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STREAMLINED SALES AND USE TAX AGREEMENT

Adopted November 12, 2002

**(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, and June 23, 2007)**

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1 **ARTICLE I**
2 **PURPOSE AND PRINCIPLE**
3

4 **Section 101: TITLE**

5 This multistate Agreement shall be referred to, cited, and known as the Streamlined Sales and
6 Use Tax Agreement.
7

8 **Section 102: FUNDAMENTAL PURPOSE**

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

- 13 A. State level administration of sales and use tax collections.
14 B. Uniformity in the state and local tax bases.
15 C. Uniformity of major tax base definitions.
16 D. Central, electronic registration system for all member states.
17 E. Simplification of state and local tax rates.
18 F. Uniform sourcing rules for all taxable transactions.
19 G. Simplified administration of exemptions.
20 H. Simplified tax returns.
21 I. Simplification of tax remittances.
22 J. Protection of consumer privacy.
23

24 **Section 103: TAXING AUTHORITY PRESERVED**

25 This Agreement shall not be construed as intending to influence a member state to impose a tax
26 on or provide an exemption from tax for any item or service. However, if a member state
27 chooses to tax an item or exempt an item from tax, that state shall adhere to the provisions
28 concerning definitions as set out in Article III of this Agreement.
29

1 **Section 104: DEFINED TERMS**

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

5
6 An alphabetical list of all the terms defined in the Agreement and their location in the Agreement
7 is found in Appendix B of this Agreement, the Index of Definitions. Terms defined for use
8 within this Agreement are set out in Article II of the Agreement. Many of the uniform definitions
9 for application in the sales and use tax laws of the member states are set out in Appendix C of
10 this Agreement, the Library of Definitions. Definitions that are not set out in Appendix C are
11 defined when applied in a particular section of the Agreement and are set out in that section of
12 the Agreement. The appendices have the same effect as the Articles in the Agreement.

13

14 **Section 105: TREATMENT OF VENDING MACHINES**

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

1 **ARTICLE II**
2 **DEFINITIONS**

3
4 The following definitions apply in this Agreement:

5 **Section 201: AGENT**

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

7 **Section 202: CERTIFIED AUTOMATED SYSTEM (CAS)**

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

11 **Section 203: CERTIFIED SERVICE PROVIDER (CSP)**

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

14 **Section 204: ENTITY-BASED EXEMPTION**

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

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

19 **Section 205: MODEL 1 SELLER**

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

22 **Section 206: MODEL 2 SELLER**

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

25 **Section 207: MODEL 3 SELLER**

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

1 **Section 208: PERSON**

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

4 **Section 209: PRODUCT-BASED EXEMPTION**

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

7 **Section 210: PURCHASER**

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

9 **Section 211: REGISTERED UNDER THIS AGREEMENT**

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

12 **Section 212: SELLER**

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

14 **Section 213: STATE**

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

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

19 **Section 214: USE-BASED EXEMPTION**

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

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

1 **ARTICLE III**

2 **REQUIREMENTS EACH STATE MUST ACCEPT TO PARTICIPATE**

3

4 **Section 301: STATE LEVEL ADMINISTRATION**

5 Each member state shall provide state level administration of sales and use taxes. The state level
6 administration may be performed by a member state's Tax Commission, Department of Revenue,
7 or any other single entity designated by state law. Sellers are only required to register with, file
8 returns with, and remit funds to the state level authority. Each member state shall provide for
9 collection of any local taxes and distribution of them to the appropriate taxing jurisdictions.
10 Each member state shall conduct, or authorize others to conduct on its behalf, all audits of the
11 sellers registered under the Agreement for that state's tax and the tax of its local jurisdictions,
12 and local jurisdictions shall not conduct independent sales or use tax audits of sellers registered
13 under the Agreement.

14

15 **Section 302: STATE AND LOCAL TAX BASES**

16 Through December 31, 2005, if a member state has local jurisdictions that levy a sales or use tax,
17 all local jurisdictions in the state shall have a common tax base. After December 31, 2005, the
18 tax base for local jurisdictions shall be identical to the state tax base unless otherwise prohibited
19 by federal law. This section does not apply to sales or use taxes levied on the retail sale or
20 transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile
21 homes.

22

23 **Section 303: SELLER REGISTRATION**

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

- 26 A. A seller registering under the Agreement is registered in each of the member states.
27 B. The member states agree not to require the payment of any registration fees or other
28 charges for a seller to register in a state in which the seller has no legal requirement to
29 register.
30 C. A written signature from the seller is not required.

- 1 D. An agent may register a seller under uniform procedures adopted by the member states.
- 2 E. A seller may cancel its registration under the system at any time under uniform
- 3 procedures adopted by the governing board. Cancellation does not relieve the seller of its
- 4 liability for remitting to the proper states any taxes collected.

5

6 **Section 304: NOTICE FOR STATE TAX CHANGES**

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

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

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

17

18 **Section 305: LOCAL RATE AND BOUNDARY CHANGES**

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

- 20 A. Provide that local rate changes will be effective only on the first day of a calendar
- 21 quarter after a minimum of sixty days' notice to sellers.
- 22 B. Apply local sales tax rate changes to purchases from printed catalogs wherein the
- 23 purchaser computed the tax based upon local tax rates published in the catalog only on
- 24 the first day of a calendar quarter after a minimum of one hundred twenty days' notice to
- 25 sellers.
- 26 C. For sales and use tax purposes only, apply local jurisdiction boundary changes only on
- 27 the first day of a calendar quarter after a minimum of sixty days' notice to sellers.
- 28 D. Provide and maintain a database that describes boundary changes for all taxing
- 29 jurisdictions. This database shall include a description of the change and the effective
- 30 date of the change for sales and use tax purposes.

- 1 E. Provide and maintain a database of all sales and use tax rates for all of the jurisdictions
2 levying taxes within the state. For the identification of states, counties, cities, and
3 parishes, codes corresponding to the rates must be provided according to Federal
4 Information Processing Standards (FIPS) as developed by the National Institute of
5 Standards and Technology. For the identification of all other jurisdictions, codes
6 corresponding to the rates must be in the format determined by the governing board.
- 7 F. Provide and maintain a database that assigns each five digit and nine digit zip code
8 within a member state to the proper tax rates and jurisdictions. The state must apply the
9 lowest combined tax rate imposed in the zip code area if the area includes more than one
10 tax rate in any level of taxing jurisdictions. If a nine digit zip code designation is not
11 available for a street address or if a seller or CSP is unable to determine the nine digit zip
12 code designation applicable to a purchase after exercising due diligence to determine the
13 designation, the seller or CSP may apply the rate for the five digit zip code area. For the
14 purposes of this section, there is a rebuttable presumption that a seller or CSP has
15 exercised due diligence if the seller has attempted to determine the nine digit zip code
16 designation by utilizing software approved by the governing board that makes this
17 designation from the street address and the five digit zip code applicable to a purchase.
- 18 G. Have the option of providing address-based boundary database records for assigning
19 taxing jurisdictions and their associated rates which shall be in addition to the
20 requirements of subsection (F) of this section. The database records must be in the same
21 approved format as the database records pursuant to subsection (F) of this section and
22 must meet the requirements developed pursuant to the federal Mobile
23 Telecommunications Sourcing Act (4 U.S.C.A. Sec. 119(a)). The governing board may
24 allow a member state to require sellers that register under this Agreement to use an
25 address-based database provided by that member state. If any member state develops
26 address-based assignment database records pursuant to the Agreement, a seller or CSP
27 may use those database records in place of the five and nine-digit zip code database
28 records provided for in subsection (F) of this section. If a seller or CSP is unable to
29 determine the applicable rate and jurisdiction using an address-based database record
30 after exercising due diligence, the seller or CSP may apply the nine digit zip code

1 designation applicable to a purchase. If a nine-digit zip code designation is not available
2 for a street address or if a seller or CSP is unable to determine the nine digit zip code
3 designation applicable to a purchase after exercising due diligence to determine the
4 designation, the seller or CSP may apply the rate for the five digit zip code area. For the
5 purposes of this section, there is a rebuttable presumption that a seller or CSP has
6 exercised due diligence if the seller or CSP has attempted to determine the tax rate and
7 jurisdiction by utilizing software approved by the governing board that makes this
8 assignment from the address and zip code information applicable to the purchase.

9 H. States that have met the requirements of subsection (F) may also elect to certify vendor
10 provided address-based databases for assigning tax rates and jurisdictions. The
11 databases must be in the same approved format as the database records pursuant to (G)
12 of this section and must meet the requirements developed pursuant to the federal Mobile
13 Telecommunications Sourcing Act (4 U.S.C.A. Sec. 119 (a)). If a state certifies a
14 vendor address-based database, a seller or CSP may use that database in place of the
15 database provided for in subsection (F) or (G) of this section. Vendors providing
16 address-based databases may request certification of their databases from the governing
17 board. Certification by the governing board does not replace the requirement that the
18 databases be certified by the states individually.

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

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

- 24 1. *In Section 305 (F) "or CSP" was added after each "seller." In addition, in two places "~~of a~~*
25 *purchaser" was replaced with "applicable to a purchase."*
- 26 2. *Section 305 (G) was amended as follows: "~~Participate with other member states in the~~*
27 *development of an Have the option of providing address-based ~~system~~ database records for*
28 *assigning taxing jurisdictions and their associated rates which shall be in addition to the*
29 *requirements of subsection (F) of this section. The ~~system~~ database records must be in the same*
30 *approved format as the database records pursuant to subsection (F) of this section and must meet*
31 *the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act (~~4~~*
32 *U.S.C. Sec. 119) (4 U.S.C.A. Sec.119 (a)). The governing board may allow a member state to*

1 require sellers that register under this Agreement to use an address-based ~~system~~ database
2 provided by that member state. If any member state develops ~~an~~ address-based assignment ~~system~~
3 database records pursuant to the ~~Mobile Telecommunications Sourcing Act~~ Agreement, a seller or
4 CSP may use ~~that system~~ those database records in place of the ~~system~~ five and nine-digit zip code
5 database records provided for in subsection (F) of this section. If a seller or CSP is unable to
6 determine the applicable rate and jurisdiction using an address-based database record after
7 exercising due diligence, the seller or CSP may apply the nine digit zip code designation
8 applicable to a purchase. If a nine-digit zip code designation is not available for a street address
9 or if a seller or CSP is unable to determine the nine digit zip code designation applicable to a
10 purchase after exercising due diligence to determine the designation, the seller or CSP may apply
11 the rate for the five digit zip code area. For the purposes of this section, there is a rebuttable
12 presumption that a seller or CSP has exercised due diligence if the seller or CSP has attempted to
13 determine the tax rate and jurisdiction by utilizing software approved by the governing board that
14 makes this assignment from the address and zip code information applicable to the purchase”.

15 3. Section 305 (H) was added.

16 *The amendment to this section became effective upon adoption.*

17 *Compiler’s note: On June 23, 2007 subsection I was added.*

19 **Section 306: RELIEF FROM CERTAIN LIABILITY**

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

31 *Compiler’s note: On October 1, 2005 Section 306 was amended as follows: “Each member state shall relieve sellers*
32 *and CSPs using databases pursuant to subsections (F), (G) and (H) from liability to the member state and local*
33 *jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or*

1 CSP relying on erroneous data provided by a member state on tax rates, boundaries, or taxing jurisdiction
2 assignments. After providing adequate notice as determined by the governing board, a A member state that provides
3 an address-based ~~system~~ database for assigning taxing jurisdictions pursuant to Section 305, subsection (G) ~~or~~
4 pursuant to the federal Mobile Telecommunications Sourcing Act will not be required to provide or (H) may cease
5 providing liability relief for errors resulting from the reliance on the ~~information~~ database provided by the member
6 state under the provisions of Section 305, subsection (F). If a seller demonstrates that requiring the use of the
7 address-based database would create an undue hardship, a member state and the governing board may extend the
8 relief from liability to such seller for a designated period of time.”

9 The amendment to this section became effective upon adoption.
10

11 **Section 307: DATABASE REQUIREMENTS AND EXCEPTIONS**

- 12 A. The electronic databases provided for in Section 305, subsections (D), (E), (F), and (G)
13 shall be in a downloadable format approved by the governing board. The databases may
14 be directly provided by the state or provided by a vendor as designated by the state. A
15 database provided by a vendor as designated by a state shall be applicable to and subject
16 to all provisions of Sections 305, 306 and this section. These databases must be
17 provided at no cost to the user of the database.
- 18 B. The provisions of Section 305, subsections (F) and (G) do not apply when the purchased
19 product is received by the purchaser at the business location of the seller.
- 20 C. The databases provided by Section 305, subsections (D), (E), (F), and (G) are not a
21 requirement of a state prior to entering into the Agreement. A seller that did not have a
22 requirement to register in a state prior to registering pursuant to this Agreement or a CSP
23 shall not be required to collect sales or use taxes for a state until the first day of the
24 calendar quarter commencing more than sixty days after the state has provided the
25 databases required by Section 305, subsections (D), (E), and (F). Provided, for the initial
26 implementation of the Agreement pursuant to Section 701, a CSP shall be required to
27 collect sales or use taxes for each member state, subject to the provisions of Section 705,
28 pursuant to the terms of the operating agreement entered into between the CSP and the
29 governing board in order to provide adequate time for testing and loading of the
30 databases.

31 *Compiler’s note: On October 1, 2005 the following amendments were made to Section 307:*

32 *Section 307 (A) was amended by adding the last three sentences.*

1 *Section 307 (C) was amended by adding “and (G)” after “(F),” deleting the second sentence (~~The governing board~~*
2 *shall establish the effective dates for availability and use of the databases.) and adding the last two sentences.*
3 *The amendment to this section became effective upon adoption.*

4

5 **Section 308: STATE AND LOCAL TAX RATES**

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

12 B. A member state that has local jurisdictions that levy a sales or use tax shall not have
13 more than one local sales tax rate or more than one local use tax rate per local
14 jurisdiction. If the local jurisdiction levies both a sales tax and use tax, the local rates
15 must be identical.

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

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

22

23 **Section 309: APPLICATION OF GENERAL SOURCING RULES AND EXCLUSIONS** 24 **FROM THE RULES**

25 A. Each member state shall agree to require sellers to source the retail sale of a product in
26 accordance with Section 310. The provisions of Section 310 apply regardless of the
27 characterization of a product as tangible personal property, a digital good, or a service.
28 The provisions of Section 310 only apply to determine a seller's obligation to pay or
29 collect and remit a sales or use tax with respect to the seller's retail sale of a product.
30 These provisions do not affect the obligation of a purchaser or lessee to remit tax on the
31 use of the product to the taxing jurisdictions of that use.

- 1 B. Sections 310 and 312 do not apply to sales or use taxes levied on the following:
- 2 1. The retail sale or transfer of watercraft, modular homes, manufactured homes, or
3 mobile homes. These items must be sourced according to the requirements of each
4 member state.
 - 5 2. The retail sale, excluding lease or rental, of motor vehicles, trailers, semi-trailers, or
6 aircraft that do not qualify as transportation equipment, as defined in Section 310,
7 subsection (D). The retail sale of these items shall be sourced according to the
8 requirements of each member state, and the lease or rental of these items must be
9 sourced according to Section 310, subsection (C).
 - 10 3. Telecommunications services and ancillary services, as set out in Section 315, and
11 Internet access service shall be sourced in accordance with Section 314.
 - 12 4. Until December 31, 2009, florist sales as defined by each member state. Prior to this
13 date, these items must be sourced according to the requirements of each member
14 state.

15 *Compiler's note: On October 1, 2005 Section 309 (B)(4) was amended by deleting 2005 and inserting 2007. The*
16 *amendment to this section became effective upon adoption. Compiler's note: On December 14, 2006 Section 309*
17 *(b) was amended as follows: "~~Section Sections 310 and 312 does do~~", and 309 (B) (3) was amended by adding*
18 *"and ancillary services" following "services" and "and Internet access service" before "shall".*
19 *Compiler's note: On June 23, 2007 the date in subsection B 4 was changed from "December 31, 2007" to*
20 *December 31, 2009."*

22 **Section 310: GENERAL SOURCING RULES**

- 23 A. The retail sale, excluding lease or rental, of a product shall be sourced as follows:
- 24 1. When the product is received by the purchaser at a business location of the seller, the
25 sale is sourced to that business location.
 - 26 2. When the product is not received by the purchaser at a business location of the seller,
27 the sale is sourced to the location where receipt by the purchaser (or the purchaser's
28 donee, designated as such by the purchaser) occurs, including the location indicated
29 by instructions for delivery to the purchaser (or donee), known to the seller.
 - 30 3. When subsections (A)(1) and (A)(2) do not apply, the sale is sourced to the location
31 indicated by an address for the purchaser that is available from the business records of

1 the seller that are maintained in the ordinary course of the seller's business when use
2 of this address does not constitute bad faith.

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

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

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

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

25 2. For a lease or rental that does not require recurring periodic payments, the payment is
26 sourced the same as a retail sale in accordance with the provisions of subsection (A).

27 3. This subsection does not affect the imposition or computation of sales or use tax on
28 leases or rentals based on a lump sum or accelerated basis, or on the acquisition of
29 property for lease.

- 1 C. The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify
2 as transportation equipment, as defined in subsection (D), shall be sourced as follows:
- 3 1. For a lease or rental that requires recurring periodic payments, each periodic payment
4 is sourced to the primary property location. The primary property location shall be as
5 indicated by an address for the property provided by the lessee that is available to the
6 lessor from its records maintained in the ordinary course of business, when use of this
7 address does not constitute bad faith. This location shall not be altered by intermittent
8 use at different locations.
 - 9 2. For a lease or rental that does not require recurring periodic payments, the payment is
10 sourced the same as a retail sale in accordance with the provisions of subsection (A).
 - 11 3. This subsection does not affect the imposition or computation of sales or use tax on
12 leases or rentals based on a lump sum or accelerated basis, or on the acquisition of
13 property for lease.
- 14 D. The retail sale, including lease or rental, of transportation equipment shall be sourced the
15 same as a retail sale in accordance with the provisions of subsection (A),
16 notwithstanding the exclusion of lease or rental in subsection (A). “Transportation
17 equipment” means any of the following:
- 18 1. Locomotives and railcars that are utilized for the carriage of persons or property in
19 interstate commerce.
 - 20 2. Trucks and truck-tractors with a Gross Vehicle Weight Rating (GVWR) of 10,001
21 pounds or greater, trailers, semi-trailers, or passenger buses that are:
 - 22 a. Registered through the International Registration Plan; and
 - 23 b. Operated under authority of a carrier authorized and certificated by the U.S.
24 Department of Transportation or another federal authority to engage in the
25 carriage of persons or property in interstate commerce.
 - 26 3. Aircraft that are operated by air carriers authorized and certificated by the U.S.
27 Department of Transportation or another federal or a foreign authority to engage in
28 the carriage of persons or property in interstate or foreign commerce.
 - 29 4. Containers designed for use on and component parts attached or secured on the items
30 set forth in subsections (D)(1) through (D)(3).

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

3
4 **Section 311: GENERAL SOURCING DEFINITIONS**

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

- 6 A. Taking possession of tangible personal property,
- 7 B. Making first use of services, or
- 8 C. Taking possession or making first use of digital goods, whichever comes first.

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

11
12 **Section 312: MULTIPLE POINTS OF USE (Effective through December 31, 2007)**

13 **Repealed on December 14, 2006**

14 *Compiler's note: This section was repealed on December 14, 2006 effective upon adoption. The following is the*
15 *section prior to its repeal:*

16
17 *Notwithstanding the provisions of Section 310, a business purchaser that is not a holder of a direct pay permit that*
18 *knows at the time of its purchase of a digital good, computer software delivered electronically, or a service that the*
19 *digital good, computer software delivered electronically, or service will be concurrently available for use in more*
20 *than one jurisdiction shall deliver to the seller in conjunction with its purchase a form disclosing this fact ("Multiple*
21 *Points of Use or MPU" Exemption Form).*

- 22 A. *Upon receipt of the MPU Exemption Form, the seller is relieved of all obligation to collect, pay, or remit*
23 *the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a*
24 *direct pay basis.*
- 25 B. *A purchaser delivering the MPU Exemption Form may use any reasonable, but consistent and uniform,*
26 *method of apportionment that is supported by the purchaser's business records as they exist at the time of*
27 *the consummation of the sale.*
- 28 C. *The MPU Exemption Form will remain in effect for all future sales by the seller to the purchaser (except*
29 *as to the subsequent sale's specific apportionment that is governed by the principle of subsection (B) and*
30 *the facts existing at the time of the sale) until it is revoked in writing.*
- 31 D. *A holder of a direct pay permit shall not be required to deliver a MPU Exemption Form to the seller. A*
32 *direct pay permit holder shall follow the provisions of subsection (B) in apportioning the tax due on a*
33 *digital good or a service that will be concurrently available for use in more than one jurisdiction.*

1 **Section 312: MULTIPLE POINTS OF USE (Effective on and after January 1, 2008)**
2 **Repealed on December 14, 2006**

3 *Compiler's note: This section was repealed on December 14, 2006 effective upon adoption. The following is the*
4 *section prior to its repeal:*

- 5
- 6 **A.** *Notwithstanding the provisions of Section 310, a business purchaser that is not a holder of a direct pay*
7 *permit that knows at the time of its purchase of a digital good, computer software, or a service that the*
8 *digital good, computer software, or service will be concurrently available for use in more than one*
9 *jurisdiction shall deliver to the seller in conjunction with its purchase an exemption certificate claiming*
10 *multiple points of use or meet the requirements of Section 312, subsections (B) or (C). Computer software,*
11 *for purposes of this section includes, but is not limited to computer software delivered electronically, by*
12 *load and leave, or in tangible form. Computer software received in-person by a business purchaser at a*
13 *business location of the seller is not included.*
- 14 1. *Upon receipt of an exemption certificate claiming multiple points of use, the seller is relieved of*
15 *all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to*
16 *collect, pay, or remit the applicable tax on a direct pay basis.*
- 17 2. *A purchaser delivering an exemption certificate claiming multiple points of use may use any*
18 *reasonable, but consistent and uniform, method of apportionment that is supported by the*
19 *purchaser's books and records as they exist at the time the transaction is reported for sales or use*
20 *tax purposes.*
- 21 3. *A purchaser delivering an exemption certificate claiming multiple points of use shall report and*
22 *pay the appropriate tax to each jurisdiction where concurrent use occurs. The tax due will be*
23 *calculated as if the apportioned amount of the digital good, computer software or service had*
24 *been delivered to each jurisdiction to which the sale is apportioned pursuant to Section 312,*
25 *subdivision (A)(2).*
- 26 4. *The exemption certificate claiming multiple points of use will remain in effect for all future sales*
27 *by the seller to the purchaser (except as to the subsequent sale's specific apportionment that is*
28 *governed by the principles of Section 312, subdivisions (A)(2) and (A)(3)) until it is revoked in*
29 *writing.*
- 30 **B.** *Notwithstanding Section 312, subsection (A), when the seller knows that the product will be concurrently*
31 *available for use in more than one jurisdiction, but the purchaser does not provide an exemption certificate*
32 *claiming multiple points of use as required in subsection (A), the seller may work with the purchaser to*
33 *produce the correct apportionment. The purchaser and seller may use any reasonable, but consistent and*
34 *uniform, method of apportionment that is supported by the seller's and purchaser's business records as*
35 *they exist at the time the transaction is reported for sales or use tax purposes. If the purchaser certifies to*

1 *the accuracy of the apportionment and the seller accepts the certification, the seller shall collect and remit*
2 *the tax pursuant to Section 312, subdivision (A)(3). In the absence of bad faith, the seller is relieved of any*
3 *further obligation to collect tax on any transaction where the seller has collected tax pursuant to the*
4 *information certified by the purchaser.*

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

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

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

18
19 **Section 313: DIRECT MAIL SOURCING**

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

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

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

1 seller has collected tax pursuant to the delivery information provided by the
2 purchaser.

3 B. If the purchaser of direct mail does not have a direct pay permit and does not provide the
4 seller with either a Direct Mail Form or delivery information, as required by subsection
5 (A) of this section, the seller shall collect the tax according to Section 310, subsection
6 (A)(5). Nothing in this paragraph shall limit a purchaser's obligation for sales or use tax
7 to any state to which the direct mail is delivered.

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

11
12 **Section 314: TELECOMMUNICATION AND RELATED SERVICES SOURCING RULE**

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

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

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

23 1. A sale of mobile telecommunications services other than air-to-ground radiotelephone
24 service and prepaid calling service, is sourced to the customer's place of primary use
25 as required by the Mobile Telecommunications Sourcing Act.

26 2. A sale of post-paid calling service is sourced to the origination point of the
27 telecommunications signal as first identified by either (i) the seller's
28 telecommunications system, or (ii) information received by the seller from its service
29 provider, where the system used to transport such signals is not that of the seller.

1 3. **(Effective through December 31, 2007)** A sale of prepaid calling service is sourced
2 in accordance with Section 310. Provided however, in the case of a sale of mobile
3 telecommunications service that is a prepaid telecommunications service, the rule
4 provided in Section 310, subsection (A)(5) shall include as an option the location
5 associated with the mobile telephone number.

6 3. **(Effective on and after January 1, 2008)** A sale of prepaid calling service or a sale
7 of a prepaid wireless calling service is sourced in accordance with Section 310.
8 Provided however, in the case of a sale of prepaid wireless calling service, the rule
9 provided in Section 310, subsection (A)(5) shall include as an option the location
10 associated with the mobile telephone number.

11 4. A sale of a private communication service is sourced as follows:

12 a. Service for a separate charge related to a customer channel termination point is
13 sourced to each level of jurisdiction in which such customer channel termination
14 point is located.

15 b. Service where all customer termination points are located entirely within one
16 jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the
17 customer channel termination points are located.

18 c. Service for segments of a channel between two customer channel termination points
19 located in different jurisdictions and which segment of channel are separately charged
20 is sourced fifty percent in each level of jurisdiction in which the customer channel
21 termination points are located.

22 d. Service for segments of a channel located in more than one jurisdiction or levels of
23 jurisdiction and which segments are not separately billed is sourced in each
24 jurisdiction based on the percentage determined by dividing the number of customer
25 channel termination points in such jurisdiction by the total number of customer
26 channel termination points.

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

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

29 *Compiler's note: On April 16, 2005 Section 314, subdivision (C)(3) was amended by inserting "or a sale of a*
30 *prepaid wireless calling service" after "service" in the first line; and by deleting "mobile telecommunications*

1 *service that is a prepaid telecommunications” and inserting “prepaid wireless calling” in its place. Member states*
2 *shall comply with this amendment no later than January 1, 2008. Compiler’s note: On December 14, 2006 Section*
3 *314 was amended by the addition of D and E.*

4
5 **Section 315: TELECOMMUNICATION SOURCING DEFINITIONS (Effective through**
6 **December 31, 2007)**

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

- 8 A. "Air-to-Ground Radiotelephone service" means a radio service, as that term is defined
9 in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio
10 telecommunications service for hire to subscribers in aircraft.
- 11 B. "Call-by-call Basis" means any method of charging for telecommunications services
12 where the price is measured by individual calls.
- 13 C. "Communications Channel" means a physical or virtual path of communications over
14 which signals are transmitted between or among customer channel termination points.
- 15 D. "Customer" means the person or entity that contracts with the seller of
16 telecommunications services. If the end user of telecommunications services is not
17 the contracting party, the end user of the telecommunications service is the customer
18 of the telecommunication service, but this sentence only applies for the purpose of
19 sourcing sales of telecommunications services under Section 314. "Customer" does
20 not include a reseller of telecommunications service or for mobile
21 telecommunications service of a serving carrier under an agreement to serve the
22 customer outside the home service provider's licensed service area.
- 23 E. "Customer Channel Termination Point" means the location where the customer either
24 inputs or receives the communications.
- 25 F. "End user" means the person who utilizes the telecommunication service. In the case
26 of an entity, “end user” means the individual who utilizes the service on behalf of the
27 entity.
- 28 G. "Home service provider" means the same as that term is defined in Section 124(5) of
29 Public Law 106-252 (Mobile Telecommunications Sourcing Act).
- 30 H. "Mobile telecommunications service" means the same as that term is defined in
31 Section 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

- 1 I. "Place of primary use" means the street address representative of where the
2 customer's use of the telecommunications service primarily occurs, which must be the
3 residential street address or the primary business street address of the customer. In
4 the case of mobile telecommunications services, "place of primary use" must be
5 within the licensed service area of the home service provider.
- 6 J. "Post-paid calling service" means the telecommunications service obtained by
7 making a payment on a call-by-call basis either through the use of a credit card or
8 payment mechanism such as a bank card, travel card, credit card, or debit card, or by
9 charge made to a telephone number which is not associated with the origination or
10 termination of the telecommunications service. A post-paid calling service includes a
11 telecommunications service that would be a prepaid calling service except it is not
12 exclusively a telecommunication service.
- 13 K. "Prepaid calling service" means the right to access exclusively telecommunications
14 services, which must be paid for in advance and which enables the origination of calls
15 using an access number or authorization code, whether manually or electronically
16 dialed, and that is sold in predetermined units or dollars of which the number declines
17 with use in a known amount.
- 18 L. "Private communication service" means a telecommunication service that entitles the
19 customer to exclusive or priority use of a communications channel or group of
20 channels between or among termination points, regardless of the manner in which
21 such channel or channels are connected, and includes switching capacity, extension
22 lines, stations, and any other associated services that are provided in connection with
23 the use of such channel or channels.
- 24 M. "Service address" means:
- 25 1. The location of the telecommunications equipment to which a customer's call is
26 charged and from which the call originates or terminates, regardless of where the
27 call is billed or paid.
 - 28 2. If the location in subsection (M)(1) is not known, service address means the
29 origination point of the signal of the telecommunications services first identified
30 by either the seller's telecommunications system or in information received by the

1 seller from its service provider, where the system used to transport such signals is
2 not that of the seller.

- 3 3. If the location in subsection (M)(1) and subsection (M)(2) are not known, the
4 service address means the location of the customer's place of primary use.
5

6 **Section 315: TELECOMMUNICATION SOURCING DEFINITIONS (Effective on and**
7 **after January 1, 2008)**

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

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

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

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

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

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

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

1 "End user" means the person who utilizes the telecommunication service. In the case of an
2 entity, "end user" means the individual who utilizes the service on behalf of the
3 entity.

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

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

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

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

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

25 "Prepaid wireless calling service" means a telecommunications service that provides the right
26 to utilize mobile wireless service as well as other non-telecommunications services,
27 including the download of digital products delivered electronically, content and
28 ancillary services, which must be paid for in advance that is sold in predetermined
29 units or dollars of which the number declines with use in a known amount.

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

7 "Service address" means:

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

18 *Compiler's note: On April 16, 2005 Section 315 (J) was amended by inserting “, except a prepaid wireless calling
19 service,” after “telecommunications service in the second sentence. The former 315 (L) and (M) were renumbered
20 315 (M) and (N) and a new Section 315 (L) was inserted. The cross references in 315 (N) were changed to account
21 for the renumbering. Member states shall comply with amendments to this section no later than January 1, 2008.*

22 *Compiler's note: On December 14, 2006 Section 315 was amended to add a new subsection B “ancillary services”
23 and a renumbering of the remaining subsections and cross references.*

24 25 **Section 316: ENACTMENT OF EXEMPTIONS (Effective through December 31, 2007)**

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

- 1 B. A member state may enact an entity-based or a use-based exemption without restriction
2 if the Agreement does not have a definition for the product whose use or purchase by a
3 specific entity is exempt or for a term that includes the product. If the Agreement has a
4 definition for the product whose use or specific purchase is exempt, a member state may
5 enact an entity-based or a use-based exemption that applies to that product as long as the
6 exemption utilizes the Agreement definition of the product. If the Agreement does not
7 have a definition for the product whose use or specific purchase is exempt but has a
8 definition for a term that includes the product, a member state may enact an entity-based
9 or a use-based exemption for the product without restriction.
- 10 C. For purposes of complying with the requirements in this section, the inclusion of a
11 product within the definition of tangible personal property is disregarded.

12
13 **Section 316: ENACTMENT OF EXEMPTIONS (Effective on and after January 1, 2008)**

- 14 A. A member state shall enact entity-based, use-based and product-based exemptions in
15 accordance with the provisions of this section and shall utilize common definitions in
16 accordance with the provisions of Section 327 and Library of Definitions in Appendix C
17 of this Agreement.
- 18 B. (1) A member state may enact a product-based exemption without restriction if Part II of
19 the Library of Definitions does not have a definition for such product.
20 (2) A member state may enact a product-based exemption for a product if Part II of the
21 Library of Definitions has a definition for such product and the member state utilizes in
22 the exemption the product definition in a manner consistent with Part II of the Library of
23 Definitions and Section 327 of this Agreement.
24 (3) A member state may enact a product-based exemption exempting all items included
25 within a definition in Part II of the Library of Definitions but shall not exempt specific
26 items included within the product definition unless the product definition sets out an
27 exclusion for such item.
- 28 C. (1) A member state may enact an entity-based or a use-based exemption for a product
29 without restriction if Part II of the Library of Definitions does not have a definition for
30 such product.

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

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

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

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

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

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

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

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

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

33 *Each member state shall comply with the October 1, 2005 amendments to this section no later than January 1, 2008.*

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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. After December 31, 2007, 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. **(Effective through December 31, 2007)** Each member state shall relieve sellers that follow the requirements of this section from any tax otherwise applicable if it is

1 determined that the purchaser improperly claimed an exemption and to hold the
2 purchaser liable for the nonpayment of tax. This relief from liability does not apply to a
3 seller who fraudulently fails to collect the tax or solicits purchasers to participate in the
4 unlawful claim of an exemption.
5

6 **B. (Effective on and after January 1, 2008)** Each member state shall relieve sellers that
7 follow the requirements of this section from the tax otherwise applicable if it is
8 determined that the purchaser improperly claimed an exemption and to hold the
9 purchaser liable for the nonpayment of tax. This relief from liability does not apply to a
10 seller who fraudulently fails to collect tax; to a seller who solicits purchasers to
11 participate in the unlawful claim of an exemption; to a seller who accepts an exemption
12 certificate when the purchaser claims an entity-based exemption when (1) the subject of
13 the transaction sought to be covered by the exemption certificate is actually received by
14 the purchaser at a location operated by the seller and (2) the state in which that location
15 resides provides an exemption certificate that clearly and affirmatively indicates
16 (graying out exemption reason types on the uniform form and posting it on a state's web
17 site is an indicator) that the claimed exemption is not available in that state; or to a seller
18 who accepts an exemption certificate claiming multiple points of use for tangible
19 personal property other than computer software for which an exemption claiming
20 multiple points of use is acceptable under Section 312.

21 **C. (Effective on and after January 1, 2008)** Each state shall relieve a seller of the tax
22 otherwise applicable if the seller obtains a fully completed exemption certificate or
23 captures the relevant data elements required under the Agreement within 90 days
24 subsequent to the date of sale.

- 25 1. If the seller has not obtained an exemption certificate or all relevant data elements as
26 provided in Section 317, subsection (C) the seller may, within 120 days subsequent to
27 a request for substantiation by a member state, either prove that the transaction was
28 not subject to tax by other means or obtain a fully completed exemption certificate
29 from the purchaser, taken in good faith. For purposes of this section, member states

1 may continue to apply their own standards of good faith until such time as a uniform
2 standard for good faith is defined in the Agreement.

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

6 3. Notwithstanding the aforementioned, each member state shall relieve a seller of the
7 tax otherwise applicable if it obtains a blanket exemption certificate for a purchaser
8 with which the seller has a recurring business relationship. States may not request
9 from the seller renewal of blanket certificates or updates of exemption certificate
10 information or data elements when there is a recurring business relationship between
11 the buyer and seller. For purposes of this section a recurring business relationship
12 exists when a period of no more than twelve months elapses between sales
13 transactions.

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

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

20 21 **Section 318: UNIFORM TAX RETURNS**

22 Each member state shall:

23 A. Require that only one tax return for each taxing period for each seller be filed for the
24 member state and all the taxing jurisdictions within the member state.

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

27 C. Allow any Model 1, Model 2, or Model 3 seller to submit its sales and use tax returns in
28 a simplified format that does not include more data fields than permitted by the
29 governing board. A member state may require additional informational returns to be
30 submitted not more frequently than every six months under a staggered system
31 developed by the governing board.

1 D. Allow any seller that is registered under the Agreement, which does not have a legal
2 requirement to register in the member state, and is not a Model 1, 2, or 3 seller, to submit
3 its sales and use tax returns as follows:

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

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

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

13 E. Participate with other member states in developing a more uniform sales and use tax
14 return that, when completed, would be available to all sellers.

15 F. Require, at each member state's discretion, all Model 1, 2, and 3 sellers to file returns
16 electronically. It is the intent of the member states that all member states have the
17 capability of receiving electronically filed returns by January 1, 2004.
18

19 **Section 319: UNIFORM RULES FOR REMITTANCES OF FUNDS**

20 Each member state shall:

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

28 B. Require, at each member state's discretion, all remittances from sellers under Models 1,
29 2, and 3 to be remitted electronically.

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

- 1 D. Provide an alternative method for making "same day" payments if an electronic funds
2 transfer fails.
- 3 E. Provide that if a due date falls on a legal banking holiday in a member state, the taxes are
4 due to that state on the next succeeding business day.
- 5 F. Require that any data that accompanies a remittance be formatted using uniform tax type
6 and payment type codes approved by the governing board.

7 *Compiler's note: On October 1, 2005 the second sentence in Section 319(A) was amended as follows: "The state
8 shall allow the amount of the any additional remittance shall to be determined through a calculation method rather
9 than actual collections. Any additional remittances and shall not require the filing of an additional return." The
10 amendment to this section became effective upon adoption.*

11

12 **Section 320: UNIFORM RULES FOR RECOVERY OF BAD DEBTS**

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

- 16 A. Allow a deduction from taxable sales for bad debts. Any deduction taken that is
17 attributed to bad debts shall not include interest.
- 18 B. Utilize the federal definition of "bad debt" in 26 U.S.C. Sec. 166 as the basis for
19 calculating bad debt recovery. However, the amount calculated pursuant to 26 U.S.C.
20 Sec. 166 shall be adjusted to exclude: financing charges or interest; sales or use taxes
21 charged on the purchase price; uncollectable amounts on property that remain in the
22 possession of the seller until the full purchase price is paid; expenses incurred in
23 attempting to collect any debt, and repossessed property.
- 24 C. Allow bad debts to be deducted on the return for the period during which the bad debt is
25 written off as uncollectable in the claimant's books and records and is eligible to be
26 deducted for federal income tax purposes. For purposes of this subsection, a claimant
27 who is not required to file federal income tax returns may deduct a bad debt on a return
28 filed for the period in which the bad debt is written off as uncollectable in the claimant's
29 books and records and would be eligible for a bad debt deduction for federal income tax
30 purposes if the claimant was required to file a federal income tax return.

- 1 D. Require that, if a deduction is taken for a bad debt and the debt is subsequently collected
2 in whole or in part, the tax on the amount so collected must be paid and reported on the
3 return filed for the period in which the collection is made.
- 4 E. Provide that, when the amount of bad debt exceeds the amount of taxable sales for the
5 period during which the bad debt is written off, a refund claim may be filed within the
6 member state's otherwise applicable statute of limitations for refund claims; however,
7 the statute of limitations shall be measured from the due date of the return on which the
8 bad debt could first be claimed.
- 9 F. Where filing responsibilities have been assumed by a CSP, allow the service provider to
10 claim, on behalf of the seller, any bad debt allowance provided by this section. The CSP
11 must credit or refund the full amount of any bad debt allowance or refund received to the
12 seller.
- 13 G. Provide that, for the purposes of reporting a payment received on a previously claimed
14 bad debt, any payments made on a debt or account are applied first proportionally to the
15 taxable price of the property or service and the sales tax thereon, and secondly to
16 interest, service charges, and any other charges.
- 17 H. In situations where the books and records of the party claiming the bad debt allowance
18 support an allocation of the bad debts among the member states, permit the allocation.

19

20 **Section 321: CONFIDENTIALITY AND PRIVACY PROTECTIONS UNDER MODEL 1**

- 21 A. The purpose of this section is to set forth the member states' policy for the protection of
22 the confidentiality rights of all participants in the system and of the privacy interests of
23 consumers who deal with Model 1 sellers.
- 24 B. As used in this section, the term "confidential taxpayer information" means all
25 information that is protected under a member state's laws, regulations, and privileges; the
26 term "personally identifiable information" means information that identifies a person;
27 and the term "anonymous data" means information that does not identify a person.
- 28 C. The member states agree that a fundamental precept in Model 1 is to preserve the
29 privacy of consumers by protecting their anonymity. With very limited exceptions, a

1 CSP shall perform its tax calculation, remittance, and reporting functions without
2 retaining the personally identifiable information of consumers.

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

- 4 1. Its system has been designed and tested to ensure that the fundamental precept of
5 anonymity is respected;
- 6 2. That personally identifiable information is only used and retained to the extent
7 necessary for the administration of Model 1 with respect to exempt purchasers;
- 8 3. It provides consumers clear and conspicuous notice of its information practices,
9 including what information it collects, how it collects the information, how it uses the
10 information, how long, if at all, it retains the information and whether it discloses the
11 information to member states. Such notice shall be satisfied by a written privacy
12 policy statement accessible by the public on the official web site of the CSP;
- 13 4. Its collection, use and retention of personally identifiable information will be limited
14 to that required by the member states to ensure the validity of exemptions from
15 taxation that are claimed by reason of a consumer's status or the intended use of the
16 goods or services purchased; and
- 17 5. It provides adequate technical, physical, and administrative safeguards so as to
18 protect personally identifiable information from unauthorized access and disclosure.

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

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

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

29 H. If anyone other than a member state, or a person authorized by that state's law or the
30 Agreement, seeks to discover personally identifiable information, the state from whom

1 the information is sought should make a reasonable and timely effort to notify the
2 individual of such request.

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

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

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

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

19
20 **Section 322: SALES TAX HOLIDAYS**

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

- 23 1. Not apply an exemption after December 31, 2004, unless the items to be exempted
24 are specifically defined in the Agreement and the exemptions are uniformly applied to
25 state and local sales and use taxes.
- 26 2. Provide notice of the exemption period at least sixty days' prior to the first day of the
27 calendar quarter in which the exemption period will begin.

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

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

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

- 7 1. Layaway sales - A sale of eligible property under a layaway sale qualifies for
8 exemption if:
 - 9 a. final payment on a layaway order is made by, and the property is given to,
10 the purchaser during the exemption period; or
 - 11 b. the purchaser selects the property and the retailer accepts the order for the
12 item during the exemption period, for immediate delivery upon full
13 payment, even if delivery is made after the exemption period.
- 14 2. Bundled sales - Member states will follow the same procedure during the sales
15 tax holiday as agreed upon for handling a bundled sale at other times.
- 16 3. Coupons and discounts - A discount by the seller reduces the sales price of the
17 property and the discounted sales price determines whether the sales price is
18 within a sales tax holiday price threshold of a member state. A coupon that
19 reduces the sales price is treated as a discount if the seller is not reimbursed
20 for the coupon amount by a third-party. If a discount applies to the total
21 amount paid by a purchaser rather than to the sales price of a particular item
22 and the purchaser has purchased both eligible property and taxable property,
23 the seller should allocate the discount based on the total sales prices of the
24 taxable property compared to the total sales prices of all property sold in that
25 same transaction.
- 26 4. Splitting of items normally sold together - Articles that are normally sold as a
27 single unit must continue to be sold in that manner. Such articles cannot be
28 priced separately and sold as individual items in order to obtain the
29 exemption. For example, a pair of shoes cannot have each shoe sold

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

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

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

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

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

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

25 7. Delivery charges - Delivery charges, including shipping, handling and service
26 charges, are part of the sales price of eligible property unless a member state
27 defines "sales price" to exclude such charges. For the purpose of determining
28 a sales tax holiday price threshold, if all the property in a shipment qualifies as
29 eligible property and the sales price for each item in the shipment is within the
30 sales tax holiday price threshold, then the seller does not have to allocate the

1 delivery, handling, or service charge to determine if the price threshold is
2 exceeded. The shipment will be considered a sale of eligible products. If the
3 shipment includes eligible property and taxable property (including an eligible
4 item with a sales price in excess of the price threshold), the seller should
5 allocate the delivery charge by using:

- 6 a. a percentage based on the total sales prices of the taxable property
7 compared to the total sales prices of all property in the shipment; or
- 8 b. a percentage based on the total weight of the taxable property compared to
9 the total weight of all property in the shipment.

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

- 13 8. Order date and back orders - For the purpose of a sales tax holiday, eligible
14 property qualifies for exemption if:
 - 15 a. the item is both delivered to and paid for by the customer during the
16 exemption period; or
 - 17 b. the customer orders and pays for the item and the seller accepts the order
18 during the exemption period for immediate shipment, even if delivery is
19 made after the exemption period. The seller accepts an order when the
20 seller has taken action to fill the order for immediate shipment. Actions to
21 fill an order include placement of an "in date" stamp on a mail order or
22 assignment of an "order number" to a telephone order. An order is for
23 immediate shipment when the customer does not request delayed
24 shipment. An order is for immediate shipment notwithstanding that the
25 shipment may be delayed because of a backlog of orders or because stock
26 is currently unavailable to, or on back order by, the seller.
- 27 9. Returns - For a 60-day period immediately after the sales tax holiday
28 exemption period, when a customer returns an item that would qualify for the
29 exemption, no credit for or refund of sales tax shall be given unless the
30 customer provides a receipt or invoice that shows tax was paid, or the seller

1 has sufficient documentation to show that tax was paid on the specific item.
2 This 60-day period is set solely for the purpose of designating a time period
3 during which the customer must provide documentation that shows that sales
4 tax was paid on returned merchandise. The 60-day period is not intended to
5 change a seller's policy on the time period during which the seller will accept
6 returns.

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

10
11 **Section 323: CAPS AND THRESHOLDS**

12 A. Each member state shall:

- 13 1. Not have caps or thresholds on the application of state sales or use tax rates or
14 exemptions that are based on the value of the transaction or item after December 31,
15 2005. A member state may continue to have caps and thresholds until that date.
16 2. Not have caps that are based on the application of the rates unless the member state
17 assumes the administrative responsibility in a manner that places no additional burden
18 on the retailer.

19 B. Each member state that has local jurisdictions that levy a sales or use tax shall not place
20 caps or thresholds on the application of local rates or use tax rates or exemptions that are
21 based on the value of the transaction or item after December 31, 2005. A member state
22 may continue to have caps and thresholds until that date.

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

27
28 **Section 324: ROUNDING RULE**

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

- 1 1. Tax computation must be carried to the third decimal place, and
- 2 2. The tax must be rounded to a whole cent using a method that rounds up to the next
- 3 cent whenever the third decimal place is greater than four.
- 4 B. Each state shall allow sellers to elect to compute the tax due on a transaction on an item
- 5 or an invoice basis, and shall allow the rounding rule to be applied to the aggregated state
- 6 and local taxes. No member state shall require a seller to collect tax based on a bracket
- 7 system.

8

9 **Section 325: CUSTOMER REFUND PROCEDURES**

- 10 A. These customer refund procedures are provided to apply when a state allows a purchaser
- 11 to seek a return of over-collected sales or use taxes from the seller.
- 12 B. Nothing in this section shall either require a state to provide, or prevent a state from
- 13 providing, a procedure by which a purchaser may seek a refund directly from the state
- 14 arising out of sales or use taxes collected in error by a seller from the purchaser.
- 15 Nothing in this section shall operate to extend any person's time to seek a refund of sales
- 16 or use taxes collected or remitted in error.
- 17 C. These customer refund procedures provide the first course of remedy available to
- 18 purchasers seeking a return of over-collected sales or use taxes from the seller. A cause
- 19 of action against the seller for the over-collected sales or use taxes does not accrue until
- 20 a purchaser has provided written notice to a seller and the seller has had sixty days to
- 21 respond. Such notice to the seller must contain the information necessary to determine
- 22 the validity of the request.
- 23 D. In connection with a purchaser's request from a seller of over-collected sales or use
- 24 taxes, a seller shall be presumed to have a reasonable business practice, if in the
- 25 collection of such sales or use taxes, the seller: i) uses either a provider or a system,
- 26 including a proprietary system, that is certified by the state; and ii) has remitted to the
- 27 state all taxes collected less any deductions, credits, or collection allowances.

1 **Section 326: DIRECT PAY PERMITS**

2 Each member state shall provide for a direct pay authority that allows the holder of a direct pay
3 permit to purchase otherwise taxable goods and services without payment of tax to the supplier
4 at the time of purchase. The holder of the direct pay permit will make a determination of the
5 taxability and then report and pay the applicable tax due directly to the tax jurisdiction. Each
6 state can set its own limits and requirements for the direct pay permit. The governing board shall
7 advise member states when setting state direct pay limits and requirements, and shall consider
8 use of the Model Direct Payment Permit Regulation as developed by the Task Force on EDI
9 Audit and Legal Issues for Tax Administration.

10
11 **Section 327: LIBRARY OF DEFINITIONS**

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

- 15 A. If a term defined in the Library of Definitions appears in a member state’s sales
16 and use tax statutes or administrative rules or regulations, the member state shall
17 enact or adopt the Library definition of the term in its statutes or administrative
18 rules or regulations in substantially the same language as the Library definition.
- 19 B. A member state shall not use a Library definition in its sales or use tax statutes or
20 administrative rules or regulations that is contrary to the meaning of the Library
21 definition.
- 22 C. Except as specifically provided in Section 316 and the Library of Definitions, a
23 member state shall impose a sales or use tax on all products or services included
24 within each definition or exempt from sales or use tax all products or services
25 within each definition.

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

1 **Section 328: TAXABILITY MATRIX**

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

8 B. A member state shall relieve sellers and CSPs from liability to the member state and
9 its local jurisdictions for having charged and collected the incorrect amount of sales
10 or use tax resulting from the seller or CSP relying on erroneous data provided by the
11 member state in the taxability matrix.
12

13 **Section 329: EFFECTIVE DATE FOR RATE CHANGES**

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

- 16 A. For a rate increase, the new rate shall apply to the first billing period starting on or after
17 the effective date.
18 B. For a rate decrease, the new rate shall apply to bills rendered on or after the effective
19 date.
20

21 **Section 330: BUNDLED TRANSACTIONS (Effective on and after January 1, 2008)**

- 22 A. A member state shall adopt and utilize to determine tax treatment, the core definition for
23 a “bundled transaction” in Appendix C, Part I of the Library of Definitions in the
24 Agreement.
25 B. Member states are not restricted in their tax treatment of bundled transactions except as
26 otherwise provided in the Agreement. Member states are not restricted in their ability to
27 treat some bundled transactions differently from other bundled transactions.
28 C. In the case of a bundled transaction that includes any of the following:
29 telecommunication service, ancillary service, internet access, or audio or video
30 programming service:

- 1 1. If the price is attributable to products that are taxable and products that are
2 nontaxable, the portion of the price attributable to the nontaxable products may be
3 subject to tax unless the provider can identify by reasonable and verifiable
4 standards such portion from its books and records that are kept in the regular
5 course of business for other purposes, including, but not limited to, non-tax
6 purposes.
- 7 2. If the price is attributable to products that are subject to tax at different tax rates,
8 the total price may be treated as attributable to the products subject to tax at the
9 highest tax rate unless the provider can identify by reasonable and verifiable
10 standards the portion of the price attributable to the products subject to tax at the
11 lower rate from its books and records that are kept in the regular course of
12 business for other purposes, including, but not limited to, non-tax purposes.
- 13 3. The provisions of this section shall apply unless otherwise provided by federal
14 law.

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

17
18 **Section 331: RELIEF FROM CERTAIN LIABILITY FOR PURCHASERS (Effective on**
19 **and after January 1, 2009)**

- 20
21 A. A member state shall relieve a purchaser from liability for penalty to that member state
22 and its local jurisdictions for having failed to pay the correct amount of sales or use tax in
23 the following circumstances:
- 24 1. A purchaser's seller or CSP relied on erroneous data provided by that member
25 state on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability
26 matrix completed by that member state pursuant to Section 328; or
 - 27 2. A purchaser holding a direct pay permit relied on erroneous data provided by that
28 member state on tax rates, boundaries, taxing jurisdiction assignments, or in the
29 taxability matrix completed by that member state pursuant to Section 328.
 - 30 3. A purchaser relied on erroneous data provided by that member state in the
31 taxability matrix completed by that member state pursuant to Section 328.

1 4. A purchaser using databases pursuant to subsections (F), (G) and (H) of Section
2 305 relied on erroneous data provided by that member state on tax rates,
3 boundaries, or taxing jurisdiction assignments. After providing adequate notice as
4 determined by the governing board, a member state that provides an address-
5 based database for assigning taxing jurisdictions pursuant to Section 305,
6 subsection (G) or (H) may cease providing liability relief for errors resulting from
7 the reliance on the database provided by the member state under the provisions of
8 Section 305, subsection (F).

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

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

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

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

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

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

1 **ARTICLE IV**
2 **SELLER REGISTRATION**
3

4 **Section 401: SELLER PARTICIPATION**

- 5 A. The member states shall provide an online registration system that will allow sellers to
6 register in all the member states.
- 7 B. By registering, the seller agrees to collect and remit sales and use taxes for all taxable
8 sales into the member states, including member states joining after the seller's
9 registration. Withdrawal or revocation of a member state shall not relieve a seller of its
10 responsibility to remit taxes previously or subsequently collected on behalf of the state.
- 11 C. In member states where the seller has a requirement to register prior to registering under
12 the Agreement, the seller may be required to provide additional information to complete
13 the registration process or the seller may choose to register directly with those states.
- 14 D. A member state or a state that has withdrawn or been expelled shall not use registration
15 with the central registration system and the collection of sales and use taxes in the
16 member states as a factor in determining whether the seller has nexus with that state for
17 any tax at any time.

18
19 **Section 402: AMNESTY FOR REGISTRATION**

- 20 A. Subject to the limitations in this section:
- 21 1. A member state shall provide amnesty for uncollected or unpaid sales or use tax to a
22 seller who registers to pay or to collect and remit applicable sales or use tax on sales
23 made to purchasers in the state in accordance with the terms of the Agreement,
24 provided that the seller was not so registered in that state in the twelve-month period
25 preceding the effective date of the state's participation in the Agreement.
- 26 2. The amnesty will preclude assessment for uncollected or unpaid sales or use tax
27 together with penalty or interest for sales made during the period the seller was not
28 registered in the state, provided registration occurs within twelve months of the
29 effective date of the state's participation in the Agreement.

1 3. Amnesty similarly shall be provided by any additional state that joins the Agreement
2 after the seller has registered.

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

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

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

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

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

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

23 **Section 403: METHOD OF REMITTANCE**

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

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

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

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

1

2 **Section 404: REGISTRATION BY AN AGENT**

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

1 ARTICLE V

2 PROVIDER AND SYSTEM CERTIFICATION

3
4 **Section 501: CERTIFICATION OF SERVICE PROVIDERS AND AUTOMATED**
5 **SYSTEMS**

- 6 A. The governing board shall certify automated systems and service providers to aid in the
7 administration of sale and use tax collections.
- 8 B. The governing board may certify a person as a CSP if the person meets all of the
9 following requirements:
- 10 1. The person uses a CAS;
 - 11 2. The person integrates its CAS with the system of a seller for whom the person
12 collects tax so that the tax due on a sale is determined at the time of the sale;
 - 13 3. The person agrees to remit the taxes it collects at the time and in the manner specified
14 by the member states;
 - 15 4. The person agrees to file returns on behalf of the sellers for whom it collects tax;
 - 16 5. The person agrees to protect the privacy of tax information it obtains in accordance
17 with Section 321 of the Agreement; and
 - 18 6. The person enters into a contract with the member states and agrees to comply with
19 the terms of the contract.
- 20 C. The governing board may certify a software program as a CAS if the governing board
21 determines that the program meets all of the following requirements:
- 22 1. It determines the applicable state and local sales and use tax rate for a transaction, in
23 accordance with Sections 309 to 315, inclusive;
 - 24 2. It determines whether or not an item is exempt from tax;
 - 25 3. It determines the amount of tax to be remitted for each taxpayer for a reporting
26 period;
 - 27 4. It can generate reports and returns as required by the governing board; and
 - 28 5. It can meet any other requirement set by the governing board.
- 29 D. The governing board may establish one or more sales tax performance standards for
30 Model 3 sellers that meet the eligibility criteria set by the governing board and that

1 developed a proprietary system to determine the amount of sales and use tax due on
2 transactions.

3
4 **Section 502: STATE REVIEW AND APPROVAL OF CERTIFIED AUTOMATED**
5 **SYSTEM SOFTWARE AND CERTAIN LIABILITY RELIEF (Effective on and after**
6 **January 1, 2008)**

- 7 A. Each member state shall review software submitted to the governing board for
8 certification as a CAS under Section 501. Such review shall include a review to
9 determine that the program accurately reflects the taxability of the product categories
10 included in the program. Upon approval by the state, the state shall certify to the
11 governing board its acceptance of the determination of the taxability of the product
12 categories included in the program.
- 13 B. Each member state shall relieve CSPs and model 2 sellers from liability to the member
14 state and local jurisdictions for not collecting sales or use taxes resulting from the CSP or
15 model 2 seller relying on the certification provided by the member state.
- 16 C. Each member state shall provide relief from liability to CSPs for not collecting sales and
17 use taxes in the same manner as provided to sellers under the provisions of section 317.
- 18 D. The governing board and the member states shall not be responsible for classification of
19 an item or transaction within the product categories certified. The relief from liability
20 provided in this section shall not be available for a CSP or model 2 seller that has
21 incorrectly classified an item or transaction into a product category certified by a member
22 state. This paragraph shall not apply to the individual listing of items or transactions
23 within a product definition approved by the governing board or the member states.
- 24 E. If a member state determines that an item or transaction is incorrectly classified as to its
25 taxability, it shall notify the CSP or model 2 seller of the incorrect classification. The
26 CSP or model 2 seller shall have ten (10) days to revise the classification after receipt of
27 notice from the member state of the determination. Upon expiration of the ten (10) days,
28 CSP or model 2 seller shall be liable for the failure to collect the correct amount of sales
29 or use taxes due and owing to the member state.

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

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

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

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

1 ARTICLE VI

2 MONETARY ALLOWANCES FOR NEW TECHNOLOGICAL MODELS FOR SALES

3 TAX COLLECTION

4
5 **Section 601: MONETARY ALLOWANCE UNDER MODEL 1**

- 6 A. Each member state shall provide a monetary allowance to a CSP in Model 1 in
7 accordance with the terms of the contract between the governing board and the CSP. The
8 details of the monetary allowance will be provided through the contract process. The
9 governing board shall require that such allowance be funded entirely from money
10 collected in Model 1.
- 11 B. The contract between the governing board and a CSP may base the monetary allowance
12 to a CSP on one or more of the following:
- 13 1. A base rate that applies to taxable transactions processed by the CSP.
 - 14 2. For a period not to exceed twenty-four months following a voluntary seller's
15 registration through the Agreement's central registration process, a percentage of tax
16 revenue generated for a member state by the voluntary seller for each member state
17 for which the seller does not have a requirement to register to collect the tax.

18
19 **Section 602: MONETARY ALLOWANCE FOR MODEL 2 SELLERS**

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

- 22 A. All sellers shall receive a base rate for a period not to exceed twenty-four months
23 following the commencement of participation by a seller. The base rate will be set after
24 the base rate has been established for Model 1. This allowance will be in addition to any
25 discount afforded by each member state at the time.
- 26 B. The member states anticipate a monetary allowance to a Model 2 Seller based on the
27 following:
- 28 1. For a period not to exceed twenty-four months following a voluntary seller's
29 registration through the Agreement's central registration process, a percentage of tax

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

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

6

7 **Section 603: MONETARY ALLOWANCE FOR MODEL 3 SELLERS AND ALL OTHER**
8 **SELLERS THAT ARE NOT UNDER MODELS 1 OR 2**

9 The member states anticipate that they will provide a monetary allowance to sellers under Model
10 3 and to all other sellers that are not under Models 1 or 2 based on the following:

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

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

1 **ARTICLE VII**

2 **AGREEMENT ORGANIZATION**

3
4 **Section 701: EFFECTIVE DATE**

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

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

16 *On April 18, 2006 Section 701 was amended by inserting "as of October 1, 2005" after "sales tax." The April 18, 2006*
17 *amendment to this section was effective upon adoption.*

18
19 **Section 702: APPROVAL OF INITIAL STATES**

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

28
29 Upon receipt of the requisite number of petitions as provided in Section 701, the Co-Chairs shall
30 convene and preside over a meeting of the petitioning states for the purpose of determining if the
31 petitioning states are in compliance with the Agreement. The meeting shall be convened as soon as

1 practicable after receipt of the requisite number of petitions provided in Section 701. An affirmative
2 vote of three-fourths of the other petitioning states is necessary for a petitioning state to be found in
3 compliance with the Agreement. A petitioning state shall not vote on its own petition for membership.
4

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

7 *Compiler's note: On April 16, 2005 this section was amended by deleting "that has adopted changes to its statutes, rules,
8 regulations, or other authorities necessary to bring a state into compliance as provided in Section 805," after "a state" in
9 the first sentence; inserting the second sentence; inserting "to a state's statutes, rules, regulations, or other authorities" after
10 "changes" in the third sentence; and deleting ", but shall not be earlier than the date the relevant statutes, rules, regulations,
11 or other authorities of the requisite number of petitioning states are effective" after "Section 701" in the second sentence in
12 the second paragraph. The April 16, 2005 amendments to this section were effective upon adoption.*
13

14 **Section 703: STREAMLINED SALES TAX IMPLEMENTING STATES**

15 A. From the time of ratification of this Agreement until the provisions of Section 701 have been met, the
16 Streamlined Sales Tax Implementing States shall maintain responsibility for the Agreement, including
17 the disposition of all proposed amendments to the Agreement. If the provisions of Section 701 have
18 been met with the use of associate members as defined in Section 704, the Streamlined Sales Tax
19 Implementing States shall be responsible for the disposition of all proposed amendments to and
20 interpretations of the Agreement until such time as the provisions of Section 701 have been met without
21 the use of associate members.
22

23 B. Amendments to the Agreement considered by the Streamlined Sales Tax Implementing States shall
24 follow the provisions as set forth in Article IX, Section 901.
25

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

1 D. Upon the expiration of the duties of the Streamlined Sales Tax Implementing States as set forth in
2 subsection C, any state that previously held Implementing State status shall become an Advisor State to
3 the Governing Board.

- 4 1. Advisor States shall serve in an *ex officio* capacity on the Governing Board, with non-
5 voting status, but may speak to any matter presented to the Governing Board for
6 consideration.
- 7 2. Each State's delegation to the Streamlined Sales Tax Implementing States may serve as
8 the state's delegation to the Governing Board as established herein or the state may
9 appoint a new delegation, of up to four representatives, who shall be members of state or
10 local government.
- 11 3. Representatives of Advisor States may serve on standing committees of the Governing
12 Board except they may not serve as officers or directors on the Executive Committee or
13 as members on the Finance Committee or the Compliance Review and Interpretations
14 Committee.
- 15 4. A state that was not previously an Implementing State may become an Advisor State by:
16 a. Enacting legislation authorizing the state's participation in interstate discussions to
17 develop a simplified sales and use tax system; or
18 b. Executing a memorandum of understanding or similar written document by the
19 governor and legislative leaders expressing the intent of the state to participate in
20 interstate discussions to develop a simplified sales and use tax system.

21 Any question over whether or not a state qualifies as an Advisor State shall be resolved
22 by a majority vote of the Governing Board.

- 23 5. Neither the Governing Board nor a Member State may share or grant any Advisor State
24 access to any seller information from the seller's registration pursuant to Section 401.
25 Neither the Governing Board nor a Member State may share or grant any Advisor State
26 access to any seller information from an audit conducted by the Governing Board or a
27 Member State on behalf of the Governing Board.
- 28 6. An Advisor State may not participate in a closed session of the Governing Board or a
29 Governing Board committee.

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

5
6 **Section 704: CONSIDERATION OF PETITIONS**

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

10
11 B. A petitioning state that is found to be in compliance pursuant to Section 805 of the Agreement
12 and the changes to their statutes, rules, regulations or other authorities necessary to bring them
13 into compliance are not in effect, but are scheduled to take effect on or before January 1, 2008,
14 shall be designated an associate member. Provided the statutes, rules, regulations or other
15 authorities remain in effect, the state shall automatically become a Member State upon the
16 effective date of the conforming legislation.

17
18 C. A petitioning state that fails to receive an affirmative vote of three-fourths of the petitioning
19 states as required under Section 702 may request associate membership. If such a request is
20 made, the Petitioning States may grant such membership by majority vote upon a finding that the
21 state has achieved substantial compliance with the terms of the Agreement taken as a whole, but
22 not necessarily each provision as required by Section 805, measured qualitatively, and there is a
23 reasonable expectation that the state will achieve compliance by January 1, 2008. A state that is
24 granted associate membership by this section shall be required to re-petition for full membership
25 under the requirements of the Agreement.

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

27
28 **Section 705: ASSOCIATE MEMBERSHIP**

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

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

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

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

5
6 B. A state which is an associate member on January 1, 2007, shall retain such status until the
7 Governing Board finds such state to be in compliance pursuant to Section 805 or December 31, 2007,
8 whichever is earlier, without regard to whether the population requirement of Section 701 has been met.
9 Any such associate member that has not been found in compliance by December 31, 2007 shall forfeit
10 its status as an associate member. The president of the governing board shall provide an associate
11 member state with the reasons why such state is not in compliance with the Agreement. Forfeiture of its
12 status as an associate member does not preclude a state from re-petitioning for membership pursuant to
13 Section 801.

14
15 C. Notwithstanding any provision of this Agreement to the contrary, a seller may, but is not
16 required to collect sales or use tax on sales into an associate member state unless the seller is otherwise
17 required to collect such taxes under applicable law. Notwithstanding the provisions of Section 401 (B),
18 a seller that volunteers to collect tax in an associate member state is not required to collect tax in any
19 other associate member state. An associate member shall be responsible for payment of costs as
20 provided in Article VI for those sellers that volunteer to collect tax in an associate member state.

21
22 D. Neither the Governing Board nor a member state may share or grant access to an associate
23 member state any seller information from the seller's registration pursuant to Section 401. Neither the
24 Governing Board nor a member state may share or grant access to an associate member state any seller
25 information from an audit conducted by the Governing Board or a member state on behalf of the
26 Governing Board unless the associate member state is a party to the audit.

27
28 E. An associate member shall be responsible for the payment of the petition fee and the annual cost
29 allocation as determined by the Streamlined Sales Tax Implementing States or Governing Board.

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

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

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

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

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

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

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

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

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

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

1
2 **ARTICLE VIII**
3 **STATE ENTRY AND WITHDRAWAL**
4

5 **Section 801: ENTRY INTO AGREEMENT**

6 A. After the effective date of the Agreement, a state may apply to become a party to the Agreement
7 by submitting a petition for membership and certificate of compliance to the governing board. The
8 petition for membership shall include such state's proposed date of entry. The petitioning state's
9 proposed date of entry shall be on the first day of a calendar quarter. The proposed date of entry shall be
10 a date on which all provisions necessary for the state to be in compliance with the Agreement are in
11 place and effective.
12

13 B. The petitioning state shall provide a copy of its petition for membership and the certificate of
14 compliance to each member state when the petitioning state submits its petition for membership to the
15 governing board. A petitioning state shall also post a copy of its petition for membership and certificate
16 of compliance on that state's web site.
17

18 C. A state that petitions for membership after January 1, 2007, that is found to be in
19 compliance pursuant to Sections 804 and 805 of the Agreement except that the changes to their
20 statutes, rules, regulations or other authorities necessary to bring them into compliance are not
21 yet in effect, shall be designated an associate member effective on the first day of the calendar
22 quarter that is not more than twelve months before its proposed date of entry as a member state.
23 Such twelve month period may be extended to eighteen months if the governing board, by
24 unanimous vote approves such extension. Such extension shall be granted only if the petitioning
25 state can present adequate justification of the necessity for the future effective date and that the
26 application of the future effective date beyond twelve months is limited to the provisions of the
27 law for which such necessity is demonstrated. Such states shall be subject to the annual
28 recertification requirement set forth in Section 803 of this Agreement for all issues other than the
29 delayed effective date issues identified at the time the state becomes an associate member.
30 Extensions of effective date delays beyond those identified at the time the state becomes an

1 associate member shall require the state to submit a statement of non-compliance pursuant to
2 Section 803. Provided the statutes, rules, regulations or other authorities remain in effect, the
3 state shall automatically become a member state on the state's proposed date of entry.
4

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

11 *Compiler's note: On June 23, 2007 subsections A and B were numbered and subsections C and D were added. These*
12 *changes became effective upon their adoption.*
13

14 **Section 802: CERTIFICATE OF COMPLIANCE**

15 The certificate of compliance shall be signed by the chief executive of the state's tax agency. The
16 certificate of compliance shall document compliance with the provisions of the Agreement and cite
17 applicable statutes, rules, regulations, or other authorities evidencing such compliance.
18

19 **Section 803: ANNUAL RE-CERTIFICATION OF MEMBER STATES**

20 Each member state shall annually re-certify that such state is in compliance with the Agreement. Each
21 member state shall make a re-certification to the governing board on or before August 1 of each year
22 after the year of the state's entry. In its annual re-certification, the state shall include any changes in its
23 statutes, rules, regulations, or other authorities that could affect its compliance with the terms of the
24 Agreement. The re-certification shall be signed by the chief executive of the state's tax agency.
25

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

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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. 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.

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

10
11 The governing board may assign committees certain duties, including, but not limited to:

- 12 A. Responding to questions regarding the administration of the Agreement;
- 13 B. Preparing certification requirements and coordinating the certification process for CSPs;
- 14 C. Coordinating joint audits;
- 15 D. Issuing requests for proposals;
- 16 E. Coordinating contracts with member states and providers; and
- 17 F. Maintaining records for the governing board.

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

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

27
28 **Section 807: OPEN MEETINGS**

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

- 31 A. Personnel issues.

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

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

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

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

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

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

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

21
22 **Section 808: WITHDRAWAL OF MEMBERSHIP OR EXPULSION OF A MEMBER**

23 With respect to each member state, the Agreement shall continue in full force and effect until a member
24 state withdraws its membership or is expelled. A member state's withdrawal or expulsion cannot be
25 effective until the first day of a calendar quarter after a minimum of sixty days' notice. A member state
26 shall submit notice of its intent to withdraw from the Agreement to the governing board and the chief
27 executive of each member state's tax agency. The member state shall provide public notice of its intent
28 to withdraw and post its notice of intent to withdraw on its web site. The withdrawal by or expulsion of
29 a state does not affect the validity of the Agreement among other member states. A state that withdraws
30 or is expelled from the Agreement remains liable for its share of any financial or contractual obligations

1 that were incurred by the governing board prior to the effective date of that state's withdrawal or
2 expulsion. The appropriate share of any financial or contractual obligation shall be determined by the
3 state and the governing board in good faith based on the relative benefits received and burdens incurred
4 by the parties.
5

6 **Section 809: SANCTION OF MEMBER STATES**

7 A. If a member state is found to be out of compliance with the Agreement, the governing board may
8 consider sanctions against the state. The sanctions that the governing board may impose include
9 expulsion from the Agreement, or other penalties as determined by the governing board. The adoption
10 of a resolution to sanction a member state for noncompliance with the Agreement shall require the
11 affirmative vote of three-fourths of the entire governing board, excluding the state that is the subject of
12 the resolution. The member state that is the subject of the resolution shall not vote on such resolution.
13 Resolutions seeking sanctions shall be acted upon by the governing board within a reasonable period of
14 time as set forth in the governing board's rules. The governing board shall provide an opportunity for
15 public comment prior to action on a proposed sanction.
16

17 B. No member state shall be sanctioned for failing to comply with any amendment to the
18 Agreement adopted under section 901 of the Agreement or an interpretation or interpretative rule
19 adopted under section 902 of the Agreement, if compliance with the amendment, interpretation or
20 interpretive rule requires the state to make a statutory change, until the later of the first day of January at
21 least two years after the adoption of the amendment or interpretive rule or the first day of a calendar
22 quarter following the end of one full session of the state's legislature.
23

24 C. No member state shall be sanctioned for failing to be in compliance with any term of the
25 Agreement that the state has adopted, in substantially identical form, in its statutes if its noncompliance
26 is a result of a judicial ruling in that state that interprets that term of the Agreement in a manner
27 inconsistent with an interpretation by, or interpretive rule of, the Governing Board adopted under section
28 902 of the Agreement and the member state comes into compliance with the interpretation of the
29 Governing Board by amending its statutes before the later of the first day of January at least two years
30 after the issuance of the judicial decision or the first day of a calendar quarter following one full session
31 of the state's legislature.

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

3 4 **Section 810: STATE AND LOCAL ADVISORY COUNCIL**

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

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

17 18 **Section 811: BUSINESS ADVISORY COUNCIL**

19 The governing board shall recognize a Business Advisory Council from the private sector to advise the
20 governing board on matters pertaining to the administration of the Agreement. These matters shall
21 include, but not be limited to, admission of states into membership, noncompliance, and interpretations,
22 revisions or additions to the Agreement. The Business Advisory Council shall advise and assist the
23 State and Local Government Advisory Council in the functions noted in Section 810.

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

1 ARTICLE IX

2 AMENDMENTS AND INTERPRETATIONS

3
4 **Section 901: AMENDMENTS TO AGREEMENT**

5 Amendments to the Agreement may be brought before the governing board by any member state. The
6 Agreement may be amended by a three-fourths vote of the entire governing board. The governing board
7 shall give the Governor and presiding officer of each house of each member state notice of proposed
8 amendments to the Agreement at least sixty days prior to consideration. The governing board shall give
9 public notice of proposed amendments to the Agreement at least sixty days prior to consideration. The
10 governing board shall provide an opportunity for public comment prior to action on an amendment to
11 the Agreement.
12

13 **Section 902: INTERPRETATIONS OF AGREEMENT**

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

1 *Compiler's note: On August 29, 2006 Section 902 was amended by adding the second, third, fourth, and last sentences. The*
2 *fifth sentence was amended as follows: "~~All~~ Both forms of". The August 29, 2006 amendment to this section became effective*
3 *upon its approval.*
4

5 **Section 903: DEFINITION REQUESTS**

6 Any member state or any other person may make requests for additional definitions or for
7 interpretations on how an individual product or service fits within a definition. Requests shall be
8 submitted in writing as determined by the governing board. Such requests shall be referred to
9 the Advisory Council created in Section 810 or other group under guidelines and procedures as
10 set forth in the governing board's rules. The entity to which the request was referred shall post
11 notice of the request and provide for input from the public and the member states as directed by
12 the governing board. Within one hundred eighty days after receiving the request, they shall
13 report to the governing board one of the following recommendations:

- 14 A. That no action be taken on the request;
- 15 B. That a proposed amendment to the Library be submitted;
- 16 C. That an interpretation request be submitted; or
- 17 D. That additional time is needed to review the request.

18
19 If either an amendment or an interpretation is recommended, the entity to which the request was
20 referred shall provide the appropriate language as required by the governing board. The
21 governing board shall take action on the recommendation of the entity to which the request was
22 referred at the next meeting of the governing board pursuant to the notice requirements of
23 Section 806. Action by the governing board to approve a recommendation for no action shall be
24 considered the final disposition of the request. Nothing in this paragraph shall prohibit a state
25 from directly submitting a proposed amendment or an interpretation request to the governing
26 board pursuant to Section 901 or Section 902.

1 **ARTICLE X**
2 **ISSUE RESOLUTION PROCESS**
3

4 **Section 1001: RULES AND PROCEDURES FOR ISSUE RESOLUTION**

5 The governing board shall promulgate rules creating an issue resolution process. The rules shall govern
6 the conduct of the process, including the participation by any petitioner, affected state, and other
7 interested party, the disposition of a petition to invoke the process, the allocation of costs for
8 participating in the process, the possible involvement of a neutral third party or non-binding arbitration,
9 and such further details as the governing board determines necessary and appropriate.
10

11 **Section 1002: PETITION FOR RESOLUTION**

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

- 14 A. Membership of a state under Article VIII;
15 B. Matters of compliance under Section 805;
16 C. Possibilities of sanctions of a member state under Section 809;
17 D. Amendments to the Agreement under Section 901;
18 E. Interpretation issues, including differing interpretations among the member states, under Section
19 902; or
20 F. Other matters at the discretion of the governing board.
21

22 **Section 1003: FINAL DECISION OF GOVERNING BOARD**

23 The governing board shall consider any recommendations resulting from the issue resolution process
24 before making its decision, which decision shall, as with all other matters under the Agreement, be final
25 and not subject to further review.
26

27 **Section 1004: LIMITED SCOPE OF THIS ARTICLE**

28 Nothing in this Article shall be construed to substitute for, stay or extend, limit, expand, or
29 otherwise affect, in any manner, any right or duty that any person or governmental body has
30 under the laws of any member state or local government body. This Article is specifically

- 1 subject to the terms of Article XI and shall not be construed as taking precedence over Article
- 2 XI.

1 **ARTICLE XI**

2 **RELATIONSHIP OF AGREEMENT TO MEMBER STATES AND PERSONS**

3
4 **Section 1101: COOPERATING SOVEREIGNS**

5 This Agreement is among individual cooperating sovereigns in furtherance of their governmental
6 functions. The Agreement provides a mechanism among the member states to establish and
7 maintain a cooperative, simplified system for the application and administration of sales and use
8 taxes under the duly adopted law of each member state.
9

10 **Section 1102: RELATIONSHIP TO STATE LAW**

11 No provision of the Agreement in whole or part invalidates or amends any provision of the law
12 of a member state. Adoption of the Agreement by a member state does not amend or modify any
13 law of the state. Implementation of any condition of the Agreement in a member state, whether
14 adopted before, at, or after membership of a state, must be by the action of the member state. All
15 member states remain subject to Article VIII.
16

17 **Section 1103: LIMITED BINDING AND BENEFICIAL EFFECT**

- 18 A. This Agreement binds and inures only to the benefit of the member states. No person,
19 other than a member state, is an intended beneficiary of this Agreement. Any benefit to a
20 person other than a state is established by the laws of the member states and not by the
21 terms of this Agreement.
- 22 B. Consistent with subsection (A), no person shall have any cause of action or defense under
23 the Agreement or by virtue of a member state's approval of the Agreement. No person
24 may challenge, in any action brought under any provision of law, any action or inaction
25 by any department, agency, or other instrumentality of any member state, or any political
26 subdivision of a member state on the ground that the action or inaction is inconsistent
27 with the Agreement.
- 28 C. No law of a member state, or the application thereof, may be declared invalid as to any
29 person or circumstance on the ground that the provision or application is inconsistent
30 with the Agreement.

1

2 **Section 1104: FINAL DETERMINATIONS**

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

1 **ARTICLE XII**

2 **REVIEW OF COSTS AND BENEFITS ASSOCIATED WITH THE AGREEMENT**

3
4 **Section 1201: REVIEW OF COSTS AND BENEFITS**

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

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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 (or Co-Chairs of the Streamlined Sales Tax Implementing States) for membership into the Agreement.

NAME

TITLE

STATE OF _____

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Appendix B
INDEX OF DEFINITIONS

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1 Appendix C

2 LIBRARY OF DEFINITIONS

3
4 **Part I** Administrative definitions including tangible personal property. Terms included
5 in this Part are core terms that apply in imposing and administering sales and use taxes.

6
7 **Part II** Product definitions. Terms included in this Part are used to exempt items from
8 sales and use taxes or to impose tax on items by narrowing an exemption that otherwise includes
9 these items.

10
11 **Part III** Sales tax holiday definitions. Terms included in this Part are core terms that
12 apply in imposing and administering sales and use taxes during sales tax holidays.

13
14 PART I

15
16 Administrative Definitions

17
18 A “**bundled transaction**” is the retail sale of two or more products, except real property and
19 services to real property, where (1) the products are otherwise distinct and identifiable, and (2)
20 the products are sold for one non-itemized price. A “bundled transaction” does not include the
21 sale of any products in which the “sales price” varies, or is negotiable, based on the selection by
22 the purchaser of the products included in the transaction.

23
24 (A) “Distinct and identifiable products” does not include:

- 25 1. Packaging – such as containers, boxes, sacks, bags, and bottles – or other materials –
26 such as wrapping, labels, tags, and instruction guides – that accompany the “retail sale”
27 of the products and are incidental or immaterial to the “retail sale” thereof. Examples of
28 packaging that are incidental or immaterial include grocery sacks, shoeboxes, dry
29 cleaning garment bags and express delivery envelopes and boxes.

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

4 3. Items included in the member state’s definition of “sales price,” pursuant to Appendix C
5 of the Agreement.

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

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

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

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

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

21 (a) De minimis means the seller’s “purchase price” or “sales price” of the taxable
22 products is ten percent (10%) or less of the total “purchase price” or “sales price” of the
23 bundled products.

24 (b) Sellers shall use either the “purchase price” or the “sales price” of the products to
25 determine if the taxable products are de minimis. Sellers may not use a combination of the
26 “purchase price” and “sales price” of the products to determine if the taxable products are de
27 minimis.

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

1 (4) The “retail sale” of exempt tangible personal property and taxable tangible personal
2 property where:

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

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

11 *Compiler’s note: On April 16, 2005 the definition of a “bundled transaction” was added. Member States shall*
12 *comply with this definition no later than January 1, 2008.*

13
14 **“Delivery charges”** means charges by the seller of personal property or services for preparation
15 and delivery to a location designated by the purchaser of personal property or services including,
16 but not limited to, transportation, shipping, postage, handling, crating, and packing.

17 A member state may exclude from “delivery charges” the charges for delivery of “direct mail” if
18 the charges are separately stated on an invoice or similar billing document given to the
19 purchaser.

20 If a shipment includes exempt property and taxable property, the seller should allocate the
21 delivery charge by using:

- 22 a. a percentage based on the total sales prices of the taxable property compared to
23 the total sales prices of all property in the shipment; or
24 b. a percentage based on the total weight of the taxable property compared to the
25 total weight of all property in the shipment.

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

28
29 **“Direct mail”** means printed material delivered or distributed by United States mail or other
30 delivery service to a mass audience or to addressees on a mailing list provided by the purchaser

1 or at the direction of the purchaser when the cost of the items are not billed directly to the
2 recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by
3 the purchaser to the direct mail seller for inclusion in the package containing the printed material.

4 "Direct mail" does not include multiple items of printed material delivered to a single address.

5 *Compiler's note: The Governing Board issued an interpretation of "direct mail" on December 14, 2006. That*
6 *interpretation can be found in the Library of Interpretations.*

7
8 **"Lease or rental"** means any transfer of possession or control of tangible personal property for
9 a fixed or indeterminate term for consideration. A lease or rental may include future options to
10 purchase or extend.

11 A. Lease or rental does not include:

12 1. A transfer of possession or control of property under a security agreement or deferred
13 payment plan that requires the transfer of title upon completion of the required
14 payments;

15 2. A transfer or possession or control of property under an agreement that requires the
16 transfer of title upon completion of required payments and payment of an option price
17 does not exceed the greater of one hundred dollars or one percent of the total required
18 payments; or

19 3. Providing tangible personal property along with an operator for a fixed or
20 indeterminate period of time. A condition of this exclusion is that the operator is
21 necessary for the equipment to perform as designed. For the purpose of this
22 subsection, an operator must do more than maintain, inspect, or set-up the tangible
23 personal property.

24 B. Lease or rental does include agreements covering motor vehicles and trailers where the
25 amount of consideration may be increased or decreased by reference to the amount
26 realized upon sale or disposition of the property as defined in 26 USC 7701(h)(1).

27 C. This definition shall be used for sales and use tax purposes regardless if a transaction is
28 characterized as a lease or rental under generally accepted accounting principles, the
29 Internal Revenue Code, the [state commercial code], or other provisions of federal, state
30 or local law.

1 D. This definition will be applied only prospectively from the date of adoption and will
2 have no retroactive impact on existing leases or rentals. This definition shall neither
3 impact any existing sale-leaseback exemption or exclusions that a state may have, nor
4 preclude a state from adopting a sale-leaseback exemption or exclusion after the
5 effective date of the Agreement.

6
7 **“Purchase price”** applies to the measure subject to use tax and has the same meaning as sales
8 price.

9
10 **“Retail sale or Sale at retail”** means any sale, lease, or rental for any purpose other than for
11 resale, sublease, or subrent.

12
13 **“Sales price”(Effective through December 31, 2007)** applies to the measure subject to sales
14 tax and means the total amount of consideration, including cash, credit, property, and services,
15 for which personal property or services are sold, leased, or rented, valued in money, whether
16 received in money or otherwise, without any deduction for the following:

- 17 A. The seller's cost of the property sold;
- 18 B. The cost of materials used, labor or service cost, interest, losses, all costs of
19 transportation to the seller, all taxes imposed on the seller, and any other expense
20 of the seller;
- 21 C. Charges by the seller for any services necessary to complete the sale, other than
22 delivery and installation charges;
- 23 D. Delivery charges;
- 24 E. Installation charges;
- 25 F. The value of exempt personal property given to the purchaser where taxable and
26 exempt personal property have been bundled together and sold by the seller as a
27 single product or piece of merchandise; and
- 28 G. Credit for any trade-in, as determined by state law.

1 States may exclude from “sales price” the amounts received for charges included in paragraphs
2 (C) through (G) above, if they are separately stated on the invoice, billing, or similar document
3 given to the purchaser.

4 “Sales price” shall not include:

- 5 A. Discounts, including cash, term, or coupons that are not reimbursed by a third
6 party that are allowed by a seller and taken by a purchaser on a sale;
- 7 B. Interest, financing, and carrying charges from credit extended on the sale of
8 personal property or services, if the amount is separately stated on the invoice,
9 bill of sale or similar document given to the purchaser; and
- 10 C. Any taxes legally imposed directly on the consumer that are separately stated on
11 the invoice, bill of sale or similar document given to the purchaser.

12

13 **“Sales price” (Effective on and after January 1, 2008)** applies to the measure subject to sales
14 tax and means the total amount of consideration, including cash, credit, property, and services,
15 for which personal property or services are sold, leased, or rented, valued in money, whether
16 received in money or otherwise, without any deduction for the following:

- 17 A. The seller's cost of the property sold;
- 18 B. The cost of materials used, labor or service cost, interest, losses, all costs of
19 transportation to the seller, all taxes imposed on the seller, and any other expense
20 of the seller;
- 21 C. Charges by the seller for any services necessary to complete the sale, other than
22 delivery and installation charges;
- 23 D. Delivery charges;
- 24 E. Installation charges; and
- 25 F. Credit for any trade-in, as determined by state law.

26 States may exclude from “sales price” the amounts received for charges included in paragraphs
27 (C) through (F) above, if they are separately stated on the invoice, billing, or similar document

1 given to the purchaser. States may exclude from (C) above, “telecommunications nonrecurring”
2 charges if they are separately stated on the invoice, billing, or similar documents. A state doing
3 so must define “telecommunications nonrecurring charges” as follows:

4
5 **“Telecommunications nonrecurring charges”** means an amount billed for the installation,
6 connection, change or initiation of “telecommunications service” received by the customer.

7
8 “Sales price” shall not include:

- 9 A. Discounts, including cash, term, or coupons that are not reimbursed by a third
10 party that are allowed by a seller and taken by a purchaser on a sale;
- 11 B. Interest, financing, and carrying charges from credit extended on the sale of
12 personal property or services, if the amount is separately stated on the invoice,
13 bill of sale or similar document given to the purchaser; and
- 14 C. Any taxes legally imposed directly on the consumer that are separately stated on
15 the invoice, bill of sale or similar document given to the purchaser.

16
17 “Sales price” shall include consideration received by the seller from third parties if:

- 18 A. The seller actually receives consideration from a party other than the purchaser and the
19 consideration is directly related to a price reduction or discount on the sale;
- 20 B. The seller has an obligation to pass the price reduction or discount through to the
21 purchaser;
- 22 C. The amount of the consideration attributable to the sale is fixed and determinable by the
23 seller at the time of the sale of the item to the purchaser; and
- 24 D. One of the following criteria is met:
 - 25 1. The purchaser presents a coupon, certificate or other documentation to the seller to
26 claim a price reduction or discount where the coupon, certificate or documentation is
27 authorized, distributed or granted by a third party with the understanding that the third
28 party will reimburse any seller to whom the coupon, certificate or documentation is
29 presented;

- 1 2. Athletic supporters;
- 2 3. Baby receiving blankets;
- 3 4. Bathing suits and caps;
- 4 5. Beach capes and coats;
- 5 6. Belts and suspenders;
- 6 7. Boots;
- 7 8. Coats and jackets;
- 8 9. Costumes;
- 9 10. Diapers, children and adult, including disposable diapers;
- 10 11. Ear muffs;
- 11 12. Footlets;
- 12 13. Formal wear;
- 13 14. Garters and garter belts;
- 14 15. Girdles;
- 15 16. Gloves and mittens for general use;
- 16 17. Hats and caps;
- 17 18. Hosiery;
- 18 19. Insoles for shoes;
- 19 20. Lab coats;
- 20 21. Neckties;
- 21 22. Overshoes;
- 22 23. Pantyhose;
- 23 24. Rainwear;
- 24 25. Rubber pants;
- 25 26. Sandals;
- 26 27. Scarves;
- 27 28. Shoes and shoe laces;
- 28 29. Slippers;
- 29 30. Sneakers;
- 30 31. Socks and stockings;

- 1 32. Steel toed shoes;
 - 2 33. Underwear;
 - 3 34. Uniforms, athletic and non-athletic; and
 - 4 35. Wedding apparel.
- 5 B. "Clothing" shall not include:
- 6 1. Belt buckles sold separately;
 - 7 2. Costume masks sold separately;
 - 8 3. Patches and emblems sold separately;
 - 9 4. Sewing equipment and supplies including, but not limited to, knitting needles,
10 patterns, pins, scissors, sewing machines, sewing needles, tape measures, and
11 thimbles; and
 - 12 5. Sewing materials that become part of "clothing" including, but not limited to, buttons,
13 fabric, lace, thread, yarn, and zippers.

14 *Compiler's note: The Governing Board issued an interpretation of the definition of clothing on August 29, 2006.*

15 *That interpretation can be found in the Library of Interpretations.*

16 **"Clothing accessories or equipment"** means incidental items worn on the person or in
17 conjunction with "clothing." "Clothing accessories or equipment" are mutually exclusive of and
18 may be taxed differently than apparel within the definition of "clothing," "sport or recreational
19 equipment," and "protective equipment." The following list contains examples and is not
20 intended to be an all-inclusive list. "Clothing accessories or equipment" shall include:

- 21 A. Briefcases;
- 22 B. Cosmetics;
- 23 C. Hair notions, including, but not limited to, barrettes, hair bows, and hair nets;
- 24 D. Handbags;
- 25 E. Handkerchiefs;
- 26 F. Jewelry;
- 27 G. Sun glasses, non-prescription;
- 28 H. Umbrellas;
- 29 I. Wallets;
- 30 J. Watches; and

1 K. Wigs and hair pieces.

2 **“Fur clothing”** means “clothing” that is required to be labeled as a fur product under the Federal
3 Fur Products Labeling Act (15 U.S.C. §69), and the value of the fur components in the product is
4 more than three times the value of the next most valuable tangible component. “Fur clothing” is
5 human wearing apparel suitable for general use but may be taxed differently from “clothing.”
6 For the purposes of the definition of “fur clothing” the term “fur” means any animal skin or part
7 thereof with hair, fleece, or fur fibers attached thereto, either in its raw or processed state, but
8 shall not include such skins that have been converted into leather or suede, or which in
9 processing, the hair, fleece, or fur fiber has been completely removed.

10 *Compiler’s note: On December 14, 2006 the definition of “fur clothing” was approved.*

11 **“Protective equipment”** means items for human wear and designed as protection of the wearer
12 against injury or disease or as protections against damage or injury of other persons or property
13 but not suitable for general use. “Protective equipment” are mutually exclusive of and may be
14 taxed differently than apparel within the definition of “clothing,” “clothing accessories or
15 equipment,” and “sport or recreational equipment.” The following list contains examples and is
16 not intended to be an all-inclusive list. “Protective equipment” shall include:

- 17 A. Breathing masks;
- 18 B. Clean room apparel and equipment;
- 19 C. Ear and hearing protectors;
- 20 D. Face shields;
- 21 E. Hard hats;
- 22 F. Helmets;
- 23 G. Paint or dust respirators;
- 24 H. Protective gloves;
- 25 I. Safety glasses and goggles;
- 26 J. Safety belts;
- 27 K. Tool belts; and
- 28 L. Welders gloves and masks.

29 **“Sport or recreational equipment”** means items designed for human use and worn in
30 conjunction with an athletic or recreational activity that are not suitable for general use. “Sport

1 or recreational equipment” are mutually exclusive of and may be taxed differently than apparel
2 within the definition of “clothing,” “clothing accessories or equipment,” and “protective
3 equipment.” The following list contains examples and is not intended to be an all-inclusive list.

4 “Sport or recreational equipment” shall include:

- 5 A. Ballet and tap shoes;
- 6 B. Cleated or spiked athletic shoes;
- 7 C. Gloves, including, but not limited to, baseball, bowling, boxing, hockey, and golf;
- 8 D. Goggles;
- 9 E. Hand and elbow guards;
- 10 F. Life preservers and vests;
- 11 G. Mouth guards;
- 12 H. Roller and ice skates;
- 13 I. Shin guards;
- 14 J. Shoulder pads;
- 15 K. Ski boots;
- 16 L. Waders; and
- 17 M. Wetsuits and fins.

18 19 **COMPUTER RELATED**

20 “**Computer**” means an electronic device that accepts information in digital or similar form and
21 manipulates it for a result based on a sequence of instructions.

22 “**Computer software**” means a set of coded instructions designed to cause a “computer” or
23 automatic data processing equipment to perform a task.

24 “**Delivered electronically**” means delivered to the purchaser by means other than tangible
25 storage media.

26 “**Electronic**” means relating to technology having electrical, digital, magnetic, wireless, optical,
27 electromagnetic, or similar capabilities.

28 “**Load and leave**” means delivery to the purchaser by use of a tangible storage media where the
29 tangible storage media is not physically transferred to the purchaser.

1 **“Prewritten computer software”** means “computer software,” including prewritten upgrades,
2 which is not designed and developed by the author or other creator to the specifications of a
3 specific purchaser. The combining of two or more “prewritten computer software” programs or
4 prewritten portions thereof does not cause the combination to be other than “prewritten computer
5 software.” “Prewritten computer software” includes software designed and developed by the
6 author or other creator to the specifications of a specific purchaser when it is sold to a person
7 other than the specific purchaser. Where a person modifies or enhances “computer software” of
8 which the person is not the author or creator, the person shall be deemed to be the author or
9 creator only of such person’s modifications or enhancements. “Prewritten computer software” or
10 a prewritten portion thereof that is modified or enhanced to any degree, where such modification
11 or enhancement is designed and developed to the specifications of a specific purchaser, remains
12 “prewritten computer software;” provided, however, that where there is a reasonable, separately
13 stated charge or an invoice or other statement of the price given to the purchaser for such
14 modification or enhancement, such modification or enhancement shall not constitute “prewritten
15 computer software.”

16 A member state may exempt “prewritten computer software” “delivered electronically” or by
17 “load and leave.”

18 **FOOD AND FOOD PRODUCTS**

19 **“Alcoholic Beverages”** means beverages that are suitable for human consumption and contain
20 one-half of one percent or more of alcohol by volume.

21 **“Candy”** means a preparation of sugar, honey, or other natural or artificial sweeteners in
22 combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars,
23 drops, or pieces. “Candy” shall not include any preparation containing flour and shall require no
24 refrigeration.

25 **“Dietary supplement”** means any product, other than “tobacco,” intended to supplement the
26 diet that:

27 A. Contains one or more of the following dietary ingredients:

- 28 1. A vitamin;
- 29 2. A mineral;
- 30 3. An herb or other botanical;
- 31

1 4. An amino acid;

2 5. A dietary substance for use by humans to supplement the diet by increasing the total
3 dietary intake; or

4 6. A concentrate, metabolite, constituent, extract, or combination of any ingredient
5 described in above; and Is intended for ingestion in tablet, capsule, powder, softgel, gelcap,
6 or liquid form, or if not intended for ingestion in such a form, is not represented as
7 conventional food and is not represented for use as a sole item of a meal or of the diet; and

8 C. Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts"
9 box found on the label and as required pursuant to 21 C.F.R § 101.36.

10 **“Food and food ingredients”** means substances, whether in liquid, concentrated, solid, frozen,
11 dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed
12 for their taste or nutritional value. “Food and food ingredients” does not include “alcoholic
13 beverages” or “tobacco.” A member state may exclude “candy,” “dietary supplements” and
14 “soft drinks” from this definition, which items are mutually exclusive of each other.

15 Notwithstanding the foregoing requirements of this definition or any other provision of the
16 Agreement, a member state may maintain its tax treatment of food in a manner that differs from
17 the definitions provided herein, provided its taxation or exemption of food is based on a
18 prohibition or requirement of that state’s Constitution that exists on the effective date of the
19 Agreement.

20 **“Food sold through vending machines”** means food dispensed from a machine or other
21 mechanical device that accepts payment.

22 **“Prepared food”** means:

23 A. Food sold in a heated state or heated by the seller;

24 B. Two or more food ingredients mixed or combined by the seller for sale as a single item;
25 or

26 C. Food sold with eating utensils provided by the seller, including plates, knives, forks,
27 spoons, glasses, cups, napkins, or straws. A plate does not include a container or
28 packaging used to transport the food.

29 “Prepared food” in B does not include food that is only cut, repackaged, or pasteurized by the
30 seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring

1 cooking by the consumer as recommended by the Food and Drug Administration in chapter 3,
2 part 401.11 of its Food Code so as to prevent food borne illnesses.

3
4 The following items may be taxed differently than “prepared food” and each other, if sold
5 without eating utensils provided by the seller, but may not be taxed differently than the same
6 item when classified under “food and food ingredients.”

- 7 1. Food sold by a seller whose proper primary NAICS classification is manufacturing in
8 sector 311, except subsector 3118 (bakeries).
- 9 2. Food sold in an unheated state by weight or volume as a single item.
- 10 3. Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries,
11 donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas.

12 Substances within “food and food ingredients” may be taxed differently if sold as “prepared
13 food.” A state shall tax or exempt from taxation “candy,” dietary supplements,” and “soft
14 drinks” that are sold as “prepared food” in the same manner as it treats other substances that are
15 sold as “prepared food.”

16 *Compiler’s note: The Governing Board issued an interpretation of the definition of “prepared food” on April 18,*
17 *2006. That interpretation can be found in the Library of Interpretations. Compiler’s note: The Governing Board*
18 *issued an interpretation of “prepared food” on December 14, 2006. That interpretation can be found in the Library*
19 *of Interpretations.*

20 **“Soft drinks”** means non-alcoholic beverages that contain natural or artificial sweeteners. “Soft
21 drinks” do not include beverages that contain milk or milk products, soy, rice or similar milk
22 substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

23 **“Tobacco”** means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains
24 tobacco.

25 26 **HEALTH-CARE**

27 **“Drug”** means a compound, substance or preparation, and any component of a compound,
28 substance or preparation, other than “food and food ingredients,” “dietary supplements” or
29 “alcoholic beverages:”

- 1 A. Recognized in the official United State Pharmacopoeia, official Homeopathic
- 2 Pharmacopoeia of the United States, or official National Formulary, and supplement to
- 3 any of them; or
- 4 B. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
- 5 C. Intended to affect the structure or any function of the body.

6 A member state may independently:

- 7 A. Limit the definition of “drug” to human use (as opposed to both human and animal use)
- 8 in the administration of its exemption;
- 9 B. Draft its exemption for “drug” to specifically add insulin and/or medical oxygen so that
- 10 no prescription is required, even if a state requires a prescription under its exemption for
- 11 drugs;
- 12 C. Determine the taxability of the sales of drugs and prescription drugs to hospitals and
- 13 other medical facilities;
- 14 D. Determine the taxability of free samples of drugs; and
- 15 E. Determine the taxability of bundling taxable and nontaxable drug, if uniform treatment
- 16 of bundled transactions is not otherwise defined in the Agreement.

17 *Compiler’s note: The Governing Board issued an interpretation of “drug” on June 23, 2007. That interpretation*

18 *can be found in the Library of Interpretations.*

19 **“Durable medical equipment” (Effective through December 31, 2007)** means equipment

20 including repair and replacement parts for same, but does not include “mobility enhancing

21 equipment,” which:

- 22 A. Can withstand repeated use; and
- 23 B. Is primarily and customarily used to serve a medical purpose; and
- 24 C. Generally is not useful to a person in the absence of illness or injury; and
- 25 D. Is not worn in or on the body.

26 A member state may limit its exemption to “durable medical equipment” used for home use only.

27 A member state may limit the application of this definition by requiring a “prescription,” or limit

28 an exemption based on Medicare or Medicaid payments or reimbursements.

29 A member state may exclude from the product definition of “durable medical equipment” any of

30 the following for purposes enacting a product-based exemption:

- 1
- 2 1. Oxygen delivery equipment not worn in or on the body, including repair and
- 3 replacement parts;
- 4 2. Kidney dialysis equipment not worn in or on the body, including repair and
- 5 replacement parts; or
- 6 3. Enteral feeding systems not worn in or on the body, including repair and replacement
- 7 parts.
- 8

9 A member state choosing to enact a product-based exemption for oxygen delivery equipment,
10 kidney dialysis equipment, or enteral feeding systems, if those items are not worn in or on the
11 body, must also enact a product-based exemption for oxygen delivery equipment, kidney dialysis
12 equipment, or enteral feeding systems, if those are worn in or on the body.

13
14 A member state may limit the product-based exemption for oxygen delivery equipment, kidney
15 dialysis equipment, or enteral feeding systems using any combination of the following:

- 16
- 17 a. By requiring a prescription;
- 18 b. Based on Medicare or Medicaid payments or reimbursement; or
- 19 c. For home use.

20 **“Durable medical equipment” (Effective on and after January 1, 2008)** means equipment
21 including repair and replacement parts for same, but does not include “mobility enhancing
22 equipment,” which:

- 23 E. Can withstand repeated use; and
- 24 F. Is primarily and customarily used to serve a medical purpose; and
- 25 G. Generally is not useful to a person in the absence of illness or injury; and
- 26 H. Is not worn in or on the body.

27 A member state may limit its exemption to “durable medical equipment:”

- 28 A. By requiring a prescription;
- 29 B. Based on Medicare or Medicaid payments or reimbursement; or
- 30 C. For home use.

1 A member state may limit the exemption using any combination of the above but in no case shall
2 an exemption certificate be required.

3
4 Repair and replacement parts as used in this definition include all components or attachments
5 used in conjunction with the “durable medical equipment.” A member state may exclude from
6 repair and replacement parts items which are for single patient use only.

7
8 A member state may exclude from the product definition of “durable medical equipment” any of
9 the following for purposes enacting a product-based exemption:

- 10
11 1. Oxygen delivery equipment not worn in or on the body, including repair and
12 replacement parts;
- 13 2. Kidney dialysis equipment not worn in or on the body, including repair and
14 replacement parts; or
- 15 3. Enteral feeding systems not worn in or on the body, including repair and replacement
16 parts.

17
18 A member state choosing to enact a product-based exemption for oxygen delivery equipment,
19 kidney dialysis equipment, or enteral feeding systems, if those items are not worn in or on the
20 body, must also enact a product-based exemption for oxygen delivery equipment, kidney dialysis
21 equipment, or enteral feeding systems, if those are worn in or on the body.

22
23 A member state may limit the product-based exemption for oxygen delivery equipment, kidney
24 dialysis equipment, or enteral feeding systems using any combination of the following:

- 25
- 26 a. By requiring a prescription;
- 27 b. Based on Medicare or Medicaid payments or reimbursement; or
- 28 c. For home use.

29 *Compiler’s note: On October 1, 2005 the durable medical equipment definition was amended by deleting: “A*
30 *member state may limit its exemption to “durable medical equipment” used for home use only. A member state*

1 ~~may limit the application of this definition by requiring a “prescription,” or limit an exemption based on~~
2 ~~Medicare or Medicaid payments or reimbursements” after D and inserting:~~

3 “A member state may limit its exemption to “durable medical equipment:”

4 A. By requiring a prescription;

5 B. Based on Medicare or Medicaid payments or reimbursement; or

6 C. For home use.

7 A member state may limit the exemption using any combination of the above but in no case shall an exemption
8 certificate be required.”

9 *Member states shall adopt and utilize this definition no later than January 1, 2008.*

10 *Compiler’s note: On August 29, 2006 the durable medical equipment definition was amended by adding all the*
11 *language starting with “A member state may exclude...” The August 29, 2006 amendment to this section*
12 *became effective upon its approval.*

13 *Compiler’s note: On June 23, 2007 the definition of durable medical equipment was amended by adding:*

14 *“Repair and replacement parts as used in this definition include all components or attachments used in*
15 *conjunction with the “durable medical equipment.” A member state may exclude from repair and replacement*
16 *parts items which are for single patient use only.”*

17 **“Grooming and hygiene products”** are soaps and cleaning solutions, shampoo, toothpaste,
18 mouthwash, antiperspirants, and sun tan lotions and screens, regardless of whether the items
19 meet the definition of “over-the-counter-drugs.”

20 **“Mobility enhancing equipment”** means equipment including repair and replacement parts to
21 same, but does not include “durable medical equipment,” which:

22 A. Is primarily and customarily used to provide or increase the ability to move from one
23 place to another and which is appropriate for use either in a home or a motor vehicle;
24 and

25 B. Is not generally used by persons with normal mobility; and

26 C. Does not include any motor vehicle or equipment on a motor vehicle normally provided
27 by a motor vehicle manufacturer.

28 A member state may limit the application of this definition by requiring a “prescription,” or limit
29 an exemption based on Medicare or Medicaid payments or reimbursements.

30 **“Over-the-counter-drug”** means a drug that contains a label that identifies the product as a drug
31 as required by 21 C.F.R. § 201.66. A member state may exclude “grooming and hygiene
32 products” from this definition. The “over-the-counter-drug” label includes:

33 A. A “Drug Facts” panel; or

1 B. A statement of the “active ingredient(s)” with a list of those ingredients contained in the
2 compound, substance or preparation.

3 **“Prescription”** means an order, formula or recipe issued in any form of oral, written, electronic,
4 or other means of transmission by a duly licensed practitioner authorized by the laws of the
5 member state.

6 **“Prosthetic device”** means a replacement, corrective, or supportive device including repair and
7 replacement parts for same worn on or in the body to:

- 8 A. Artificially replace a missing portion of the body;
- 9 B. Prevent or correct physical deformity or malfunction; or
- 10 C. Support a weak or deformed portion of the body.

11 A member state may exclude any or all of the following from the definition of “prosthetic
12 device:”

- 13 A. Corrective eyeglasses;
- 14 B. Contact lenses;
- 15 C. Hearing aids; and
- 16 D. Dental prosthesis.

17 A member state may limit the application of this definition by requiring a “prescription,” or limit
18 an exemption based on Medicare or Medicaid payments or reimbursements.

19

20 **TELECOMMUNICATIONS (Effective on and after January 1, 2008)**

21 **Tax Base/Exemption Terms**

22

23 **“Ancillary services”** means services that are associated with or incidental to the provision of
24 “telecommunications services”, including but not limited to “detailed telecommunications
25 billing”, “directory assistance”, “vertical service”, and “voice mail services”.

26 **“Conference bridging service”** means an “ancillary service” that links two or more participants
27 of an audio or video conference call and may include the provision of a telephone number.

28 “Conference bridging service” does not include the “telecommunications services” used to reach
29 the conference bridge.

1 **“Detailed telecommunications billing service”** means an “ancillary service” of separately
2 stating information pertaining to individual calls on a customer’s billing statement.

3 **“Directory assistance”** means an “ancillary service” of providing telephone number
4 information, and/or address information.

5 **“Vertical service”** means an “ancillary service” that is offered in connection with one or more
6 “telecommunications services”, which offers advanced calling features that allow customers to
7 identify callers and to manage multiple calls and call connections, including “conference
8 bridging services”.

9 **“Voice mail service”** means an “ancillary service” that enables the customer to store, send or
10 receive recorded messages. “Voice mail service” does not include any “vertical services” that
11 the customer may be required to have in order to utilize the “voice mail service”.

12 **“Telecommunications service”** means the electronic transmission, conveyance, or routing of
13 voice, data, audio, video, or any other information or signals to a point, or between or among
14 points. The term “telecommunications service” includes such transmission, conveyance, or
15 routing in which computer processing applications are used to act on the form, code or protocol
16 of the content for purposes of transmission, conveyance or routing without regard to whether
17 such service is referred to as voice over Internet protocol services or is classified by the Federal
18 Communications Commission as enhanced or value added. “Telecommunications service” does
19 not include:

- 20 A. Data processing and information services that allow data to be generated, acquired,
21 stored, processed, or retrieved and delivered by an electronic transmission to a purchaser
22 where such purchaser’s primary purpose for the underlying transaction is the processed
23 data or information;
- 24 B. Installation or maintenance of wiring or equipment on a customer’s premises;
- 25 C. Tangible personal property;
- 26 D. Advertising, including but not limited to directory advertising.
- 27 E. Billing and collection services provided to third parties;
- 28 F. Internet access service;
- 29 G. Radio and television audio and video programming services, regardless of the medium,
30 including the furnishing of transmission, conveyance and routing of such services by the

1 programming service provider. Radio and television audio and video programming
2 services shall include but not be limited to cable service as defined in 47 USC 522(6) and
3 audio and video programming services delivered by commercial mobile radio service
4 providers, as defined in 47 CFR 20.3;

5 H. “Ancillary services”; or

6 I. Digital products “delivered electronically”, including but not limited to software, music,
7 video, reading materials or ring tones.

8 **“800 service”** means a “telecommunications service” that allows a caller to dial a toll-free
9 number without incurring a charge for the call. The service is typically marketed under the name
10 “800”, “855”, “866”, “877”, and “888” toll-free calling, and any subsequent numbers designated
11 by the Federal Communications Commission.

12 **“900 service”** means an inbound toll “telecommunications service” purchased by a subscriber
13 that allows the subscriber’s customers to call in to the subscriber’s prerecorded announcement or
14 live service. “900 service” does not include the charge for: collection services provided by the
15 seller of the “telecommunications services” to the subscriber, or service or product sold by the
16 subscriber to the subscriber’s customer. The service is typically marketed under the name “900”
17 service, and any subsequent numbers designated by the Federal Communications Commission.

18 **“Fixed wireless service”** means a “telecommunications service” that provides radio
19 communication between fixed points.

20 **“Mobile wireless service”** means a “telecommunications service” that is transmitted, conveyed
21 or routed regardless of the technology used, whereby the origination and/or termination points of
22 the transmission, conveyance or routing are not fixed, including, by way of example only,
23 “telecommunications services” that are provided by a commercial mobile radio service provider.

24 **“Paging service”** means a “telecommunications service” that provides transmission of coded
25 radio signals for the purpose of activating specific pagers; such transmissions may include
26 messages and/or sounds.

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

1 **“Prepaid wireless calling service”** means a “telecommunications service” that provides the
2 right to utilize “mobile wireless service” as well as other non-telecommunications services
3 including the download of digital products “delivered electronically”, content and “ancillary
4 services”, which must be paid for in advance that is sold in predetermined units of dollars of
5 which the number declines with use in a known amount.

6 **“Private communications service”** means a “telecommunications service” that entitles the
7 customer to exclusive or priority use of a communications channel or group of channels between
8 or among termination points, regardless of the manner in which such channel or channels are
9 connected, and includes switching capacity, extension lines, stations, and any other associated
10 services that are provided in connection with the use of such channel or channels.

11 **“Value-added non-voice data service”** means a service that otherwise meets the definition of
12 “telecommunications services” in which computer processing applications are used to act on the
13 form, content, code, or protocol of the information or data primarily for a purpose other than
14 transmission, conveyance or routing.

15 **Modifiers of Sales Tax Base/Exemption Terms**

16 The following terms can be used to further delineate the type of “telecommunications service” to
17 be taxed or exempted. The terms would be used with the broader terms and subcategories
18 delineated above.

19 **“Coin-operated telephone service”** means a “telecommunications service” paid for by inserting
20 money into a telephone accepting direct deposits of money to operate.

21 **“International”** means a “telecommunications service” that originates or terminates in the
22 United States and terminates or originates outside the United States, respectively. United States
23 includes the District of Columbia or a U.S. territory or possession.

24 **“Interstate”** means a “telecommunications service” that originates in one United States state, or
25 a United States territory or possession, and terminates in a different United States state or a
26 United States territory or possession.

27 **“Intrastate”** means a “telecommunications service” that originates in one United States state or
28 a United States territory or possession, and terminates in the same United States state or a United
29 States territory or possession.

1 **“Pay telephone service”** means a “telecommunications service” provided through any pay
2 telephone.

3 **“Residential telecommunications service”** means a “telecommunications service” or “ancillary
4 services” provided to an individual for personal use at a residential address, including an
5 individual dwelling unit such as an apartment. In the case of institutions where individuals
6 reside, such as schools or nursing homes, “telecommunications service” is considered residential
7 if it is provided to and paid for by an individual resident rather than the institution.

8

9 The terms “ancillary services” and “telecommunications service” are defined as a broad range of
10 services. The terms “ancillary services” and “telecommunications service” are broader than the
11 sum of the subcategories. Definitions of subcategories of “ancillary services” and
12 “telecommunications service” can be used by a member state alone or in combination with other
13 subcategories to define a narrower tax base than the definitions of “ancillary services” and
14 “telecommunications service” would imply. The subcategories can also be used by a member
15 state to provide exemptions for certain subcategories of the more broadly defined terms.

16 A member state that specifically imposes tax on, or exempts from tax, local telephone or local
17 telecommunications service may define “local service” in any manner in accordance with
18 Section 327 of the Agreement, except as limited by other sections of this Agreement.

19 *Compiler’s note: On April 16, 2005 the telecommunications definitions were added to the Agreement. Member*
20 *states shall adopt and utilize these definitions no later than January 1, 2008.*

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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).

"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.

"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:

- A. Binders;
- B. Book bags;
- C. Calculators;
- D. Cellophane tape;
- E. Blackboard chalk;
- F. Compasses;
- G. Composition books;
- H. Crayons;
- I. Erasers;
- J. Folders; expandable, pocket, plastic, and manila;
- K. Glue, paste, and paste sticks;
- L. Highlighters;

- 1 M. Index cards;
- 2 N. Index card boxes;
- 3 O. Legal pads;
- 4 P. Lunch boxes;
- 5 Q. Markers;
- 6 R. Notebooks;
- 7 S. Paper; loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila
- 8 paper, colored paper, poster board, and construction paper;
- 9 T. Pencil boxes and other school supply boxes;
- 10 U. Pencil sharpeners;
- 11 V. Pencils;
- 12 W. Pens;
- 13 X. Protractors;
- 14 Y. Rulers;
- 15 Z. Scissors; and
- 16 AA. Writing tablets.

17 **“School art supply”** is an item commonly used by a student in a course of study for artwork.
18 The term is mutually exclusive of the terms “school supply,” “school instructional material,” and
19 “school computer supply,” and may be taxed differently. The following is an all-inclusive list:

- 20 A. Clay and glazes;
- 21 B. Paints; acrylic, tempera, and oil;
- 22 C. Paintbrushes for artwork;
- 23 D. Sketch and drawing pads; and
- 24 E. Watercolors.

25 **“School instructional material”** is written material commonly used by a student in a course of
26 study as a reference and to learn the subject being taught. The term is mutually exclusive of the
27 terms “school supply,” “school art supply,” and “school computer supply,” and may be taxed
28 differently. The following is an all-inclusive list:

- 29 A. Reference books;
- 30 B. Reference maps and globes;

1 C. Textbooks; and

2 D. Workbooks.

3 **“School computer supply”** is an item commonly used by a student in a course of study in which
4 a computer is used. The term is mutually exclusive of the terms “school supply,” “school art
5 supply,” and “school instructional material,” and may be taxed differently. The following is an
6 all-inclusive list:

7 A. Computer storage media; diskettes, compact disks;

8 B. Handheld electronic schedulers, except devices that are cellular phones;

9 C. Personal digital assistants, except devices that are cellular phones;

10 D. Computer printers; and

11 E. Printer supplies for computers; printer paper, printer ink.

1 Appendix D

2 LIBRARY OF INTERPRETATIONS

3
4 **Interpretation 2006-01**
5 **(Adopted April 18, 2006)**
6

7 This Interpretation Recommendation is made to the Governing Board by the Compliance Review
8 and Interpretations Committee this 2nd day of February, 2006 in accordance with Article IX, Rule
9 902 of Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.
10

11 The party requesting the interpretation is RSM McGladrey, Inc. of Cedar Rapids, Iowa. The
12 request was made by letter dated November 23, 2005, and was made pursuant to the provisions
13 for expedited consideration contained in Rule 902 at subsection H.
14

15 Issue
16

17 The issue presented is an interpretation of Agreement section 402 pertaining to amnesty. The
18 specific question presented was whether amnesty is available to a seller for tax not collected, if
19 the seller has collected an amount of tax in a state, but failed to remit it. The seller otherwise
20 meets the qualifications prescribed in section 402. The issue was presented with an
21 acknowledgement that tax collected must be remitted with applicable penalties and interest as a
22 precondition to receiving amnesty.
23

24 Public Comment
25

26 No written public comments were received.
27

28 Recommendation
29

30 By unanimous consent the Compliance Review and Interpretations Committee submits to the
31 Governing Board a recommendation that a seller who has collected tax in a member state may
32 obtain amnesty for taxes not collected in that state or any member state in accordance with the
33 terms of Agreement section 402. The Committee further recommends that tax collected from
34 purchasers in a member state must be remitted with applicable penalty and interest to that
35 member state as a condition of receiving amnesty. This condition is in addition to those
36 conditions specifically enumerated in section 402 of the Agreement.
37

38 Rationale
39

40 A plain reading of Agreement section 402 requires a state to provide amnesty for “uncollected or
41 unpaid sales or use tax”. A similar plain reading of the disqualifying language contained in
42 subsection 402C limits disqualification to “sales or use taxes already paid or remitted to the state
43 or to taxes collected by the seller.” As the seller has not collected the taxes at issue, amnesty is

1 available despite the fact that the seller collected taxes on other sales which will not qualify for
2 amnesty.

3
4 Committee Members

5
6 Larry Wilkie, Committee Chair; Myles Vosberg, Andy Sabol, Tony Mastin, Dan Noble, Tom
7 Conley representing Joseph VanDevender, and Dale Vettel.

8
9 **Interpretation 2006-02**
10 **(Adopted April 18, 2006)**

11
12 This Interpretation Recommendation is made to the Governing Board by the Compliance Review
13 and Interpretations Committee this 2nd day of February 2006 in accordance with Article IX, Rule
14 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

15
16 The party requesting the interpretation is Department of Treasury, State of Michigan, of Lansing
17 Michigan. The request was made by letter dated January 4, 2006, and was made pursuant to the
18 provisions for expedited consideration contained in Rule 902 H.

19
20 Issue

21
22 The issue presented is an interpretation of Agreement section 402 pertaining to amnesty. The
23 questions presented related to when a seller is considered registered under the Agreement for
24 purposes of eligibility for amnesty when a seller has registered through the central registration
25 system and indicated that it will make use of a model 1 or model 2 seller for those periods when
26 a certified service provider (CSP) or a certified automated system (CAS) have not been deemed
27 available by the Executive Committee of the Governing Board. The specific questions presented
28 are as follows:

- 29 (1) When will a model 1 or model 2 seller be deemed to have “registered under the
30 Agreement” as provided in Section 211 of the Agreement?
31 (2) When will a model 1 or model 2 seller be required to begin collecting and remitting sales
32 or use taxes to member states as provided in Section 401(B) of the Agreement?
33 (3) When will a model 1 or model 2 seller be denied amnesty because they have received a
34 notice of the commencement of an audit as provided in Section 402(B) of the
35 Agreement?

36
37 Public Comment

38
39 No written public comments were received.

40
41 Recommendation

42
43 By unanimous consent the Compliance Review and Interpretations Committee submits to the
44 Governing Board the following recommendations:

- 45 (1) A model 1 or model 2 seller will be “registered under the Agreement”:

1 (a) on a date that follows the act of making application for registration through the
2 central registration system, and

3 (b) the date that they begin, or are required to begin, collecting a member state's sales
4 or use tax.

5 (2) A model 1 or model 2 seller will be required to begin collecting and remitting sales or use
6 taxes in a member state on the first day of the calendar month after 60 days notice that
7 adequate CSP or CAS services are available as determined by the Executive Committee
8 of the Governing Board.

9 (3) A model 1 or model 2 seller will be denied amnesty in a member state pursuant to
10 Section 402(B) as having received a notice of audit only if that notice of audit is received
11 on a date that precedes the date the seller made application for registration through the
12 central registration system.

13 14 Rationale

15
16 The basis for the recommended interpretations is the inability of a model 1 or model 2 seller to
17 collect and remit sales and use taxes until these technology models are deemed to be available
18 for use by the Executive Committee of the Governing Board. A registration through the central
19 registration system should not be considered complete until a model 1 or model 2 seller begins to
20 collect or is required to begin to collect a member states' sales or use tax. These interpretations
21 are consistent with the Position on Amnesty adopted by the Governing Board on November 9,
22 2005.

23 24 Committee Members

25
26 Larry Wilkie, Committee Chair, Tom Conley, representing Joe VanDevender, Tony Mastin, Dan
27 Noble, Andy Sabol, Dale Vettel, and Myles Vosberg.

28 29 30 **Interpretation 2006-03** 31 **(Adopted April 18, 2006)**

32
33 This Interpretation Recommendation is made to the Governing Board by the Compliance Review
34 and Interpretations Committee this 16th day of February 2006 in accordance with Article IX,
35 Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board,
36 Inc.

37
38 The party requesting the interpretation is the State of Indiana, Tom Conley, Indiana Delegate,
39 State and Local Advisory Council. The request was made by letter dated January 5, 2006, and
40 was made pursuant to the provisions for expedited consideration contained in Rule 902 H.

41 42 Issue

1 The issue presented is an interpretation of Agreement Article III, Section 310, Subsection C,
2 Clause 1 pertaining to sourcing of initial lease payments made to dealers. The quoted section of
3 the agreement reads as follows:
4

5 For a lease or rental that requires recurring periodic payments, each periodic payment is
6 sourced to the primary property location. The primary property location shall be as
7 indicated by an address for the property provided by the lessee that is available to the
8 lessor from its records maintained in the ordinary course of business, when use of this
9 address does not constitute bad faith. This location shall not be altered by intermittent
10 use at different locations.
11

12 Indiana is requesting an interpretation on the sourcing of initial payments (down payments,
13 rebates or other potentially taxable receipts) paid to the seller at the time the lease is negotiated
14 between the seller and purchaser. Are these payments considered a recurring periodic payment
15 and sourced in accordance with Section 310(C)?
16

17 Recommendation

18
19 By unanimous consent the Compliance Review and Interpretations Committee submits to the
20 Governing Board the following recommendation:
21

22 Article III, Section 310, Subsection C, of the Agreement should be interpreted to include
23 payments received at the inception of a lease (down payments, rebates or other potentially
24 taxable receipts) as periodic payments and sourced to the primary property location consistent
25 with the sourcing of the remaining periodic payments.
26

27 Rationale

28
29 The committee contacted the automobile associations of their various states. The associations
30 reported that their leasing organizations vary in the way that the receipts collected at the
31 inception of the lease are currently sourced. Some source the receipts to the primary property
32 location while others source the receipts to the dealer's location. The committee believed that
33 the intent of the original sourcing rule was to establish a single location for sourcing all
34 payments. The proposed interpretation would be consistent with what we believed to be the
35 intent of the rule. The interpretation would also eliminate the confusion that currently seems to
36 exist related to this issue.
37

38 Committee Members

39
40 Cathy Wicks representing Larry Wilkie, Tom Conley, representing Joe VanDevender, Tony
41 Mastin, Dan Noble, Andy Sabol, Dale Vettel, Acting Committee Chair, and Myles Vosberg.
42

43 **Interpretation 2006-04**
44 **(Adopted April 18, 2006)**
45

1 This Interpretation Recommendation is made to the Governing Board by the Compliance Review
2 and Interpretations Committee this 13th day of April 2006 in accordance with Article IX, Rule
3 902 of Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.
4

5 The party requesting the interpretation is Brinker International on behalf of the National
6 Association of Convenience Stores, Council on State Taxation, Darden Restaurants, Food
7 Marketing Institute, Indiana Grocery & Convenience Store Association, Marathon Petroleum
8 Company, Marsh Supermarket Pharmacy, Minnesota Grocers Association, Speedway, Starbucks
9 Coffee, Target, Utah Food Industry Association and Yum! Brands, Incorporated. The request
10 was made by letter dated January 9, 2006, and was made pursuant to the provisions for expedited
11 consideration contained in Rule 902 at subsection H.
12

13 Issue 14

15 The issue presented is an interpretation of definition of “food sold with eating utensils provided
16 by the seller” found in section C of the prepared food definition found in Appendix C, Part II.
17

18 Public Comment 19

20 Public comments were received from both industry and state agencies.
21

22 Recommendation 23

24 The Compliance Review and Interpretations Committee submits to the Governing Board a
25 recommendation that the definition of “food sold with eating utensils” be interpreted as specified
26 in the State and Local Advisory Council paper on “Prepared Food Re-Visited Updated April 13,
27 2006.” This paper was distributed with Diane Hardt’s e-mail dated April 13, 2006 with revised
28 documents for the Streamlined Sales Tax Governing Board meeting in Indianapolis, Indiana on
29 April 18, 2006. Committee members have agreed, by a vote of five to one, that they can support
30 the proposal as presented, provided states are given adequate time to promulgate regulations,
31 make legislative changes, or prepare other published guidance as each state determines is
32 necessary to adopt the language proposed.
33

34 Rationale 35

36 The Compliance Review and Interpretations Committee finds itself in a difficult situation with
37 this request for interpretation and its subsequent determination of support of the proposal.
38

39 All members recognize the need to come to agreement on how to interpret the subject language.
40 Committee members, as well as other states and business representatives involved in the
41 discussions, have indicated support for the proposal. The Committee commends business
42 members and state members for their diligent efforts in bringing this proposal to the table.
43

44 Concern was expressed by some Committee members that the language in the proposal goes
45 beyond an interpretation of the existing language in the definition and, in some states, would

1 require legislative changes. Committee member, Tony Mastin, noted that using the Black’s Law
2 Dictionary definition of the word “provided” would be an allowable interpretation of the current
3 language. Business representatives expressed concern that using a dictionary definition would
4 not provide the necessary guidance to administer the provision and would result in states
5 adopting different interpretations of the meaning of the phrase.
6

7 The Committee is seeking advice from the Governing Board on whether this interpretation goes
8 beyond the scope of an interpretation of the current definition. If so, the Committee asks for
9 advice from the Governing Board on how to proceed. The options discussed, if this is not an
10 interpretation, were either an amendment to the Agreement or a rule.
11

12 Committee Members

13
14 Larry Wilkie, Committee Chair; Myles Vosberg, Andy Sabol, Tony Mastin, Dan Noble, Tom
15 Conley representing Joseph VanDevender, and Dale Vettel.
16

17 State and Local Advisory Council
18 Prepared Food Re-Visited
19 Updated April 13, 2006
20
21

22 SSTP approved several interpretations of the food definitions at its meeting on January 6, 2005.
23 The approved interpretations are included in an Issue Paper titled “Food Definition Issues” on
24 the Streamlined web site at www.streamlinedsalestax.org. SSTP interpreted “provided by the
25 seller” with respect to utensils as:
26

- 27 1. Utensils need only be made available to purchasers if a seller’s sales of prepared
28 food in A and B of the definition (except items 1 through 3 that a state chooses to
29 exclude), soft drinks, and alcohol beverages at an establishment are more than
30 75% of the seller’s total sales at the establishment.
31
- 32 2. For sellers other than in 1., the seller’s customary practice is to give the utensil to
33 the purchaser, except that plates, glasses, or cups necessary for the purchaser to
34 receive the food or food ingredients need only be made available.
35

36 Also, SSTP addressed utensils provided by persons other than the seller and resold by a seller as
37 follows:
38

39 Although a person other than the seller may have originally placed the utensil in
40 the package, the seller provides it to the purchaser when it transfers the package to
41 the purchaser. Therefore, in the examples provided (caterer sells a boxed lunch
42 with utensils to a concessionaire who sells the boxed lunch; food manufacturer
43 packages ready-to-eat lunch with utensils and sells to a grocer who sells the
44 lunch), utensils are provided by the seller.
45

1 The Food Marketing Institute and a number of interested parties submitted a request for
2 interpretation to the Compliance Review and Interpretations Committee (CRIC) on January 6,
3 2006. CRIC has requested the State and Local Advisory Council (SLAC) of the Streamlined
4 Governing Board to further address the prepared food interpretation issue.

5
6 At the SLAC meeting on January 7-8, 2006, a work group discussed concerns about the SSTP
7 approved interpretation and identified solutions. Business representatives reviewed those
8 solutions and recommended minor changes. The proposed interpretation is as follows:

- 9
- 10 I. We will maintain the 75% test for sellers but modify how the numerator and
11 denominator are calculated so that like businesses (single purpose coffee shop v.
12 coffee shop in a bookstore) are treated the same.
13
 - 14 II. The numerator would include sales of (a) prepared food if under A and B of the
15 definition of prepared food; and (b) food where plates, bowls, glasses or cups are
16 necessary to receive the food (e.g., dispensed milk, salad bar). Alcoholic
17 beverages are not included in the numerator.
18
 - 19 III. The denominator would include sales of all food and food ingredients, including
20 prepared food, candy, dietary supplements, and soft drinks. Alcoholic beverages
21 are not included in the denominator.
22
 - 23 IV. For sellers with a sales percentage of 75% or less, utensils are provided by the
24 seller if the seller's practice for the item (as represented by the seller) is to
25 physically give or hand the utensil to the purchaser, except that plates, bowls,
26 glasses, or cups necessary for the purchaser to receive the food (e.g., dispensed
27 milk, salad bar) need only be made available.
28
 - 29 V. For sellers with a sales percentage greater than 75%, utensils are provided by the
30 seller if they are made available to purchasers.
31
 - 32 VI. For sellers with a sales percentage greater than 75% and who sell items that
33 contain four (4) or more servings packaged as one item sold for a single price, an
34 item does not become prepared food due to the seller having utensils available.
35 However, if the seller provides utensils for the item as in 4 above, then the item is
36 considered prepared food. Whenever available, serving sizes will be determined
37 based on a label on an item sold. If no label is available, a seller will reasonably
38 determine the number of servings in an item.
39
 - 40 VII. When a seller sells food items that have a utensil placed in a package by a person
41 other than the seller, and that person's NAICS classification code is that of
42 manufacturers (sector 311), the seller shall not be considered to have provided the
43 utensil except as provided in 4-6 above. For any other packager with any other
44 NAICS classification code (e.g., sector 722 for caterers), the seller shall be
45 considered to have provided the utensil.

- 1
2 VIII. The prepared food sales percentage will be calculated by the seller for each tax
3 year or business fiscal year, based on the seller's data from the prior tax year or
4 business fiscal year, as soon as possible after accounting records are available, but
5 not later than 90 days after the beginning of the tax or business fiscal year.
6
7 IX. A single prepared food sales percentage will be determined annually, for all of the
8 seller's establishments in a state.
9
10 X. A new business will make a good faith estimate of their prepared food sales
11 percentage for their first year. A new business should adjust its good faith
12 estimate prospectively after the first three months of operation if actual prepared
13 food sales percentages materially affect the 75% threshold test.
14

15 If states concur that the above interpretation of "food sold with eating utensils provided by the
16 seller" requires an amendment to the Agreement or time to implement the interpretation, then a
17 temporary interpretation must be offered now so that sellers of prepared food can determine tax
18 treatments under laws enacted by states that are in compliance with the Streamlined Sales and
19 Use Tax Agreement. The Governing Board states will be surveyed to determine if they can or
20 cannot support the following uniform interpretation. If a Governing Board state cannot support
21 this interpretation, the Governing Board state will be asked to explain its interpretation. The
22 results of the survey will be presented to the Governing Board at its meeting in April.
23

24 "Food sold with eating utensils provided by the seller" means the seller's practice for
25 the item is to physically give or hand the utensil to the purchaser.
26

27 Note: Black's Law Dictionary defines "*provide*" as to make, procure, or furnish for future use,
28 prepare. To supply; to afford; to contribute.
29

30 **Interpretation 2006-05**
31 **(Adopted August 29, 2006)**
32

33 This Interpretation Recommendation is made to the Governing Board by the Compliance Review
34 and Interpretations Committee this 27th day of April, 2006 in accordance with Article IX, Rule
35 902 of Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.
36

37 The party requesting the interpretation is George S. Isaacson of Brann & Isaacson, of Lewiston
38 Maine. The request was made by letter dated March 31, 2006, and was made pursuant to the
39 provisions for expedited consideration contained in Rule 902 at subsection H.
40

41 Issue
42

43 The first issue presented is an interpretation of the definition of "clothing" found in Appendix C,
44 Part II of the Streamlined Sales and Use Tax Agreement. The specific question is: Do articles of
45 human wearing apparel suitable for general use that are made from fur or hide on the pelt (i.e.,

1 animal skins with hair, fleece or fur fibers attached) constitute “clothing” within the meaning of
2 the Agreement?

3
4 The second issue presented is an interpretation of Section 327(C) of the Agreement which
5 requires a member state to impose sales or use tax on all products or services included within
6 each definition or to exempt from sales or use tax all products or services within each definition.
7 The specific question is, if human wearing apparel made from fur and suitable for general use
8 constitutes “clothing” as defined in the SSUTA, must a member state, under Section 327 of the
9 Agreement, treat fur clothing in the same manner as all other clothing?

10
11 The third issue presented is whether Minnesota’s general exemption from sales and use tax for
12 clothing, and the imposition of a separate gross revenues tax on fur clothing results in Minnesota
13 being in violation of Section 327 (C) of the agreement.

14 15 Public Comment

16
17 No written public comments were received.

18 19 Recommendation

20
21 By unanimous consent the Compliance Review and Interpretations Committee submits to the
22 Governing Board the following recommendations regarding the above three issues:

- 23 1. Appendix C, Part II of the Streamlined Sales and Use Tax Agreement defines clothing as
24 human wearing apparel suitable for general use. An article made from fur or hide on the
25 pelt that is wearing apparel suitable for general use, is not excluded from the definition of
26 clothing.
27
- 28 2. Clothing made with fur must be treated in the same manner as other clothing. A state can
29 choose to impose the sales tax on all articles of clothing, or it may choose to exempt all
30 articles of clothing. A state cannot choose to apply the sales tax to some articles of
31 clothing and exempt other articles of clothing.
32
- 33 3. The third question concerns whether Minnesota is in violation of Section 327 (C) of the
34 Agreement. The Agreement pertains only to sales and use taxes. Imposition of
35 Minnesota’s gross revenue tax on articles of fur clothing does not constitute a violation of
36 Section 327 (C) of the Agreement.
37

38 Rationale

- 39
40 1. The committee reviewed the definition of clothing and determined that articles of
41 clothing made from fur or hide on the pelt are not excluded from the definition of
42 clothing. There is no language in the definition or the Agreement that qualifies or restricts
43 the definition of clothing based on the materials that are used to produce the clothing.
44

- 1 2. The committee reviewed Section 327 of the Agreement. Section 327 requires that except
2 as specifically provided in Section 316 and any applicable definition, a member state
3 must either impose its sales and use taxes on all products or services within a definition,
4 or exempt all products or services within a definition.
5
- 6 3. Minnesota exempts all clothing from the sales and use tax. Minnesota does not impose a
7 sales tax on articles of clothing made with fur or hide on the pelt (Minnesota Statutes,
8 Chapter 297A (General Sales and Use Taxes)). Minnesota imposes a separate gross
9 revenues tax on fur clothing (Minnesota Statutes, Chapter 295 (Gross Revenues and
10 Gross Receipts Taxes)). This is not in violation of any provision of the Agreement. It is a
11 separate tax from the sales tax and is imposed on the gross receipts of the furrier for sales
12 in Minnesota. Article I, Section 104 of the agreement provides that the definition of a
13 term is not intended to influence the interpretation or application of that term with respect
14 to other tax types.
15

16 Committee Members

17
18 Larry Wilkie, Committee Chair, Tony Mastin, Dan Noble, Andy Sabol, Joe VanDevender, Dale
19 Vettel, and Myles Vosberg.
20

21 **Interpretation 2006-06** 22 **(Adopted August 29, 2006)** 23

24 This Interpretation Recommendation is made to the Governing Board by the Compliance Review
25 and Interpretations Committee this 22nd day of June, 2006 in accordance with Article IX, Rule
26 902 of Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.
27

28 The party requesting the interpretation is William Riesenberger of the Ohio Department of
29 Taxation, Sales and Use Tax Division. The request was made by letter dated January 25, 2006.
30 Expedited consideration available under Rule 902, subsection H was not requested.
31

32 Issue

33
34 The issue presented is an interpretation of Agreement section 402 pertaining to amnesty. The
35 question presented was whether a company that has a physical presence in a state continues to be
36 eligible for amnesty in that same state if it deregisters in the other member and associate member
37 states. Amnesty was originally granted under section 402 of the agreement when the company
38 registered to collect tax through the streamlined sales tax central registration system.
39

40 Public Comment

41
42 No written public comments were received.
43

44 Recommendation

1 By unanimous consent the Compliance Review and Interpretations Committee submits to the
2 Governing Board a recommendation that a seller who has deregistered to collect tax in any
3 member state within thirty-six months of its registration is no longer eligible for amnesty in any
4 member state or associate member state under section 402 of the Agreement including states
5 where the seller has a physical presence.
6

7 Rationale

8

9 Section 402A(1) of the agreement provides amnesty for uncollected or unpaid sales or use tax to
10 a seller that registers to pay or to collect and remit applicable sales or use tax in accordance with
11 the terms of the agreement. In addition, section 402D states the amnesty is fully effective as
12 long as the seller continues registration and continues payment or collection and remittance of
13 applicable sales or use taxes for a period of at least thirty-six months. A seller that deregisters
14 within thirty-six months of its registration does not meet the requirements of Section 402D and,
15 therefore, forfeits the amnesty provided under the agreement in all member and associate
16 member states including any state where registration is continued. Notice of deregistration is
17 made through the central registration system to all member and associate member states.
18

19 Committee Members

20

21 Larry Wilkie, Committee Chair; Myles Vosberg, Andy Sabol, Tony Mastin, Dan Noble, Tom
22 Conley representing Joseph VanDevender, and Dale Vettel.
23

24 **Interpretation 2006-07** 25 **(Adopted August 29, 2006)** 26

27 This Interpretation Recommendation is made to the Governing Board by the Compliance Review
28 and Interpretations Committee this 24th day of August, 2006 in accordance with Article IX, Rule
29 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.
30

31 The party requesting the interpretation is the Software Finance & Tax Executives Council
32 (SoFTEC) represented by Mark Nebergall of 1150 17th Street NW # 601, Washington DC 20036.
33 The request was made on the prescribed form on April 11, 2006 and was made pursuant to the
34 provisions for consideration contained in Rule 902 at subsection (D). SoFTEC provided
35 supplemental information in support of the interpretation and to provide clarification of the scope
36 of the interpretation request.
37

38 Issue

39

40 SoFTEC raises three issues associated with Section 312A, Multiple Points of Use, effective on
41 and after January 1, 2008, of the Streamlined Sales and Use Tax Agreement (SSUTA). Each of
42 the issues involves the interpretation of the phrase “concurrently available for use in more than
43 one jurisdiction” and its application to three specific fact patterns involving the sale of software
44 and service. We list the fact patterns first and then the issues associated with each fact pattern
45 exactly as presented in the interpretation request.

1
2 Fact Pattern (1): Software Company sells software that can be loaded onto Customer’s
3 server and can be accessed and used concurrently by Customer’s employees located in
4 several states. The only copy of the software received by the Customer is the one loaded
5 onto the Customer’s server. No subsequent copies of the software are made and sent to
6 employees in other states.
7

8 Fact Pattern (2): Software is loaded onto Software Company’s server and Software
9 Company sells access to the software to Customer. Customer’s employees gain concurrent
10 access to the software from multiple locations. No copy of the software is ever delivered to
11 the Customer.
12

13 Fact Pattern (3): A copy of a computer program is licensed by Software Company to
14 Customer along with the right to make multiple copies of the software which will be
15 delivered to Customer’s users/employees in multiple jurisdictions.
16

17 Issue (1): “Is software loaded onto a server located in a single state that can be accessed by
18 users in several states “concurrently available for use in more than one jurisdiction” within
19 the meaning of Section 312A of the Agreement?”

20 Issue (2): “Is delivery of a copy of the computer program to the customer necessary to
21 invoke the “concurrently available for use in more than one jurisdiction” language of Section
22 312A?”

23 Issue (3): “Is a license of a copy of a computer program that allows the licensee/customer to
24 make copies of the software that will be used in more than one jurisdiction by the customer
25 “concurrently available for use in more than one jurisdiction” within the meaning of Section
26 312A?”

27 Public Comment

28 Public comment was received from both industry and state agencies.

29 Recommendation

30 By unanimous vote the Compliance Review and Interpretations Committee submits to the
31 Governing Board the following interpretation recommendation regarding the above three issues.
32 It is important to note that the committee’s recommendation departs from SoFTEC’s proposed
33 interpretation as it relates to issues one and three by incorporating clarifications provided by
34 SoFTEC in supplemental memorandums. This interpretation recommendation does not take a
35 position on whether the transactions described in the fact patterns are sales of computer software
36 or whether they are sales of services since this distinction is not important to the question of
37 whether the purchases are considered to be concurrently available for use in multiple
38 jurisdictions.

1 It is also important to note that regardless of the fact situation, a seller is not relieved of its
2 obligation to collect and remit sales or use tax on otherwise taxable transactions, unless the
3 purchaser delivers to the seller an exemption form claiming direct pay or multiple points of use.

4 ~~E.~~ The purchase of software loaded onto a server located in a single state that will be
5 available for access by employees in multiple jurisdictions is concurrently
6 available for use in more than one jurisdiction within the meaning of Section 312A
7 of the Agreement if the purchaser knows at the time of its purchase that the
8 software will be concurrently available for use in multiple jurisdictions.

9 F. Delivery of a copy of a computer program is not necessary to invoke the
10 “concurrently available for use in more than one jurisdiction” language of Section
11 312A.

12 G. The purchase of a license of a copy of a computer program that allows the
13 licensee/customer to make copies of the software that will be used in more than
14 one jurisdiction by the customer is concurrently available for use in more than one
15 jurisdiction within the meaning of Section 312A of the Agreement if the
16 purchaser knows at the time of its purchase that the software will be concurrently
17 available for use in multiple jurisdictions.

18 Rationale

19 1. The critical component of Section 312A is the direction provided to both the seller and
20 purchaser. The term “concurrently available for use” has clear meaning: “concurrently”
21 (occurring at the same time); “available for use” (that **can** be used). Applying the clear
22 meaning of the term “concurrently available for use” to the specific fact pattern
23 described, the purchased item is considered to be concurrently available for use in
24 multiple jurisdictions within the meaning of Section 312A.

25 2. The delivery of a copy of a computer program is not specifically enumerated in Section
26 312A as a trigger for invoking the “concurrently available for use” language.

27 3. See item 1. The same rationale applies here.

28 Committee members

29 Larry Wilkie, Committee Chair, Dale Vettel, Vice Chair, Tony Mastin, Dan Noble, Andy Sabol,
30 Joe VanDevender, and Myles Vosberg.

31 *Compiler’s note: On December 14, 2006 Section 312 was repealed.*
32

33 **Interpretation 2006-08** 34 **(Adopted December 14, 2006)** 35

1 This Interpretation Recommendation is made to the Governing Board by the Compliance Review
2 and Interpretations Committee this 17th day of August, 2006 in accordance with Article IX, Rule
3 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.
4

5 The party requesting the interpretation is Jane Page of the South Dakota Department of Revenue.
6 The request was made on the prescribed form on June 7, 2006 and was made pursuant to the
7 provisions for consideration contained in Rule 902 at subsection (D).
8

9 Issue

10
11 The issue presented is an interpretation of Agreement section 402 pertaining to amnesty. The
12 question presented was whether a registrant must remain registered with each state for a period
13 of thirty-six months from the date that the state becomes a member.
14

15 The situation described involved a seller that registers through the streamlined sales tax central
16 registration system with all member states on October 1, 2005. A new state becomes a member
17 October 1, 2008. The seller cancels registration with all states effective December 1, 2008.
18

19 The seller in the situation described above was registered for a total of thirty-eight months, but
20 only two months in the new state. Does the seller retain amnesty with the new member state?
21

22 Public Comment

23 No written public comments were received.

24 Recommendation

25 The Compliance Review and Interpretations Committee submits to the Governing Board a
26 recommendation that a seller who deregisters to collect tax in a member state within thirty-six
27 months of that state becoming a member is no longer eligible for amnesty in that new member
28 state under Section 402 of the agreement. However, the seller retains amnesty with all member
29 states in which they were registered for at least thirty-six months, provided they meet all of the
30 other requirements of Section 402 of the agreement.

31 Rationale

32 Section 402A(1) of the agreement provides amnesty for uncollected or unpaid sales or use tax to
33 a seller that registered to pay or to collect and remit applicable sales or use tax in accordance
34 with the terms of the agreement. In addition, Section 402D states that the amnesty is fully
35 effective as long as the seller continues registration and continues payment or collection and
36 remittance of applicable sales or use taxes for a period of at least thirty-six months. Each
37 member state shall toll its statute of limitations applicable to asserting a tax liability during this
38 thirty-six month period.

39 A seller that deregisters within thirty-six months of the date that a state becomes a member does
40 not meet the requirements of section 402D and, therefore, forfeits the amnesty provided under

1 the agreement for that member state. Assuming that all other requirements of Section 402 are
2 met, the seller retains amnesty in the initial member states since they met the thirty-six month
3 registration requirement in those states.

4 Committee members

5 Larry Wilkie, Committee Chair, Dale Vettel, Vice Chair, Tony Mastin, Dan Noble, Andy Sabol,
6 Joe VanDevender, and Myles Vosberg.

7
8 **Interpretation 2006-09**
9 **(Adopted December 14, 2006)**

10
11 This Interpretation Recommendation is made to the Governing Board by the Compliance Review
12 and Interpretations Committee this 14th day of September, 2006 in accordance with Article IX,
13 Rule 902 of Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.
14

15 The party requesting the interpretation is Suzanne Beaudelaire of Ernst & Young, LLP. The
16 request was made on the prescribed form dated August 16, 2006, and was made pursuant to the
17 provisions for expedited consideration contained in Rule 902 at subsection H.
18

19 Issue

20
21 The issue presented is an interpretation of Agreement section 402 pertaining to amnesty. The
22 question presented was whether companies (predecessor companies) would be eligible for
23 amnesty under Agreement section 402 if another company (successor company) acquired the
24 assets and liabilities of the predecessor companies and then registered to collect sales/use tax
25 through the SST central registration system. According to facts presented in the request, the
26 predecessor companies no longer exist, but would qualify for amnesty under Agreement section
27 402 if they still existed and they registered through the central registration system.
28

29 Public Comment

30
31 No written public comments were received. Ms. Beaudelaire's discussion and response to the
32 committee's questions during the September 14, 2006 meeting were the only oral comments
33 presented to the committee. Other issues regarding liability for sales/use tax related to
34 predecessor companies were raised during the discussion, but the following recommendation is
35 limited to the specific question addressed in Ms. Beaudelaire's request.
36

37 Recommendation

38
39 By unanimous consent the Compliance Review and Interpretations Committee submits to the
40 Governing Board a recommendation that predecessor companies that do not register through the
41 central registration system are not eligible for amnesty under Agreement section 402.
42

1 Rationale

2
3 Section 402A(1) of the agreement provides amnesty for uncollected or unpaid sales or use tax to
4 a seller that registers to pay or to collect and remit applicable sales or use tax in accordance with
5 the terms of the agreement. The agreement language is clear that amnesty is not available to
6 companies that do not register under the agreement.

7
8 Committee Members

9
10 Larry Wilkie, Committee Chair; Myles Vosberg, Andy Sabol, Tony Mastin, Dan Noble, Tom
11 Conley representing Joseph VanDevender, and Dale Vettel.

12
13 **Interpretation 2006-10**
14 **(Withdrawn December 14, 2006)**

15
16 **Interpretation 2006-11**
17 **(Adopted December 14, 2006)**

18
19 This Interpretation Recommendation is made to the Governing Board by the Compliance Review
20 and Interpretations Committee this 26th day of October 2006 in accordance with Article IX, Rule
21 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

22
23 The party requesting the interpretation is Mr. John Nugent of the Rhode Island Division of
24 Taxation. The request was made on the prescribed form dated October 6, 2006, and was made
25 pursuant to the provisions for expedited consideration contained in Rule 902 H.

26
27 Issue

28
29 The issue presented is an interpretation of Interpretation 2006-04 adopted on April 18, 2006 by
30 the Governing Board defining the term “food sold with eating utensils provided by the seller” for
31 purposes of the prepared food definition in the Agreement. The specific issue involves the
32 following language which is referred to as a “bulk serving” in the remainder of this document:

33
34 “For sellers with a sales percentage greater than 75% and who sell items that contain four (4)
35 or more servings packaged as one item sold for a single price, an item does not become
36 prepared food due to the seller having utensils available.”

37
38 The questions presented was whether the packaging by a seller of four or more bakery products
39 individually selected by a purchaser and sold for a single price meets the definition of “bulk
40 serving” as defined above.

41
42 Public Comment

43
44 Written public comments were received and are incorporated herein.

1 Recommendation

2
3 By unanimous consent the Compliance Review and Interpretations Committee submits to the
4 Governing Board the recommendation that packaging by a seller of four or more bakery products
5 individually selected by the purchaser and sold for a single price constitutes a bulk serving.
6

7 Rationale

8
9 Section VI of Interpretation 2006-04 provides, in part, the following:
10 “For sellers with a sales percentage greater than 75% and who sell items that contain four (4) or
11 more servings packaged as one item sold for a single price, an item does not become prepared
12 food due to the seller having utensils available...”
13

14 The “bulk servings” of Interpretation 2006-04 does not provide by whom the item must be
15 packaged, or that the item must be pre-packaged. Thus, for bakery products, all that is required is
16 that the item ultimately sold to the purchaser be a package of bakery products consisting of four
17 or more servings sold for a single price. The fact that the servings are individually selected by the
18 purchaser and packaged by the seller or the purchaser does not affect the transaction. The item
19 does not constitute prepared food even when sold by a seller whose sales percentage is greater
20 than 75% and who makes eating utensils available.
21

22 The Committee wishes to note that if the seller charges for each individual serving in the
23 package, the sale would not be of “one item sold for a single price.” It should be noted that the
24 same provision in Section VI of Interpretation 2006-04, which we are referring to as “bulk
25 serving,” does treat “bulk servings” as prepared food when the seller’s practice for the item (as
26 represented by the seller) is to physically hand the utensil to the purchaser, except that plates,
27 bowls, glasses, or cups necessary for the purchaser to receive food need only be made available.
28

29 Committee Members

30
31 Larry Wilkie, Committee Chair, Tom Conley, representing Joe VanDevender, Tony Mastin, Dan
32 Noble, Andy Sabol, Dale Vettel, and Myles Vosberg.
33

34 **Interpretation 2006-12**
35 **(Adopted December 14, 2006)**
36

37 This Interpretation Recommendation is made to the Governing Board by the Compliance Review
38 and Interpretations Committee this 26th day of October, 2006 in accordance with Article IX, Rule
39 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.
40

41 The party requesting the interpretation is McCarter & English, LLP. The request was made on
42 the prescribed form on October 6, 2006 and was made pursuant to the provisions for
43 consideration contained in Rule 902, subsection (H).
44

45 Issue

1
2 The issue presented is an interpretation of the definition of “direct mail” found in Appendix C,
3 Part I of the Agreement. The specific question is whether billing invoices, return envelopes and
4 any additional marketing materials are included in the definition of “direct mail.” The definition
5 in question reads as follows:

6
7 “Direct mail” means printed material delivered or distributed by United States mail or other
8 delivery service to a mass audience or to addresses on a mailing list provided by the
9 purchaser or at the direction of the purchaser when the cost of the items are not billed directly
10 to the recipients. “Direct Mail” includes tangible personal property supplied directly or
11 indirectly by the purchaser to the direct mail seller for inclusion in the package containing the
12 printed material. “Direct mail” does not include multiple items of printed material delivered
13 to a single address.

14 The Interpretation Request provided the following background facts. A company in the business
15 of printing and mailing billing statements for clients in a wide variety of industries receives
16 customer data electronically and prints statements, letters, invoices and additional pages on
17 preprinted paper or forms to meet the client’s specifications. The printed material is sorted,
18 folded and inserted into envelopes, bundled based on zip codes and given to the United States
19 Postal Service for delivery. The mailed packet typically also will include a return envelope,
20 coupons and other marketing materials.

21
22 Public Comment

23 Written public comments were received from a state agency.

24 Recommendation

25 By majority vote, the Compliance Review and Interpretations Committee submits to the
26 Governing Board a recommendation that billing invoices, return envelopes and any additional
27 marketing materials included with the mailing are included in the definition of direct mail
28 provided the sale meets the criteria set out in the definition of direct mail. Joseph VanDevender,
29 Indiana Department of Revenue, abstained from the vote on this recommendation due to a
30 potential conflict of interest.

31 The criteria requires that the sale is of printed material delivered or distributed to a mass
32 audience or to addresses on a mailing list provided by the purchaser or at the direction of the
33 purchaser when the cost of the items are not billed directly to the recipients.

34 It is important to note that this definition applies only for the purposes of determining proper
35 sourcing, and for determining whether delivery charges are included in the taxable sales price of
36 the direct mail.

37 Rationale

1 A plain reading of the definition of direct mail supports the recommendation that billing
2 invoices, return envelopes and additional marketing materials included with the printed material
3 meets the definition of direct mail. However, the discussion surrounding this interpretation
4 request indicates that there is a misunderstanding about the intended use of the definition of
5 “direct mail.”

6 The definition is placed in the Administrative Definitions section of the Agreement purposely,
7 because it is not intended to be a product definition. The definition was created only to define the
8 term as used in the Direct Mail Sourcing provisions found in Section 313, and for the exclusion
9 from “delivery charges” allowed for charges for delivery of “direct mail.”

10 States may tax or exempt any service or sale of printed material included in the definition of
11 “direct mail” in any way they choose. For example, a state may impose sales and use tax on
12 charges to print billing invoices, and exempt charges to print advertising material, both of which
13 are included in the definition of direct mail. However, if the sale is taxable and includes mailing
14 or delivering the printed material to a mass audience or to addresses on a mailing list as stated in
15 the definition, it must be sourced under the provisions of Section 313, and the exclusion for
16 delivery charges allowed applies if a member state has adopted that exclusion.

17 Committee members

18 Larry Wilkie, Committee Chair, Dale Vettel, Vice Chair, Tony Mastin, Dan Noble, Andy Sabol,
19 Joe VanDevender, and Myles Vosberg.

20

21 **Interpretation 2007-01**
22 **(Adopted June 23, 2007)**
23

24 This Interpretative Opinion Recommendation is made to the Governing Board by the
25 Compliance Review and Interpretations Committee on March 29, 2007, in accordance with
26 Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax
27 Governing Board, Inc.
28

29 The party requesting the interpretation is Mr. Phil Schlesinger of Avalara. The request was made
30 on the prescribed form on February 12, 2007, and was made pursuant to the provisions for
31 consideration contained in Rule 902, subsection (H).
32

33 Issue
34

35 The issue presented is an interpretation of the definition of “drug” in Appendix C, Part II of the
36 Agreement. The specific question is whether the word “drug” is limited to an item or liquid that
37 is consumed internally by the person or used externally on a person, or does it possibly extend
38 beyond this in the context of item B of the definition to include medical supplies such as
39 “Infectious Disease Testing Kits” that are intended to be used in the diagnosis of a disease.
40

1 Public Comment

2 No written public comments were received.

3 Recommendation

4 The Compliance Review and Interpretations Committee submits to the Governing Board a
5 recommendation that infectious disease testing kits do not meet the definition of “drug.”
6 However, reagents, which are a component of the infectious disease test kits, do meet the
7 definition of “drug.” The infectious disease test kits are made up of two or more distinct and
8 identifiable products and are sold for one non-itemized price, which may or may not be a
9 bundled transaction, depending on the tax laws in the state to which the sale is sourced. Since
10 this will vary from state to state, the Committee recommends that each state make a
11 determination of whether the sale of infectious disease test kits are taxable transactions according
12 to the laws of their state.

13 Rationale

14 The definition of “drug” found in Appendix C, Part II, of the Agreement does not require the
15 item to be internally consumed or externally applied to the patient in order for the definition to
16 apply. However, in order to qualify as a drug it must meet at least one of the provisions provided
17 in A, B, or C of the definition, and it must also meet the basic definition in the first paragraph:
18 “Drug” means a compound, substance or preparation, and any component of a compound,
19 substance or preparation, other than “food and food ingredients,” “dietary supplements” or
20 “alcoholic beverages.”

21 To take the position that an item qualifies as a drug merely because the item is intended to be
22 used in the diagnosis, cure, mitigation, treatment, or prevention of disease, as described in B of
23 the definition, would expand the definition of drug to include much of what is defined as durable
24 medical equipment. For example, dialysis equipment is used in the treatment of disease, but is
25 not a drug, because it is not a “compound, substance or preparation.”

26 The infectious disease test kits in question contain a chemical (reagents) and other items such as
27 slides, plastic trays and droppers. The chemicals are also sold separately from the kits.
28 Committee members agree that the chemicals meet the definition of “drug,” but the other items
29 in the kit do not. Since the infectious disease test kits contain two or more distinct and
30 identifiable products and are sold for one non-itemized price, the sale of the test kits may be a
31 bundled transaction. Business representatives pointed out that the test kits in question are just
32 one of many different test kits sold by various manufacturers for use by medical professionals.
33 Each type of kit sold will contain different items with different costs for the components, so the
34 results may differ for each type of kit. To make a determination about a specific test kit, one
35 must know the contents of the kit and the seller’s purchase price or sales price of each item
36 included in the kit. Whether sales and use tax applies to the sale of a bundled transaction, or to
37 the sale of a transaction that meets the de minimis test, is based on the laws in the state to which
38 the sale is sourced.

1 Committee members

2 Larry Wilkie, Committee Chair, Dale Vettel, Vice Chair, Tony Mastin, Andy Sabol, Joe
3 VanDevender, Myles Vosberg and Delegate John Doyle

4