. Scissors; and

27. Writing tablets.

"School art supply" is an item commonly used by a student in a course of study for artwork. The term is mutually exclusive of the terms "school supply," "school instructional material," and "school computer supply," and may be taxed differently. The following is an all-inclusive list:

1. Clay and glazes;
2. Paints; acrylic, tempora, and oil;
3. Paintbrushes for artwork;
4. Sketch and drawing pads; and
5. Watercolors.

"School instructional material" is written material commonly used by a student in a course of study as a reference and to learn the subject being taught. The term is mutually exclusive of the terms "school supply," "school art supply," and "school computer supply," and may be taxed differently. The following is an all-inclusive list:

1. Reference books;
2. Reference maps and globes;
3. Textbooks; and
4. Workbooks.

"School computer supply" is an item commonly used by a student in a course of study in which a computer is used. The term is mutually exclusive of the terms "school supply," "school art supply," and "school instructional material," and may be taxed differently. The following is an all-inclusive list:

1. Computer storage media; diskettes, compact disks;
2. Handheld electronic schedulers, except devices that are cellular phones;
3. Personal digital assistants, except devices that are cellular phones;
4. Computer printers; and
5. Printer supplies for computers; printer paper, printer ink.

Compiler's note: On September 5, 2008 Part III was divided into "Administrative Definitions" and Product Definitions." The amendment became effective upon its adoption.

Appendix D

LIBRARY OF INTERPRETATIONS

Interpretation 2006-01
(Adopted April 18, 2006)

This Interpretation Recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this 2nd day of February, 2006 in accordance with Article IX, Rule 902 of Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is RSM McGladrey, Inc. of Cedar Rapids, Iowa. The request was made by letter dated November 23, 2005, and was made pursuant to the provisions for expedited consideration contained in Rule 902 at subsection H.

Issue:

The issue presented is an interpretation of Agreement section 402 pertaining to amnesty. The specific question presented was whether amnesty is available to a seller for tax not collected, if the seller has collected an amount of tax in a state, but failed to remit it. The seller otherwise meets the qualifications prescribed in section 402. The issue was presented with an acknowledgement that tax collected must be remitted with applicable penalties and interest as a precondition to receiving amnesty.

Public Comment:

No written public comments were received.

Recommendation:

By unanimous consent the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that a seller who has collected tax in a member state may obtain amnesty for taxes not collected in that state or any member state in accordance with the terms of Agreement section 402. The Committee further recommends that tax collected from purchasers in a member state must be remitted with applicable penalty and interest to that member state as a condition of receiving amnesty. This condition is in addition to those conditions specifically enumerated in section 402 of the Agreement.

Rationale:

A plain reading of Agreement section 402 requires a state to provide amnesty for “uncollected or unpaid sales or use tax”. A similar plain reading of the disqualifying language contained in subsection 402C limits disqualification to “sales or use taxes already paid or remitted to the state

or to taxes collected by the seller." As the seller has not collected the taxes at issue, amnesty is available despite the fact that the seller collected taxes on other sales which will not qualify for amnesty.

Committee Members:

Larry Wilkie, Committee Chair; Myles Vosberg, Andy Sabol, Tony Mastin, Dan Noble, Tom Conley representing Joseph VanDevender, and Dale Vettel.

Interpretation 2006-02
(Adopted April 18, 2006)

This Interpretation Recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this 2nd day of February 2006 in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is Department of Treasury, State of Michigan, of Lansing Michigan. The request was made by letter dated January 4, 2006, and was made pursuant to the provisions for expedited consideration contained in Rule 902 H.

Issue:

The issue presented is an interpretation of Agreement section 402 pertaining to amnesty. The questions presented related to when a seller is considered registered under the Agreement for purposes of eligibility for amnesty when a seller has registered through the central registration system and indicated that it will make use of a model 1 or model 2 seller for those periods when a certified service provider (CSP) or a certified automated system (CAS) have not been deemed available by the Executive Committee of the Governing Board. The specific questions presented are as follows:

1. When will a model 1 or model 2 seller be deemed to have "registered under the Agreement" as provided in Section 211 of the Agreement?
2. When will a model 1 or model 2 seller be required to begin collecting and remitting sales or use taxes to member states as provided in Section 401(B) of the Agreement?
3. When will a model 1 or model 2 seller be denied amnesty because they have received a notice of the commencement of an audit as provided in Section 402(B) of the

Agreement?

Public Comment:

No written public comments were received.

Recommendation:

By unanimous consent the Compliance Review and Interpretations Committee submits to the Governing Board the following recommendations:

1. A model 1 or model 2 seller will be "registered under the Agreement":
    a. on a date that follows the act of making application for registration through the central registration system, and
    b. the date that they begin, or are required to begin, collecting a member state's sales or use tax.
2. A model 1 or model 2 seller will be required to begin collecting and remitting sales or use taxes in a member state on the first day of the calendar month after 60 days notice that adequate CSP or CAS services are available as determined by the Executive Committee of the Governing Board.
3. A model 1 or model 2 seller will be denied amnesty in a member state pursuant to Section 402(B) as having received a notice of audit only if that notice of audit is received on a date that precedes the date the seller made application for registration through the central registration system.

Rationale:

The basis for the recommended interpretations is the inability of a model 1 or model 2 seller to collect and remit sales and use taxes until these technology models are deemed to be available for use by the Executive Committee of the Governing Board. A registration through the central registration system should not be considered complete until a model 1 or model 2 seller begins to collect or is required to begin to collect a member states' sales or use tax. These interpretations are consistent with the Position on Amnesty adopted by the Governing Board on November 9, 2005.

Committee Members:

Larry Wilkie, Committee Chair, Tom Conley, representing Joe VanDevender, Tony Mastin, Dan Noble, Andy Sabol, Dale Vettel, and Myles Vosberg.

Interpretation 2006-03
(Adopted April 18, 2006)

This Interpretation Recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this 16th day of February 2006 in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is the State of Indiana, Tom Conley, Indiana Delegate, State and Local Advisory Council. The request was made by letter dated January 5, 2006, and was made pursuant to the provisions for expedited consideration contained in Rule 902 H.

Issue:

The issue presented is an interpretation of Agreement Article III, Section 310, Subsection C, Clause 1 pertaining to sourcing of initial lease payments made to dealers. The quoted section of the agreement reads as follows:

> For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

Indiana is requesting an interpretation on the sourcing of initial payments (down payments, rebates or other potentially taxable receipts) paid to the seller at the time the lease is negotiated between the seller and purchaser. Are these payments considered a recurring periodic payment and sourced in accordance with Section 310(C)?

Recommendation:

By unanimous consent the Compliance Review and Interpretations Committee submits to the Governing Board the following recommendation:

Article III, Section 310, Subsection C, of the Agreement should be interpreted to include payments received at the inception of a lease (down payments, rebates or other potentially taxable receipts) as periodic payments and sourced to the primary property location consistent with the sourcing of the remaining periodic payments.

Rationale:

The committee contacted the automobile associations of their various states. The associations reported that their leasing organizations vary in the way that the receipts collected at the inception of the lease are currently sourced. Some source the receipts to the primary property location while others source the receipts to the dealer's location. The committee believed that the intent of the original sourcing rule was to establish a single location for sourcing all payments. The proposed interpretation would be consistent with what we believed to be the intent of the rule. The interpretation would also eliminate the confusion that currently seems to exist related to this issue.

Committee Members:

Cathy Wicks representing Larry Wilkie, Tom Conley, representing Joe VanDevender, Tony Mastin, Dan Noble, Andy Sabol, Dale Vettel, Acting Committee Chair, and Myles Vosberg.

Interpretation 2006-04
(Adopted April 18, 2006)

This Interpretation Recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this 13th day of April 2006 in accordance with Article IX, Rule 902 of Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is Brinker International on behalf of the National Association of Convenience Stores, Council on State Taxation, Darden Restaurants, Food Marketing Institute, Indiana Grocery & Convenience Store Association, Marathon Petroleum Company, Marsh Supermarket Pharmacy, Minnesota Grocers Association, Speedway, Starbucks Coffee, Target, Utah Food Industry Association and Yum! Brands, Incorporated. The request was made by letter dated January 9, 2006, and was made pursuant to the provisions for expedited consideration contained in Rule 902 at subsection H.

Issue:

The issue presented is an interpretation of definition of "food sold with eating utensils provided by the seller" found in section C of the prepared food definition found in Appendix C, Part II.

Public Comment:

Public comments were received from both industry and state agencies.

Recommendation:

The Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that the definition of "food sold with eating utensils" be interpreted as specified in the State and Local Advisory Council paper on "Prepared Food Re-Visited Updated April 13, 2006." This paper was distributed with Diane Hardt's e-mail dated April 13, 2006 with revised documents for the Streamlined Sales Tax Governing Board meeting in Indianapolis, Indiana on April 18, 2006. Committee members have agreed, by a vote of five to one, that they can support the proposal as presented, provided states are given adequate time to promulgate regulations, make legislative changes, or prepare other published guidance as each state determines is necessary to adopt the language proposed.

Rationale:

The Compliance Review and Interpretations Committee finds itself in a difficult situation with this request for interpretation and its subsequent determination of support of the proposal.

All members recognize the need to come to agreement on how to interpret the subject language. Committee members, as well as other states and business representatives involved in the discussions, have indicated support for the proposal. The Committee commends business members and state members for their diligent efforts in bringing this proposal to the table.

Concern was expressed by some Committee members that the language in the proposal goes beyond an interpretation of the existing language in the definition and, in some states, would require legislative changes. Committee member, Tony Mastin, noted that using the Black's Law Dictionary definition of the word "provided" would be an allowable interpretation of the current language. Business representatives expressed concern that using a dictionary definition would not provide the necessary guidance to administer the provision and would result in states adopting different interpretations of the meaning of the phrase.

The Committee is seeking advice from the Governing Board on whether this interpretation goes beyond the scope of an interpretation of the current definition. If so, the Committee asks for advice from the Governing Board on how to proceed. The options discussed, if this is not an interpretation, were either an amendment to the Agreement or a rule.

Committee Members:

Larry Wilkie, Committee Chair; Myles Vosberg, Andy Sabol, Tony Mastin, Dan Noble, Tom Conley representing Joseph VanDevender, and Dale Vettel.

State and Local Advisory Council
Prepared Food Re-Visited
Updated April 13, 2006

Streamline approved several interpretations of the food definitions at its meeting on January 6, 2005. The approved interpretations are included in an Issue Paper titled "Food Definition Issues" on the Streamline web site at www.streamlinedsalestax.org. Streamline interpreted "provided by the seller" with respect to utensils as:

B. Utensils need only be made available to purchasers if a seller's sales of prepared food in A and B of the definition (except items 1 through 3 that a state chooses to exclude), soft drinks, and alcohol beverages at an establishment are more than 75% of the seller's total sales at the establishment.

C. For sellers other than in 1, the seller's customary practice is to give the utensil to the purchaser, except that plates, glasses, or cups necessary for the purchaser to receive the food or food ingredients need only be made available.

Also, Streamline addressed utensils provided by persons other than the seller and resold by a seller as follows:

Although a person other than the seller may have originally placed the utensil in the package, the seller provides it to the purchaser when it transfers the package to the purchaser. Therefore, in the examples provided (caterer sells a boxed lunch with utensils to a concessionaire who sells the boxed lunch; food manufacturer packages ready-to-eat lunch with utensils and sells to a grocer who sells the lunch), utensils are provided by the seller.

The Food Marketing Institute and a number of interested parties submitted a request for interpretation to the Compliance Review and Interpretations Committee (CRIC) on January 6, 2006. CRIC has requested the State and Local Advisory Council (SLAC) of the Streamlined Governing Board to further address the prepared food interpretation issue.

At the SLAC meeting on January 7-8, 2006, a work group discussed concerns about the SSTP approved interpretation and identified solutions. Business representatives reviewed those solutions and recommended minor changes. The proposed interpretation is as follows:

1. We will maintain the 75% test for sellers but modify how the numerator and denominator are calculated so that like businesses (single purpose coffee shop v. coffee shop in a bookstore) are treated the same.

2. The numerator would include sales of (a) prepared food if under A and B of the definition of prepared food; and (b) food where plates, bowls, glasses or cups are necessary to receive the food (e.g., dispensed milk, salad bar). Alcoholic beverages are not included in the numerator.

3. The denominator would include sales of all food and food ingredients, including prepared food, candy, dietary supplements, and soft drinks. Alcoholic beverages are not included in the denominator.

4. For sellers with a sales percentage of 75% or less, utensils are provided by the seller if the seller's practice for the item (as represented by the seller) is to physically give or hand the utensil to the purchaser, except that plates, bowls, glasses, or cups necessary for the purchaser to receive the food (e.g., dispensed milk, salad bar) need only be made available.

5. For sellers with a sales percentage greater than 75%, utensils are provided by the seller if they are made available to purchasers.

6. For sellers with a sales percentage greater than 75% and who sell items that contain four (4) or more servings packaged as one item sold for a single price, an item does not become prepared food due to the seller having utensils available. However, if the seller provides utensils for the item as in 4 above, then the item is considered prepared food. Whenever available, serving sizes will be determined based on a label

on an item sold. If no label is available, a seller will reasonably determine the number of servings in an item.

7. When a seller sells food items that have a utensil placed in a package by a person other than the seller, and that person's NAICS classification code is that of manufacturers (sector 311), the seller shall not be considered to have provided the utensil except as provided in 4-6 above . For any other packager with any other NAICS classification code (e.g., sector 722 for caterers), the seller shall be considered to have provided the utensil.

8. The prepared food sales percentage will be calculated by the seller for each tax year or business fiscal year, based on the seller's data from the prior tax year or business fiscal year, as soon as possible after accounting records are available, but not later than 90 days after the beginning of the tax or business fiscal year.

9. A single prepared food sales percentage will be determined annually, for all of the seller's establishments in a state.

10. A new business will make a good faith estimate of their prepared food sales percentage for their first year. A new business should adjust its good faith estimate prospectively after the first three months of operation if actual prepared food sales percentages materially affect the 75% threshold test.

If states concur that the above interpretation of "food sold with eating utensils provided by the seller'" requires an amendment to the Agreement or time to implement the interpretation, then a temporary interpretation must be offered now so that sellers of prepared food can determine tax treatments under laws enacted by states that are in compliance with the Streamlined Sales and Use Tax Agreement. The Governing Board states will be surveyed to determine if they can or cannot support the following uniform interpretation. If a Governing Board state cannot support this interpretation, the Governing Board state will be asked to explain its interpretation. The results of the survey will be presented to the Governing Board at its meeting in April.

"Food sold with eating utensils provided by the seller" means the seller's practice for the item is to physically give or hand the utensil to the purchaser.

Note: Black's Law Dictionary defines "*provide*" as to make, procure, or furnish for future use, prepare. To supply; to afford; to contribute.

Interpretation 2006-05
(Adopted August 29, 2006)

This Interpretation Recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this 27th day of April, 2006 in accordance with Article IX, Rule 902 of Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is George S. Isaacson of Brann & Isaacson, of Lewiston Maine. The request was made by letter dated March 31, 2006, and was made pursuant to the provisions for expedited consideration contained in Rule 902 at subsection H.

Issue:

The first issue presented is an interpretation of the definition of "clothing" found in Appendix C, Part II of the Streamlined Sales and Use Tax Agreement. The specific question is: Do articles of human wearing apparel suitable for general use that are made from fur or hide on the pelt (i.e., animal skins with hair, fleece or fur fibers attached) constitute "clothing" within the meaning of the Agreement?

The second issue presented is an interpretation of Section 327(C) of the Agreement which requires a member state to impose sales or use tax on all products or services included within each definition or to exempt from sales or use tax all products or services within each definition. The specific question is, if human wearing apparel made from fur and suitable for general use constitutes "clothing" as defined in the SSUTA, must a member state, under Section 327 of the Agreement, treat fur clothing in the same manner as all other clothing?

The third issue presented is whether Minnesota's general exemption from sales and use tax for clothing, and the imposition of a separate gross revenues tax on fur clothing results in Minnesota being in violation of Section 327 (C) of the agreement.

Public Comment:

No written public comments were received.

Recommendation:

By unanimous consent the Compliance Review and Interpretations Committee submits to the Governing Board the following recommendations regarding the above three issues:

(1) Appendix C, Part II of the Streamlined Sales and Use Tax Agreement defines clothing as human wearing apparel suitable for general use. An article made from fur or hide on the pelt that is wearing apparel suitable for general use, is not excluded from the definition of clothing.

(2) Clothing made with fur must be treated in the same manner as other clothing. A state can choose to impose the sales tax on all articles of clothing, or it may choose to exempt all articles of clothing. A state cannot choose to apply the sales tax to some articles of clothing and exempt other articles of clothing.

(3) The third question concerns whether Minnesota is in violation of Section 327 (C) of the Agreement. The Agreement pertains only to sales and use taxes. Imposition of

Minnesota's gross revenue tax on articles of fur clothing does not constitute a violation of Section 327 (C) of the Agreement.

Rationale:

(1) The committee reviewed the definition of clothing and determined that articles of clothing made from fur or hide on the pelt are not excluded from the definition of clothing. There is no language in the definition or the Agreement that qualifies or restricts the definition of clothing based on the materials that are used to produce the clothing.

(2) The committee reviewed Section 327 of the Agreement. Section 327 requires that except as specifically provided in Section 316 and any applicable definition, a member state must either impose its sales and use taxes on all products or services within a definition, or exempt all products or services within a definition.

(3) Minnesota exempts all clothing from the sales and use tax. Minnesota does not impose a sales tax on articles of clothing made with fur or hide on the pelt (Minnesota Statutes, Chapter 297A (General Sales and Use Taxes)). Minnesota imposes a separate gross revenues tax on fur clothing (Minnesota Statutes, Chapter 295 (Gross Revenues and Gross Receipts Taxes)). This is not in violation of any provision of the Agreement. It is a separate tax from the sales tax and is imposed on the gross receipts of the furrier for sales in Minnesota. Article I, Section 104 of the agreement provides that the definition of a term is not intended to influence the interpretation or application of that term with respect to other tax types.

Committee Members:

Larry Wilkie, Committee Chair, Tony Mastin, Dan Noble, Andy Sabol, Joe VanDevender, Dale Vettel, and Myles Vosberg.

Interpretation 2006-06
(Adopted August 29, 2006)

This Interpretation Recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this 22nd day of June, 2006 in accordance with Article IX, Rule 902 of Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is William Riesenberger of the Ohio Department of Taxation, Sales and Use Tax Division. The request was made by letter dated January 25, 2006. Expedited consideration available under Rule 902, subsection H was not requested.

Issue:

The issue presented is an interpretation of Agreement section 402 pertaining to amnesty. The question presented was whether a company that has a physical presence in a state continues to be eligible for amnesty in that same state if it deregisters in the other member and associate member states. Amnesty was originally granted under section 402 of the agreement when the company registered to collect tax through the streamlined sales tax central registration system.

Public Comment:

No written public comments were received.

Recommendation:

By unanimous consent the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that a seller who has deregistered to collect tax in any member state within thirty-six months of its registration is no longer eligible for amnesty in any member state or associate member state under section 402 of the Agreement including states where the seller has a physical presence.

Rationale:

Section 402A(1) of the agreement provides amnesty for uncollected or unpaid sales or use tax to a seller that registers to pay or to collect and remit applicable sales or use tax in accordance with the terms of the agreement. In addition, section 402D states the amnesty is fully effective 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. A seller that deregisters within thirty-six months of its registration does not meet the requirements of Section 402D and, therefore, forfeits the amnesty provided under the agreement in all member and associate member states including any state where registration is continued. Notice of deregistration is made through the central registration system to all member and associate member states.

Committee Members:

Larry Wilkie, Committee Chair; Myles Vosberg, Andy Sabol, Tony Mastin, Dan Noble, Tom Conley representing Joseph VanDevender, and Dale Vettel.

Interpretation 2006-07
(Adopted August 29, 2006)

This Interpretation Recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this 24th day of August, 2006 in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is the Software Finance & Tax Executives Council (SoFTEC) represented by Mark Nebergall of 1150 17th Street NW # 601, Washington DC 20036.

The request was made on the prescribed form on April 11, 2006 and was made pursuant to the provisions for consideration contained in Rule 902 at subsection (D). SoFTEC provided supplemental information in support of the interpretation and to provide clarification of the scope of the interpretation request.

Issue:

SoFTEC raises three issues associated with Section 312A, Multiple Points of Use, effective on and after January 1, 2008, of the Streamlined Sales and Use Tax Agreement (SSUTA). Each of the issues involves the interpretation of the phrase "concurrently available for use in more than one jurisdiction" and its application to three specific fact patterns involving the sale of software and service. We list the fact patterns first and then the issues associated with each fact pattern exactly as presented in the interpretation request.

Fact Pattern (1): Software Company sells software that can be loaded onto Customer's server and can be accessed and used concurrently by Customer's employees located in several states. The only copy of the software received by the Customer is the one loaded onto the Customer's server. No subsequent copies of the software are made and sent to employees in other states.

Fact Pattern (2): Software is loaded onto Software Company's server and Software Company sells access to the software to Customer. Customer's employees gain concurrent access to the software from multiple locations. No copy of the software is ever delivered to the Customer.

Fact Pattern (3): A copy of a computer program is licensed by Software Company to Customer along with the right to make multiple copies of the software which will be delivered to Customer's users/employees in multiple jurisdictions.

Issue (1): "Is software loaded onto a server located in a single state that can be accessed by users in several states "concurrently available for use in more than one jurisdiction" within the meaning of Section 312A of the Agreement?"

Issue (2): "Is delivery of a copy of the computer program to the customer necessary to invoke the "concurrently available for use in more than one jurisdiction" language of Section 312A?"

Issue (3): "Is a license of a copy of a computer program that allows the licensee/customer to make copies of the software that will be used in more than one jurisdiction by the customer "concurrently available for use in more than one jurisdiction" within the meaning of Section 312A?"

Public Comment:

Public comment was received from both industry and state agencies.

Recommendation:

By unanimous vote the Compliance Review and Interpretations Committee submits to the Governing Board the following interpretation recommendation regarding the above three issues. It is important to note that the committee's recommendation departs from SoFTEC's proposed interpretation as it relates to issues one and three by incorporating clarifications provided by SoFTEC in supplemental memorandums. This interpretation recommendation does not take a position on whether the transactions described in the fact patterns are sales of computer software or whether they are sales of services since this distinction is not important to the question of whether the purchases are considered to be concurrently available for use in multiple jurisdictions.

It is also important to note that regardless of the fact situation, a seller is not relieved of its obligation to collect and remit sales or use tax on otherwise taxable transactions, unless the purchaser delivers to the seller an exemption form claiming direct pay or multiple points of use.

1. The purchase of software loaded onto a server located in a single state that will be available for access by employees in multiple jurisdictions is concurrently available for use in more than one jurisdiction within the meaning of Section 312A of the Agreement if the purchaser knows at the time of its purchase that the software will be concurrently available for use in multiple jurisdictions.

2. Delivery of a copy of a computer program is not necessary to invoke the "concurrently available for use in more than one jurisdiction" language of Section 312A.

3. The purchase of a license of a copy of a computer program that allows the licensee/customer to make copies of the software that will be used in more than one jurisdiction by the customer is concurrently available for use in more than one jurisdiction within the meaning of Section 312A of the Agreement if the purchaser knows at the time of its purchase that the software will be concurrently available for use in multiple jurisdictions.

Rationale:

1. The critical component of Section 312A is the direction provided to both the seller and purchaser. The term "concurrently available for use" has clear meaning: "concurrently" (occurring at the same time); "available for use" (that **can** be used). Applying the clear meaning of the term "concurrently available for use" to the specific fact pattern described, the purchased item is considered to be concurrently available for use in multiple jurisdictions within the meaning of Section 312A.

2. The delivery of a copy of a computer program is not specifically enumerated in Section 312A as a trigger for invoking the "concurrently available for use" language.

3. See item 1. The same rationale applies here.

Committee members:

Larry Wilkie, Committee Chair, Dale Vettel, Vice Chair, Tony Mastin, Dan Noble, Andy Sabol, Joe VanDevender, and Myles Vosberg.

Compiler's note: On December 14, 2006 Section 312 was repealed.

Interpretation 2006-08
(Adopted December 14, 2006)

This Interpretation Recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this 17th day of August, 2006 in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is Jane Page of the South Dakota Department of Revenue. The request was made on the prescribed form on June 7, 2006 and was made pursuant to the provisions for consideration contained in Rule 902 at subsection (D).

Issue:

The issue presented is an interpretation of Agreement section 402 pertaining to amnesty. The question presented was whether a registrant must remain registered with each state for a period of thirty-six months from the date that the state becomes a member.

The situation described involved a seller that registers through the streamlined sales tax central registration system with all member states on October 1, 2005. A new state becomes a member October 1, 2008. The seller cancels registration with all states effective December 1, 2008.

The seller in the situation described above was registered for a total of thirty-eight months, but only two months in the new state. Does the seller retain amnesty with the new member state?

Public Comment:

No written public comments were received.

Recommendation:

The Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that a seller who deregisters to collect tax in a member state within thirty-six months of that state becoming a member is no longer eligible for amnesty in that new member state under Section 402 of the agreement. However, the seller retains amnesty with all member states in which they were registered for at least thirty-six months, provided they meet all of the other requirements of Section 402 of the agreement.

Rationale:

Section 402A(1) of the agreement provides amnesty for uncollected or unpaid sales or use tax to a seller that registered to pay or to collect and remit applicable sales or use tax in accordance with the terms of the agreement. In addition, Section 402D states that the amnesty is fully effective 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.

A seller that deregisters within thirty-six months of the date that a state becomes a member does not meet the requirements of section 402D and, therefore, forfeits the amnesty provided under the agreement for that member state. Assuming that all other requirements of Section 402 are met, the seller retains amnesty in the initial member states since they met the thirty-six month registration requirement in those states.

Committee members:

Larry Wilkie, Committee Chair, Dale Vettel, Vice Chair, Tony Mastin, Dan Noble, Andy Sabol, Joe VanDevender, and Myles Vosberg.

Interpretation 2006-09
(Adopted December 14, 2006)

This Interpretation Recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this 14th day of September, 2006 in accordance with Article IX, Rule 902 of Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is Suzanne Beaudelaire of Ernst & Young, LLP. The request was made on the prescribed form dated August 16, 2006, and was made pursuant to the provisions for expedited consideration contained in Rule 902 at subsection H.

Issue:

The issue presented is an interpretation of Agreement section 402 pertaining to amnesty. The question presented was whether companies (predecessor companies) would be eligible for amnesty under Agreement section 402 if another company (successor company) acquired the assets and liabilities of the predecessor companies and then registered to collect sales/use tax

through the SST central registration system. According to facts presented in the request, the predecessor companies no longer exist, but would qualify for amnesty under Agreement section 402 if they still existed and they registered through the central registration system.

Public Comment:

No written public comments were received. Ms. Beaudelaire's discussion and response to the committee's questions during the September 14, 2006 meeting were the only oral comments presented to the committee. Other issues regarding liability for sales/use tax related to predecessor companies were raised during the discussion, but the following recommendation is limited to the specific question addressed in Ms. Beaudelaire's request.

Recommendation:

By unanimous consent the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that predecessor companies that do not register through the central registration system are not eligible for amnesty under Agreement section 402.

Rationale:

Section 402A(1) of the agreement provides amnesty for uncollected or unpaid sales or use tax to a seller that registers to pay or to collect and remit applicable sales or use tax in accordance with the terms of the agreement. The agreement language is clear that amnesty is not available to companies that do not register under the agreement.

Committee Members:

Larry Wilkie, Committee Chair; Myles Vosberg, Andy Sabol, Tony Mastin, Dan Noble, Tom Conley representing Joseph VanDevender, and Dale Vettel.

Interpretation 2006-10
(Withdrawn December 14, 2006)

Interpretation 2006-11
(Adopted December 14, 2006)

This Interpretation Recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this 26th day of October 2006 in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is Mr. John Nugent of the Rhode Island Division of Taxation. The request was made on the prescribed form dated October 6, 2006, and was made pursuant to the provisions for expedited consideration contained in Rule 902 H.

Issue:

The issue presented is an interpretation of Interpretation 2006-04 adopted on April 18, 2006 by the Governing Board defining the term "food sold with eating utensils provided by the seller" for purposes of the prepared food definition in the Agreement. The specific issue involves the following language which is referred to as a "bulk serving" in the remainder of this document:

> "For sellers with a sales percentage greater than 75% and who sell items that contain four (4) or more servings packaged as one item sold for a single price, an item does not become prepared food due to the seller having utensils available."

The questions presented was whether the packaging by a seller of four or more bakery products individually selected by a purchaser and sold for a single price meets the definition of "bulk serving" as defined above.

Public Comment:

Written public comments were received and are incorporated herein.

Recommendation:

By unanimous consent the Compliance Review and Interpretations Committee submits to the Governing Board the recommendation that packaging by a seller of four or more bakery products individually selected by the purchaser and sold for a single price constitutes a bulk serving.

Rationale:

Section VI of Interpretation 2006-04 provides, in part, the following:
"For sellers with a sales percentage greater than 75% and who sell items that contain four (4) or more servings packaged as one item sold for a single price, an item does not become prepared food due to the seller having utensils available…"

The "bulk servings" of Interpretation 2006-04 does not provide by whom the item must be packaged, or that the item must be pre-packaged. Thus, for bakery products, all that is required is that the item ultimately sold to the purchaser be a package of bakery products consisting of four or more servings sold for a single price. The fact that the servings are individually selected by the purchaser and packaged by the seller or the purchaser does not affect the transaction. The item does not constitute prepared food even when sold by a seller whose sales percentage is greater than 75% and who makes eating utensils available.

The Committee wishes to note that if the seller charges for each individual serving in the package, the sale would not be of "one item sold for a single price." It should be noted that the same provision in Section VI of Interpretation 2006-04, which we are referring to as "bulk serving," does treat "bulk servings" as prepared food when the seller's practice for the item (as

represented by the seller) is to physically hand the utensil to the purchaser, except that plates, bowls, glasses, or cups necessary for the purchaser to receive food need only be made available.

Committee Members:

Larry Wilkie, Committee Chair, Tom Conley, representing Joe VanDevender, Tony Mastin, Dan Noble, Andy Sabol, Dale Vettel, and Myles Vosberg.

Interpretation 2006-12
(Adopted December 14, 2006)

This Interpretation Recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this 26th day of October, 2006 in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is McCarter & English, LLP. The request was made on the prescribed form on October 6, 2006 and was made pursuant to the provisions for consideration contained in Rule 902, subsection (H).

Issue:

The issue presented is an interpretation of the definition of "direct mail" found in Appendix C, Part I of the Agreement. The specific question is whether billing invoices, return envelopes and any additional marketing materials are included in the definition of "direct mail." The definition in question reads as follows:

> "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct Mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

The Interpretation Request provided the following background facts. A company in the business of printing and mailing billing statements for clients in a wide variety of industries receives customer data electronically and prints statements, letters, invoices and additional pages on preprinted paper or forms to meet the client's specifications. The printed material is sorted, folded and inserted into envelopes, bundled based on zip codes and given to the United States

Postal Service for delivery. The mailed packet typically also will include a return envelope, coupons and other marketing materials.

Public Comment:

Written public comments were received from a state agency.

Recommendation:

By majority vote, the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that billing invoices, return envelopes and any additional marketing materials included with the mailing are included in the definition of direct mail provided the sale meets the criteria set out in the definition of direct mail. Joseph VanDevender, Indiana Department of Revenue, abstained from the vote on this recommendation due to a potential conflict of interest.

The criteria requires that the sale is of printed material delivered or distributed to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients.

It is important to note that this definition applies only for the purposes of determining proper sourcing, and for determining whether delivery charges are included in the taxable sales price of the direct mail.

Rationale:

A plain reading of the definition of direct mail supports the recommendation that billing invoices, return envelopes and additional marketing materials included with the printed material meets the definition of direct mail. However, the discussion surrounding this interpretation request indicates that there is a misunderstanding about the intended use of the definition of "direct mail."

The definition is placed in the Administrative Definitions section of the Agreement purposely, because it is not intended to be a product definition. The definition was created only to define the term as used in the Direct Mail Sourcing provisions found in Section 313, and for the exclusion from "delivery charges" allowed for charges for delivery of "direct mail."

States may tax or exempt any service or sale of printed material included in the definition of "direct mail" in any way they choose. For example, a state may impose sales and use tax on charges to print billing invoices, and exempt charges to print advertising material, both of which are included in the definition of direct mail. However, if the sale is taxable and includes mailing or delivering the printed material to a mass audience or to addresses on a mailing list as stated in the definition, it must be sourced under the provisions of Section 313, and the exclusion for delivery charges allowed applies if a member state has adopted that exclusion.

Committee members:

Larry Wilkie, Committee Chair, Dale Vettel, Vice Chair, Tony Mastin, Dan Noble, Andy Sabol, Joe VanDevender, and Myles Vosberg.

Interpretation 2007-01
(Adopted June 23, 2007)

This Interpretative Opinion Recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee on March 29, 2007, in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is Mr. Phil Schlesinger of Avalara. The request was made on the prescribed form on February 12, 2007, and was made pursuant to the provisions for consideration contained in Rule 902, subsection (H).

Issue:

The issue presented is an interpretation of the definition of "drug" in Appendix C, Part II of the Agreement. The specific question is whether the word "drug" is limited to an item or liquid that is consumed internally by the person or used externally on a person, or does it possibly extend beyond this in the context of item B of the definition to include medical supplies such as "Infectious Disease Testing Kits" that are intended to be used in the diagnosis of a disease.

Public Comment:

No written public comments were received.

Recommendation:

The Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that infectious disease testing kits do not meet the definition of "drug." However, reagents, which are a component of the infectious disease test kits, do meet the definition of "drug." The infectious disease test kits are made up of two or more distinct and identifiable products and are sold for one non-itemized price, which may or may not be a bundled transaction, depending on the tax laws in the state to which the sale is sourced. Since this will vary from state to state, the Committee recommends that each state make a determination of whether the sale of infectious disease test kits are taxable transactions according to the laws of their state.

Rationale:

The definition of "drug" found in Appendix C, Part II, of the Agreement does not require the item to be internally consumed or externally applied to the patient in order for the definition to apply. However, in order to qualify as a drug it must meet at least one of the provisions provided in A, B, or C of the definition, and it must also meet the basic definition in the first paragraph: "Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation, other than "food and food ingredients," "dietary supplements" or "alcoholic beverages."

To take the position that an item qualifies as a drug merely because the item is intended to be used in the diagnosis, cure, mitigation, treatment, or prevention of disease, as described in B of the definition, would expand the definition of drug to include much of what is defined as durable medical equipment. For example, dialysis equipment is used in the treatment of disease, but is not a drug, because it is not a "compound, substance or preparation."

The infectious disease test kits in question contain a chemical (reagents) and other items such as slides, plastic trays and droppers. The chemicals are also sold separately from the kits. Committee members agree that the chemicals meet the definition of "drug," but the other items in the kit do not. Since the infectious disease test kits contain two or more distinct and identifiable products and are sold for one non-itemized price, the sale of the test kits may be a bundled transaction. Business representatives pointed out that the test kits in question are just one of many different test kits sold by various manufacturers for use by medical professionals. Each type of kit sold will contain different items with different costs for the components, so the results may differ for each type of kit. To make a determination about a specific test kit, one must know the contents of the kit and the seller's purchase price or sales price of each item included in the kit. Whether sales and use tax applies to the sale of a bundled transaction, or to the sale of a transaction that meets the de minimis test, is based on the laws in the state to which the sale is sourced.

Committee members:

Larry Wilkie, Committee Chair, Dale Vettel, Vice Chair, Tony Mastin, Andy Sabol, Joe VanDevender, Myles Vosberg and Delegate John Doyle

Interpretation 2007-02
(Adopted September 20, 2007)

This Interpretation Recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this 7th day of June, 2007 in accordance with Article IX, Rule 902 of Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is Lafarge North America. The request was made by letter dated May 14, 2007, and was made pursuant to the provisions for expedited consideration contained in Rule 902 at subsection H.

Issue:

The issue presented is an interpretation of Agreement section 310 (General Sourcing Rules). The specific question presented was whether the seller's location is considered the destination when the terms of the sale are FOB (Free on Board) Plant (origin) regardless of whether the customer picks up the product in their own or vehicle or sends a third party to pick up the product.

Recommendation:

By unanimous consent the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that a sale is not considered "received" by the purchaser and therefore not sourced to the seller's location when a third party shipping company picks up the product on behalf of the purchaser.

Rationale:

A plain reading of Agreement section 310(A) states that the retail sale of a product shall be sourced to the business location when the product is received by the purchaser at the business location. Section 311 of the Agreement states that the term "receive" as used in Section 310(A) does not "include possession by a shipping company on behalf of the purchaser." The terms of the sale as FOB (origin) are irrelevant in determining sourcing under the Agreement. Since the source of the sale in the proposed fact scenario is not determined under subsection (A)(1) of Section 310, the seller must follow the subsequent paragraphs of subsection A to determine the source of the sale.

Committee Members:

Myles Vosberg, Andy Sabol, Tony Mastin, Joseph VanDevender, and Dale Vettel.

Interpretation 2007-03
(Adopted September 20, 2007)

This Interpretation Recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this 21st day of June, 2007 in accordance with Article IX, Rule 902 of Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is Patrick Williams of General Nutrition Centers, Inc. The request was submitted to the Executive Director on March 20, 2007. Expedited consideration available under Rule 902, subsection H was not requested

Issue:

The issue presented is an interpretation of the definition of candy. The question presented was whether flour includes flour substitutes and if the presence of a flour substitute within a food product would prevent that food product from meeting the definition of candy.

Public Comment:

No written public comments were received.

Recommendation:

By unanimous consent the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that the same labeling standards used by the food industry be used to determine what constitutes flour for the purpose of defining candy. A product does not contain flour unless the product label specifically lists "flour" as an ingredient.

Rationale:

The definition of candy found in Appendix C, Part II of the Streamlined Sales and Use Tax Agreement states candy shall not include any preparation containing flour, but does not define what constitutes flour. It is reasonable to accept the food industry's labeling standards and not consider any ingredient to be flour unless it is listed as such on the product label.

Committee Members:

Larry Wilkie, Committee Chair; John Doyle, Tony Mastin, Andy Sabol, Joseph VanDevender, Dale Vettel, and Myles Vosberg.

Interpretative Opinion 2008-01
(Adopted April 2, 2008)

This Interpretative Opinion recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this 13th day of March, 2008 in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is Mr. Drew Gruenburg, Senior Vice President of the Society of American Florists of Alexandria, Virginia. The request was made on January 30, 2008.

Issue:

Significant numbers of floral orders are placed through arrangements whereby a florist in one location ("Accepting Florist") takes an order from a customer to deliver floral orders (flowers, floral arrangements, potted plants, floral containers or any other article common to the floral

business) to a third party recipient in another location. The Accepting Florist transmits a floral order to another florist ("Delivering Florist") for delivery to the third party recipient. The question presented asks who is the seller for sales and use tax purposes, the Accepting Florist or the Delivering Florist.

Public Comment:

Additional written comments were received from Mr. Paul Goodman representing the Society of American Florists.

Recommendation:

By unanimous consent of the participating members, the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that the seller in the scenario described is the Accepting Florist.

Rationale:

The Governing Board took action at its inaugural meeting on October 1, 2005 related to a similar request for interpretation from the floral industry. That action was recorded in the minutes of the meeting as: "A motion for an interpretation of who is the seller for floral orders through floral delivery networks was moved by South Dakota, seconded by Oklahoma and passed." No other formal record of this action has been located. Action on this interpretation recommendation will create a record through the same process by which subsequent interpretations have been handled.

Agreement Section 212 defines the term "seller" as "a person making sales, leases, or rentals of personal property or services." This definition was established for application within the Agreement, therefore the provisions of the Agreement applicable to the Library of Definitions, including Section 327, do not apply.

Agreement Section 309.B.4 provides that the general sourcing provisions of Section 310 do not apply to sales or use taxes levied on florist sales until December 31, 2009. Issues of sourcing are separate and distinct, and are not addressed in this interpretation recommendation in any way.

Participating Committee Members:

John Doyle, Committee Chair, Larry Wilkie, Myles Vosberg, Tony Mastin, Joseph VanDevender, and Dale Vettel

Interpretative Opinion 2008-2
(Adopted September 5, 2008)

This Interpretative Opinion recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this day of June 5, 2008 in accordance with Article IX,

Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is Software Finance & Tax Executives Council (SoFTEC) represented by Mark Nebergall. The request was made on April 7, 2008.

Issue:

SoFTEC raises an issue associated with the direct mail definition in Appendix C of the Agreement. The fact pattern presented involves a company in the data processing business. The company electronically receives accounts receivable information from its customers, processes the information on its computers to develop billing information, and creates billing statements. The company prints and mails the billing statements along with return envelopes to the individual account holders. The issue presented is whether this activity constitutes "direct mail" as the term is defined by the Agreement in those states that treat this activity as a data processing or billing service.

Public Comment:

No state or public written comments were received.

Recommendation:

By a vote of five to two, the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that the transactions outlined in the issue section above are not direct mail.

Rationale:

The Agreement defines "direct mail" as "printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients." Although printed material is distributed in the fact pattern, the development of the billing information is the majority of the work performed. Many states take the position that this transaction is a sale of a service and not of tangible personal property. It is necessary to look at the transaction and how it is characterized. In those states that treat the transaction as a sale of a service, it would not be a sale of direct mail as printed material is not what is being sold.

Participating Committee Members:

This interpretation was supported by Larry Wilkie, Andy Sabol, Tony Mastin, Joe Vandevender and John Doyle. This interpretation was not supported by Myles Vosberg and Dale Vettel.

Interpretative Opinion 2009-1
(Adopted May 12, 2009)

This Interpretative Opinion recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this day of January 15, 2009 in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is Software Finance & Tax Executives Council (SoFTEC) represented by Mark Nebergall. The request was made on January 11, 2008.

Issue:

SoFTEC raises an issue associated with the purchase of additional software licenses. The fact pattern presented involves a purchaser acquiring prewritten computer software under a license that limits its ability to use the software in one of three ways: (1) the license only permits the purchaser to make a set number of copies, (2) the license only permits a set number of users to use the software concurrently, or (3) the license only permits the purchaser to load the software onto a computer with a specified computing power. If the purchaser wants to make additional copies of the software, allow additional users to use the software concurrently, or to migrate the software to more powerful computer, it must upgrade the license and pay an additional license fee. Once the fee is paid, the seller provides the purchaser by telephone with an alphanumeric code which, when entered into the computer, permits the making of additional copies of the software, permits additional concurrent users, or causes the software to function on the more powerful machine. The seller delivers no additional software to the purchaser. The issue presented is whether a software license upgrade (as opposed to an upgrade of the software itself) constitute "tangible personal property" or "computer software" where the only thing delivered to the purchaser is an alphanumeric code.

Public Comment:

No state or public written comments were received.

Recommendation:

By a unanimous vote, the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that the interpretation proposed by the requester not be accepted.

Rationale:

The Agreement defines "tangible personal property" as" personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses" and "includes electricity, water, gas, steam, and prewritten computer software." Although no physical software or other tangible personal property is distributed in the fact pattern, the

additional license to use the software is the essence of the transaction, not the alphanumeric code. The alphanumeric code merely facilitates the additional use of the software. The additional license to use the software should be treated the same as the original purchase of the software license.

Participating Committee Members:

Larry Wilkie, Myles Vosberg, Andy Sabol, Tony Mastin, Joe VanDevender.

Interpretative Opinion 2009-2
(Adopted September 30, 2009)

This Interpretative Opinion recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this day of July 2, 2009 in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is Woodman's Food Markets, Inc. represented by Steve Kaukl. The request was made on April 10, 2009.

Issue:

Woodman's Food Markets, Inc. raises a question associated with the definition of soft drinks. The State of Illinois currently considers fruit flavored cocktail mixes to be soft drinks because they can be directly consumed as a non-alcoholic fruit flavored ready to drink beverage. Fruit flavored cocktail mixes contain no alcohol. The example given was Jose Cuervo Margarita Mix, which contains no fruit juice and no alcohol. The intended use for the product is to combine it with liquor to produce an alcoholic cocktail. The issue presented is whether fruit flavored cocktail mixes are soft drinks under the Agreement definitions. The requester proposes that an interpretation be made that fruit flavored cocktail drinks are not soft drinks.

Public Comment:

No state or public written comments were received.

Recommendation:

By a unanimous vote, the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that the interpretation proposed by the requester not be accepted.

Rationale:

The Agreement defines “soft drinks” to mean non-alcoholic beverages that contain natural or artificial sweeteners. The definition provides that “soft drinks” do not include beverages that include greater than fifty percent of vegetable or fruit juice by volume. The definitions in the Agreement are meant to be objective tests to determine the classification of an item and the intent of the user is not relevant. Fruit flavored cocktail mixes meet the definition of “soft drink” and should be classified as such.

Participating Committee Members:

Larry Wilkie, Myles Vosberg, Tony Mastin, Tom Atchley, Rep. Deb Peters.

Interpretative Opinion 2009-3
(Adopted September 30, 2009)

This Interpretative Opinion recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this day of July 2, 2009 in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is Woodman’s Food Markets, Inc. represented by Steve Kaukl. The request was made on April 10, 2009.

Issue:

Woodman’s Food Markets, Inc. raises an issue associated with the definition of soft drinks. Ready to drink ice tea can come in an unsweetened and unflavored state. The example given was Lipton PureLeaf Iced Tea. The issue presented is whether unsweetened and unflavored ready to drink iced tea would be considered soft drinks under the Agreement definitions. The requester proposes that an interpretation be made that unsweetened and unflavored ready to drink iced tea are not soft drinks.

Public Comment:

No state or public written comments were received.

Recommendation:

By a unanimous vote, the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that the interpretation proposed by the requester be accepted.

Rationale:

The Agreement defines "soft drinks" to mean non-alcoholic beverages that contain natural or artificial sweeteners. Unsweetened, unflavored ready to drink iced tea does not meet the definition as it contains no sweeteners and falls under the food definition.

Participating Committee Members:

Larry Wilkie, Myles Vosberg, Tony Mastin, Tom Atchley, Rep. Deb Peters.

Interpretative Opinion 2009-4
(Adopted September 30, 2009)

This Interpretative Opinion recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this day of July 2, 2009 in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is Woodman's Food Markets, Inc. represented by Steve Kaukl. The request was made on April 10, 2009.

Issue:

Woodman's Food Markets, Inc. raises an issue with regard to the definition of candy. Certain baking ingredients have the characteristics of candy but are not intended to be consumed as candy. The example given was M&M's Baking Bits which are intended to be used as an ingredient in the making of cookies and other baked desserts. The issue presented is whether baking ingredients such as M&M's Baking Bits meet the definition of candy under the Agreement definitions. The requester proposes that an interpretation be made that such baking ingredients are not candy.

Public Comment:

No state or public written comments were received.

Recommendation:

By a unanimous vote, the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that the interpretation proposed by the requester not be accepted.

Rationale:

The Agreement defines "candy" to mean a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. The definitions in the Agreement are meant to be objective

tests to determine the classification of an item and the intent of the user is not relevant. Baking ingredients such as M&M's Baking Bits meet the definition of candy and should be classified as such.

Participating Committee Members:

Larry Wilkie, Myles Vosberg, Tony Mastin, Tom Atchley, Rep. Deb Peters.

Interpretative Opinion 2009-5
(Adopted December 17, 2009)

This Interpretative Opinion recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this day of November 12, 2009 in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is James Tilton. The request was made on August 18, 2009.

Issue:

Mr. Tilton raises an issue with regard to the definition of candy. Cereal and breakfast bars contain sugar and some contain flour. The example given was Honey Smacks, Rice Krispie Treats, Coco Krispies, Golden Crisp, Special K, Fruity Pebbles, Carmel Corn Rice Cakes, Kelloggs Raisin Bran, Wheaties, and Cheerios which all contain sugar but no flour. The issue presented is whether cereals like these meet the definition of candy under the Agreement definitions. The requester proposes that an interpretation be made that such cereals are candy.

Public Comment:

The Compliance Review and Interpretations Committee (CRIC) asked the State and Local Advisory Council (SLAC) to conduct research and to make a recommendation. There were state and public comments received by SLAC which resulted in a paper that was submitted to CRIC on November 12, 2009.

Recommendation:

By a unanimous vote, the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that the interpretation proposed by the requester not be accepted.

Rationale:

The Agreement defines "candy" to mean a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. The definitions in the Agreement are meant to be objective tests to determine the classification of an item and the intent of the user is not relevant.

(1) Breakfast cereals are **not** candy because they are not sold in the form of bars, drops or pieces.
(2) Natural or artificially sweetened breakfast bars, Carmel Corn Rice Cakes, and Rice Krispie Treats that do **not** have ingredient labeling specifying flour and do **not** require refrigeration are candy. These products are sold in the form of bars and meet the objective test in the definition of candy.
(3) Lightly Salted Rice Cakes that do not contain natural or artificial sweeteners according to the ingredient labeling are food and food ingredients and are not classified as candy.

Participating Committee Members:

Cathy Wicks for Larry Wilkie, Myles Vosberg, Tony Mastin, Tom Atchley, Rep. Deb Peters and Senator Luke Kenley.

Interpretative Opinion 2010-01
(Adopted April 30, 2010)

This Interpretative Opinion recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this day of March 11, 2010, in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is Tim Maloney. The request was made on February 17, 2010.

Issue:

Canton Chair Rental is an Ohio-based company located in Stark County that rents tangible personal property such as tables, chairs and other party-related items to individuals, families and companies in Stark County and other adjacent counties, all in Ohio. The normal arrangement is that these items are rented to the consumer/customer for a fee on a short-term, non-recurring basis, and not of duration of more than thirty days. The orders are received by Canton Chair Rental at its Stark County offices and the items rented are delivered to the customer at the customer's home or business by Canton Chair Rental. The issue presented is whether a renter of tangible personal property in Ohio, which has local jurisdictions that levy or receive sales or use taxes pursuant to Section 310.1, can utilize origin-based sourcing. The requester proposes that an interpretation be made that such rentals should qualify for origin based sourcing.

Public Comment:

Written comments were received from Mr. Bill Riesenberger of the state of Ohio, the Equipment Leasing and Finance Association, and from Mr. Tim Maloney.

Recommendation:

By a unanimous vote, the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that the interpretation proposed by the requester not be accepted.

Rationale:

Subsection 310.1B provides: "A member state may source retail sales, **excluding lease or rental**, of tangible personal property or digital goods to the location where the order is received by the seller if: …".

The Administrative Definitions in Part I of Appendix C of the Agreement define "lease or rental" to mean "any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration." The transaction highlighted in Mr. Maloney's interpretation request clearly falls within the definition of "lease or rental". Since leases or rentals are excluded under Subsection 310.1 B, the sourcing for such sales must be done by the member state under the provisions of Section 310 of the Agreement. Subsection 310B.2 states: "For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection 310A."

Subsection 310A sources sales on the location where the customer receives the property. These transactions are excluded from the origin sourcing election provided in Section 310.1. As such, they are to be sourced according to Subsection 310B. If the lease payments are structured such that it falls under Subsection 310B.2 as outlined in the situation provided, the payment is then sourced under the hierarchy provided in Subsection 310A.

Participating Committee Members:

Larry Wilkie, Myles Vosberg, Tom Atchley, Rep. Deb Peters, and Richard Cram.

Interpretative Opinion 2010-02
(Adopted August 17, 2010)

This Interpretative Opinion recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this day of May 27, 2010 in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The Governing Board requested the interpretation as a result of the issue being raised during the 2009 recertification compliance review.

Issue:

The issue being considered is whether an exemption for one-way paging conflicts with the Agreement's definition of paging? During the compliance review, the Compliance Review and Interpretations Committee determined that a number of states were exempting one-way paging. The Agreement contains a definition of "paging" which includes both one-way and two-way paging. The Committee decided not to consider the issue as part of the compliance review and to bring the issue to the attention of the Governing Board. The Governing Board asked the State and Local Advisory Council (SLAC) to conduct research and to make a recommendation to the Compliance Review and Interpretations Committee (CRIC).

Public Comment:

At the Governing Board's request, the SLAC conducted research on the issue. There were state and public comments received by SLAC which resulted in a paper that was submitted to CRIC.

Recommendation:

By a unanimous vote, the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that the interpretation action proposed by the SLAC be accepted. No action by the SLAC or the Governing Board to address "one-way paging" is necessary at this time. States identified in the CRIC's 2009 Compliance Review Report have expressed the intent to address this matter within their states by eliminating use of the term "one-way paging" (administratively or legislatively, as appropriate) so that all paging services in those states (including one-way paging) are either taxed or exempt.

Rationale:

The Agreement defines "paging service" as "a 'telecommunications service' that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds." The Agreement does not contain a definition for "one-way paging."

Governing Board Rule 327.2, Part D provides that with respect to telecommunications, partial exclusion of a definition is prohibited. A member state choosing to tax telecommunication services shall use applicable definitions contained in the Streamlined Sales and Use Tax Agreement and shall not exclude from imposition a part of any definition or any item included in such a definition unless the Streamlined Sales and Use Tax Agreement specifically permits such a variation. There is no such provision for taxing or exempting one type of paging and not the other.

Most transmissions considered as paging now include some capacity for direct response (such as a text message). True “one-way” paging (where there is no ability to directly respond to the paging transmission) continues to exist, though perhaps on a very limited basis.

Participating Members:

Myles Vosberg, Tom Atchley, Rep. Deb Peters and Richard Cram

Interpretative Opinion 2010-03
(Adopted October 7, 2010)

This Interpretative Opinion recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this day of September 16, 2010 in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is Mr. David A. Fruchtman. The request was made on August 18, 2010.

Issue:

Mr. Fruchtman asked, on behalf of a client, whether carbon dioxide used to make seltzer for human consumption qualifies as “food and food ingredients.” According to the facts presented, the company represented is a distributer and gas refiller of a table top seltzer making system. The company’s customers initially purchase a table top seltzer making kit, which includes a reusable seltzer dispenser weighing less than five pounds, two reusable plastic bottles, flavor samples and a canister filled with beverage-grade carbon dioxide ("canisters"). Customers screw a canister into the table top seltzer dispenser. To make seltzer at any time, a customer fills one of the plastic bottles with tap water, attaches the filled bottle to the dispenser, and pushes a button for one to two seconds, releasing gas into the water. The result is a fresh bottle of seltzer for human consumption. The carbon dioxide changes the taste of water. The taste of carbonated water is different than the taste of noncarbonated water because of the formation of carbonic acid when the carbon dioxide is dissolved in water. The seltzer is ingested as part of the beverage. Customers can add flavorings if they desire. This is the only use for the system. Mr. Fruchtman requests a ruling that the company’s sales of its canisters of beverage-grade carbon dioxide qualify as sales of "food and food ingredients" as that phrase is used in the Streamlined Sales and Use Tax Agreement ("SSUTA"), Appendix *C*.

Public Comment:

No state or public written comments were received.

Recommendation:

By a vote of three to one of the members present, the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that the interpretation proposed by the requester be accepted.

Rationale:

Term "food and food ingredients" means "Substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value."

"Food and food ingredients" are substances. The term gas is in fact defined as a "substance." For example, a gas is "a substance at a temperature above its critical temperature and therefore not liquefiable with pressure alone..[.]" *Webster's Third International Dictionary, p. 937 (2002).* The definition of "food and food ingredients" identifies various forms in which "substances" can exist. However, the list of described forms is not exclusive. Accordingly, a gas can qualify as a "substance" as contemplated in the definition of "food and food ingredients."

Under the facts presented, the identified beverage grade carbon dioxide gas is sold for ingestion and is consumed for taste.

Based upon the forgoing, the beverage grade carbon dioxide gas qualifies as a "food and food ingredient" because it is a substance, is sold for ingestion, and is consumed for taste.

Participating Committee Members:

Myles Vosberg, Rep. Deb Peters, Richard Cram and Tim Jennrich