



STEVEN L. BESHEAR
GOVERNOR

DEPARTMENT OF REVENUE
FINANCE AND ADMINISTRATION CABINET
501 HIGH STREET
FRANKFORT, KENTUCKY 40620
(502) 564-5523 (502) 564-9565 FAX
www.kentucky.gov

JONATHAN MILLER
SECRETARY

TOM B. MILLER
COMMISSIONER

RICHARD DOBSON
EXECUTIVE DIRECTOR

October 4, 2010

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

Dear Mr. Peterson:

Kentucky offers the following responses to the potential compliance issues identified in the Compliance Review and Interpretations Committee written report dated August 31, 2010. The items are discussed under separate headings below.

1) Seller Liability Relief under Section 304- There is no provision for relief from liability if a state has a rate change take effect in less than 30 days.

Kentucky's legislators and Legislative Research drafters have been notified that the effective date of any sales tax rate change must be at least 30 days after enactment with proper notification to the retail community to maintain compliance with the Streamlines Sales and Use Tax Agreement (SSUTA). Kentucky has not had a rate change since 1990, and has traditionally enacted rate changes to begin on a calendar quarter. Implementation issues and longstanding administrative practice prevent enactment of any rate changes in less than 30 days. The Kentucky Department of Revenue has general authority under KRS 139.785 to take administrative actions necessary to remain in compliance with the SSUTA which would include such liability relief in the unlikely event that such a rate increase were to occur.

2) Seller and CSP liability relief for taxability matrix errors under Section 328- The statute cited for the relief from liability provided to sellers and CSPs for errors in the taxability matrix (Section 328 of the SSUTA) is the one providing relief for reliance on previously certified software. There is no provision that provides the Section 328 relief.



The statutory cite provided in the 2010 certificate of compliance should have referenced KRS 139.785 and 139.789(8) rather than KRS 139.795. It is correct that 139.795 relates only to purchaser liability relief. Kentucky has relied upon the earlier referenced cites as its authority for granting seller liability relief since July 2004. The incorrect statutes were cited in 2009 and again this year. Changes will be made shortly to correct the statutory citation. In addition, we intend to recommend more explicit seller liability relief language during the 2011 Kentucky General Assembly when other conformity updates are under consideration.

3) School Tax rate increase excluded from gross receipts subject to Kentucky sales and use tax- The school tax and many of the other charges are imposed on the provider of the service and the definition of sales price includes them. Sales price only excludes such charges if they are imposed directly on the consumer. This issue is carried over from the 2009 review and has been referred to the SLAC where it is under review.

Under KRS 139.470(9) Kentucky exempts from sales and use tax any rate increase for school taxes and any other charges or surcharges added to the total amount of a residential telecommunications service (<http://www.lrc.ky.gov/KRS/139-00/470.PDF>). The language in question provides an exemption for certain charges associated with a residential telecommunications service. Below is further explanation of the presence of this exemption in our statutes.

- This provision has been in the Kentucky tax code since 1979 and was maintained with the adoption of the “sales price” definition and other uniformity provisions within our initial SST conforming legislation in 2003. Although the sales price definition in the SSUTA has been subsequently amended, we do not believe these amendments have added any prohibition against the exemption in place regarding residential telecom services.
- In 2007, Kentucky amended the exemption statute in KRS 139.470(9) to include the SST definition of residential telecommunications service. This exemption for certain charges related to residential telecommunications service meets the guidelines for the enactment of exemptions provided in Sections 316 and 327. There are also no definitions used in this provision that are contrary to established SST terms.
- The definition of sales price does not include a product definition for the terms within our statute (“any rate increase for school taxes and any other charges or surcharges added to the total for residential telecom”). To the extent any of these charges or surcharges would normally be included in subparagraph B or any other part of the sales price definition, this exemption clarifies that the charges when related to a residential telecommunications service are exempt from Kentucky sales and use tax.

The Department appreciates the opportunity to provide CRIC with additional information on these issues. If you should have any further questions regarding these topics, then please do not hesitate to contact my office for more detail.

Sincerely,



Richard Dobson

Executive Director

Office of Sales and Excise Taxes