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October 20, 2010

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

Dear Mr. Peterson:

Kentucky offers these follow-up responses to the Compliance Review and Interpretations Committee meeting on state recertifications held on Thursday, October 14, 2010. CRIC requested additional information on Seller Liability Relief if a state has a rate change effective in less than 30 days (Section 304). We also have additional information on two BAC questions concerning our compliance with exemption administration guidelines in Section 317. All additional information is in bold and underscored 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. KRS 139.785(2) specifically authorizes the Department "to take other actions reasonably required to implement the provisions set forth in KRS 139.780 to 139.795. Other actions authorized by this section include but are not limited to the adoption of rules and regulations and the joint procurement, with other member states, of goods and services to further the cooperative agreement." The statutory range of 139.780 to 139.795 is collectively known as the Uniform Sales and Use Tax Administration Act. The 139.785 provisions are available at http://www.lrc.ky.gov/KRS/139-00/785.PDF Kentucky has relied

upon this general provision in several cases as attested in its Certificate of Compliance. However, the Department will be submitting language for inclusion in its recommended SST updates for consideration during the 2011 Kentucky General Assembly to make the Section 304 liability relief explicit in statute.

2) Entity-based exemption exclusion from liability relief under Section 317-
The BAC asserts that the provision in KRS 139.270(2)(c)2 is not limited to over-the-counter sales.

The over-the-counter limitation is found in subsection (c)1 of this section of the tax code. Liability relief does not apply to entity-based exemption claims when 1) the product is received by the purchaser at the location of the seller and 2) the state where the seller is located clearly and affirmatively indicates that the claimed exemption is not available in that state. KRS 139.270 is available in its entirety at http://www.lrc.ky.gov/KRS/139-00/270.PDF. The statute mirrors the liability relief limitation for entity-based exemptions in Section 317 B of the SSUTA.

3) Acceptance of non-SSUTA exemption certificates- Section 317- The BAC asserts that the Department has indicated that it will require a seller accepting a non-SSUTA exemption certificate form to be held to a higher standard than that allowed by a seller using the SSUTA's form. Website has multiple exemption forms, some requiring more than that required by the SSUTA.

Kentucky has adopted the SSUTA uniform Exemption Certificate and has posted the form prominently on the Department web site for use by all sellers. The Department provides liability relief to sellers who follow the requirements of Section 317 as specified in paragraph B as follows: "Each member state shall relieve sellers that follow the requirements of this section from the tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and to hold the purchaser liable for the nonpayment of tax." There are also other exemption certificates still in circulation and available for download because many vendors have not updated their exemption certificate files and many purchasers still choose to use the older state forms. It is difficult to respond to the BAC's open-ended reference to public statements made during exemption administration discussions more than a year ago without specific examples of alleged violations. We view the presence of old certificates in circulation as a transitional issue that most if not all member states are dealing with. Currently fifteen member states still have old versions of exemption certificates posted on their web sites. We suggest that CRIC remove this question from the annual recertification discussion and schedule separate conference calls as needed for discussion of any specific issues that states or the business community may have on the administration of non-SSUTA exemption certificates.

Thank you again for your consideration of this information. We will be available on the next teleconference to respond to any further questions CRIC, BAC, or other interested parties may have.

Sincerely,

Richard Dobson

Richard Dobson
Executive Director
Office of Sales and Excise Taxes