October 7, 2010

Scott C. Peterson,
Executive Director
Streamlined Sales Tax Governing Board
4205 Hillsboro Pike, #305
Nashville, TN 37215-3339

Re: Nevada’s Comment Regarding the Compliance Review and Interpretations Committee 8/31/10 Preliminary Report on Nevada’s Annual Recertification.

Dear Mr. Peterson:

In accordance with the official notice of public comment dated August 31, 2010; please find attached our response to the Compliance Interpretations Committee Review of Nevada’s July 30, 2010 recertification documents.

Nevada respectfully requests an opportunity to discuss, at the pleasure of the Board; some of the statements made by the Review Committee in its report that we believe may be a misunderstanding of our laws and regulations via the Streamlined Agreement.

I am available to respond to any questions the Board or Review Committee has concerning this matter. Please do not hesitate in contacting me at 775-684-2060. Thank you in advance for your attention and consideration in this very important matter.

Sincerely,

Dino DiCianno, Executive Director
Nevada Department of Taxation

Enclosure
1. The definition of sales price excludes certain federal excise taxes whether imposed on the seller or purchaser. This issue was referred to SLAC as a result of the 2009 review process and is still under review.

**NRS 360B.480 “Sales price” construed.**

1. "Sales price" means the total amount of consideration, including cash, credit, property and services, for which personal property is sold, leased or rented, valued in money, whether received in money or otherwise, and without any deduction for:
   (a) The seller's cost of the property sold;
   (b) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

**NRS 360B.290 Contents of document given to purchaser indicating sales price of tangible personal property.** Any invoice, billing or other document given to a purchaser that indicates the sales price for which tangible personal property is sold must state separately any amount received by the seller for. Any taxes legally imposed directly on the consumer. **NRS 360B.480 “Sales price” construed.**

2. The term does not include: (f) any taxes legally imposed directly on the consumer which are stated separately pursuant to **NRS 360B.290**.

1. Based on the two statutes above federal excise taxes would be included in the sales price for the seller, and excluded (if separately stated) for the consumer.
2. This seems to be merely a matter of semantics, because our statute does allow for us to knowingly tax on a federal tax.
3. We do not believe that this is an issue.

2. The definition of sales price includes certain delivery charges and installation in "services necessary to complete the sale.” The SSUTA definition specifically excludes them from this category.

- The SSUTA states for sales price - without any deduction for the following
  - The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller
- **NRS 360B.480** states the exact same thing.

The SSUTA also states regarding services necessary to completing the sale - without any deduction for the following

- Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

- **D. Delivery charges:**

- **E. Installation charges;** and

- **F. Credit for any trade-in, as determined by state law.**

- States may exclude from “sales price” the amounts received for charges included in paragraphs (C) through (F) above, if they are separately stated on the invoice, billing, or similar document given to the purchaser.
We do not see the conflict here. We say that delivery charges and installation charges must be separately stated. NRS 360b.480 (1) (c) - Any charges by the seller for any services necessary to complete the sale, including any delivery charges which are not stated separately pursuant to NRS 360B.290 and excluding any installation charges which are stated separately pursuant to NRS 360B.290;

We believe that the Agreement is saying the same thing. It seems to us we are arriving at the same point and this is just a matter of wording.

3. Their definition of “receipt” is taking possession or making first use of tangible personal property. In the SSUTA it is taking possession of tangible personal property, making first use of services, or taking possession of or making first use of digital goods.

We do not tax digital goods and most services because we do not consider them tangible personal property. However, we do define receipt similarly as the Agreement.

We are at a quandary as to what the issue is here.

The bad debt statute says that collections of amounts previously claimed as a bad debt are to be applied first to the taxable price of property or services and to sales tax, and secondly to other charges such as interest. The SSUTA states that the amount should be applied “proportionately” to the sales price and tax. Section 320(G)

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

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

NRS 372.368 Deduction of certain bad debts from taxable sales; violations - 8. For the purposes of reporting a payment received on a bad debt for which a deduction has been claimed, the payment must first be applied to the sales price of the property sold and the tax due thereon, and then to any interest, service charge or other charge that was charged as part of the sale.

We do not see the conflict here. Just because we do not use the word “proportionately”, we believe we are saying and doing basically the same thing as the Agreement. This appears to be a matter of semantics.
The provision for drop shipments requires that the resale certificate be taken in good faith. The SSUTA does not include a good faith requirement.

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. SSUTA Section 317 (A) (8)

NRS 372.155 Presumption of taxability; purchase for resale; sale by drop shipment.
2. If a sale of tangible personal property is transacted by drop shipment, the third-party vendor is relieved of the burden of proving that the sale is not a sale at retail if:
   (a) The third-party vendor:
      (1) Takes in good faith from his or her customer a certificate to the effect that the property is purchased for resale; or
      (2) Obtains any other evidence acceptable to the Department that the property is purchased for resale; and
   (b) His or her customer:
      (1) Is engaged in the business of selling tangible personal property; and
      (2) Is selling the property in the regular course of business.

- We agree that the Agreement does not specify that we can apply the doctrine of good faith to drop shipment exemptions. However, it does indicate that the documentation provided be “acceptable information”. It does seem that the idea of “acceptable information” is more akin to Part 2 (a) (2) in NRS 372.155. We have put the additional qualifier of “good faith” in Part 2 (a) (1), which is not contained in the Agreement. To us this is a matter of interpretation and has not violated the spirit of the Agreement.

The statute exempts certain “medical devices,” which according to their taxability matrix includes mobility enhancing equipment and durable medical equipment. “Medical devices” is not a term in the SSUTA and the statute and administrative code do not define it.

- This is correct. The Agreement does not have this term, and it is not defined in Nevada’s Statutes and/or Rules/Regulations. However, it is defined elsewhere, very commonly –

From Wikipedia:
- A **medical device** is a product which is used for medical purposes in patients, in diagnosis, therapy or surgery. If applied to the body, the effect of the medical device is primarily physical, in contrast to pharmaceutical drugs, which exert a biochemical effect. Specific regional definitions of medical device vary slightly as detailed below. The **medical devices** are included in the category: **Medical technology**.

- **Definition in USA by the Food and Drug Administration**

  A **medical device**, according to the U.S. Food and Drug Administration (FDA): A device is an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or intended to affect the structure or any function of the body of man or other animals, and which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes. Section 201(h) (2), (3) of the Act (21 U.S.C. 321). Reference: [http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm127086.htm](http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm127086.htm)

  **medical device**: 1. broadly, any physical item used in medical treatment, from a cardiac pacemaker to a wheelchair. (MedicineNet.com)

- However, given that it is commonly defined elsewhere does not mitigate the fact that it is not defined in the Agreement or in statute or regulation, and could lead to wide open interpretation by sellers/taxpayers. **Therefore, Nevada will correct this issue in its Streamlined Bill Draft Request to the 2011 Nevada Legislative Session starting in February 2011.**

The state has been declared out of compliance by the Governing Board because it has not fully implemented ACH credit payments. The state is in the process of completing the full implementation of ACH credit.

This is true as you know. We are in the final stage of testing and implementation with Avalara (a CSP). We have made the Certification Committee and Mr. Scott Peterson aware of this ongoing development. We fully expect that this issue will be resolved in short order.