



Iowa Department of Revenue

Director: Mark R. Schuling
Hoover State Office Building
Des Moines, Iowa 50319
www.state.ia.us/tax

September 10, 2010

Scott C. Peterson
Executive Director
Streamlined Sales Tax Governing Board, Inc.
4205 Hillsboro Pike, Suite 305
Nashville, TN 37215

Dear Scott,

This letter is in response to the Preliminary Report on 2010 Annual Recertification sent to the Compliance Review and Interpretations Committee on August 31, 2010.

In that letter three "potential compliance issues" were found for the State of Iowa as follows:

1. There is no provision for relief of liability if a state rate change takes effect in less than 30 days.
2. It appears that the base for the local tax is slightly different from the state base. Sales of tangible personal property by the Department of Transportation are excluded from the local base, but a similar exclusion or exemption was not found for the state base.
3. Rule 701-18.20(7)(d)(3) includes one-way paging as a non-taxable service. The definition of paging includes one-way and two-way paging. The Governing Board in their August, 2010 meeting adopted the position that all paging must be taxed or exempted.

I will address each of these issues.

1. "There is no provision for relief of liability if a state rate change takes effect in less than 30 days."

2010 Iowa Acts, Senate File 2375, section 11, amended Iowa Code § 423.46 as follows:

Sec. 11. Section 423.46, Code 2009, is amended to read as follows:

423.46 Rate and base changes == liability for failure to collect.

1. The department shall make a reasonable effort to provide sellers with as much advance notice as practicable of a rate change and to notify sellers of legislative changes in the tax base and amendments to sales and use tax rules. ~~Failure of a seller to receive notice or failure of this state to provide notice or limit the effective date of a rate change shall not relieve the seller of its~~

obligation to collect sales or use taxes for this state Except as provided in subsection 2, a seller shall not be relieved of the obligation to collect sales or use taxes for this state by either a failure to receive such notice or by a failure of the state to provide notice.

2. A seller will be relieved of liability for failing to collect sales or use taxes for this state at the new rate under all of the following conditions and to the following extent:

a. The department fails to provide for at least thirty days between the enactment of the statute providing for a rate change and the effective date of such rate change.

b. The seller continues to collect sales or use taxes at the rate in effect immediately prior to the rate change.

c. The erroneous collection described in paragraph "b" does not continue for more than thirty days after the effective date of the rate change.

3. The relief from the obligation to collect sales or use taxes described in subsection 2 shall not apply if a seller fraudulently fails to collect tax at the new rate or if a seller has solicited purchasers on the basis of the rate in effect immediately prior to the rate change.

Senate File 2375 passed both the House and the Senate unanimously and was signed into law by Governor Culver on April 21, 2010, effective upon enactment. It is my understanding that this language was reviewed and okayed by Pam Cook prior to the Bill being filed and passed.

I also provided notice of this change to the Governing Board in a letter dated April 26, 2010, excerpt below:

“In 2010, the Department filed legislation to address the issue carried over from the 2008 as well as those identified on the 2009 Certificate of Compliance. Senate File 2375, Iowa’s 2010 Streamlined Sales Tax Bill, was signed into law on Wednesday April 21, 2010 with an immediate effective date. I have included a copy of the Bill for your reference.

The 2009 Certificate of Compliance issues have now been addressed, as follows:

1. Section 11 of Senate File 2375 amends Iowa Code section 423.46 to include language detailing the 30-day notice requirement for rate and base changes.”

2. "It appears that the base for the local tax is slightly different from the state base. Sales of tangible personal property by the Department of Transportation are excluded from the local base, but a similar exclusion or exemption was not found for the state base."

There is no difference in the base for the state sales tax and the local option sales tax. Pam Cook's September 1, 2010 e-mail indicated she found state sales tax exemptions for all the listed local option sales tax exemptions except for the local option sales tax exemption for equipment sold by the Department of Transportation.

Iowa Code § 423.3(78) provides an exemption from the state sales tax for

The sales price from sales or rental of tangible personal property, or services rendered by any entity where the profits from the sales or rental of the tangible personal property, or services rendered are used by or donated to a nonprofit entity which is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code, a **government entity**, or a non-profit private educational institution, and where the entire proceeds of the sales, rental, or services are expended for any of the following purposes:

- a. Educational.
- b. Religious.
- c. Charitable. A charitable act is an act done out of goodwill, benevolence, and a desire to add to or to improve the good of humankind in general or any class or portion of humankind, with no pecuniary profit inuring to the person performing the service or giving the gift (emphasis added).

Department rule 701 IAC 17.1(6) implements this exemption and exempts proceeds from sales that are "...used by or donated to a government entity." Sales of tangible personal property by the Department of Transportation are excluded from the state sales tax base.

3. "Rule 701-18.20(7)(d)(3) includes one-way paging as a non-taxable service. The definition of paging includes one-way and two-way paging. The Governing Board in their August, 2010 meeting adopted the position that all paging must be taxed or exempted."

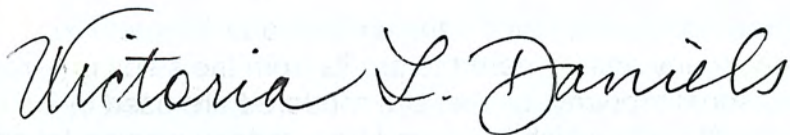
We were in compliance at the time our Taxability Matrix and Certification of Compliance were filed. The August determination by the Governing Board on this issue has not allowed us the opportunity to discuss this issue with the Iowa

Legislature. This will require Legislative action. I will follow up with you on this particular issue at the conclusion of the 2011 Legislative Session, some time in early May 2011.

In summary, we believe Iowa was in substantial compliance with the SSUTA at the time the Taxability Matrix and Certification of Compliance were filed with the Governing Board.

If you have any questions or comments regarding this response, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Victoria L. Daniels". The signature is written in a cursive, flowing style.

Victoria L. Daniels
Manager, Tax Policy & Audit Services

cc: Director Mark Schuling
Larry Paxton