

INDIANA RESPONSE TO RECERTIFICATION REPORT

FINDING: The statutes relieving sellers and CSPs from liability for errors in the taxability matrix or rate information do not provide the relief for all sellers, just sellers using a CAS.

RESPONSE: The statute does provide relief of liability for a CSP and a seller using a CAS. The Department has never attempted to hold a seller liable for errors in the taxability matrix or any other publications of the Department. Corrective legislation to provide relief of liability for all sellers could be proposed during the next legislative session if necessary.

FINDING: The statute taxing prepaid calling arrangements uses the terms prepaid telephone calling cards and prepaid telephone authorization numbers. These terms are not defined. The Streamlined Sales and Use Tax Agreement (SSUTA) defines prepaid calling service and prepaid wireless calling service. Also, the taxability matrix indicates that interstate and intrastate prepaid calling service and prepaid wireless calling service are taxable but shows international prepaid services as exempt. The taxing statute mentioned above does not indicate any jurisdictional restrictions.

RESPONSE: The imposition of sales tax on prepaid telephone calling cards has been in place since 1998. The statute imposes the sales tax on tangible personal property (the calling card) and not a telephone service. Because prepaid telephone calling cards are not defined in the SSUTA, the prepaid telephone calling cards are not subject to the SSUTA. If CRIC believes that a prepaid telephone calling card and a prepaid calling service are synonymous, the Agreement should be changed to clarify this position.

FINDING: The statute cited for customer refund procedures only addresses requests for refunds from the department. The statute does not address the provisions relating to cause of action against the seller or the presumption of a reasonable business practice.

RESPONSE: Section 325 of the SSUTA provides the following: A. These customer refund procedures are provided to apply when a state allows a purchaser to seek a return of over-collected sales or use tax from the seller.

B. Nothing in this section shall either require a state to provide, or prevent a state from providing, a procedure by which a purchaser may seek a refund directly from the state arising out of sales or use taxes collected in error by a seller from the purchaser. Nothing in this section shall operate to extend any person's time to seek a refund of sales or use taxes collected or remitted in error.

IC 6-2.5-6-13 reads as follows: A person is entitled to a refund from the department if:

- (1) a retail merchant erroneously or illegally collects state gross retail or use taxes under this article from the person;
- (2) the retail merchant remits the taxes to the department;
- (3) the retail merchant does not refund the taxes to the person; and
- (4) the person properly applies for the refund under the refund provisions contained in IC 6-8.1-9.

Indiana has provided that the seller is required to request the refund from the Department, so Section 325 does not apply concerning cause of action against the seller or the presumption of a reasonable business practice.