



Sales & Use Tax Division
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October 29, 2010

Scott Peterson, Executive Director
Streamlined Sales Tax Governing Board
4205 Hillsboro Pike
Hobbs Building Suite 305
Nashville, TN 37215-3339

Dear Mr. Peterson:

This letter responds to the Preliminary Report on 2010 Annual Recertification dated October 1, 2010 submitted by Pam Cook and you to the Compliance Review and Interpretations Committee of the Streamlined Sales Tax Governing Board. Ohio's response follows each restated issue below.

ISSUE #1

A number of provisions in the SSUTA are in pending rules that the state's website indicates were to be presented on August 31, 2010. These are: 1) relief from liability provisions for rate changes taking effect in less than 30 days (Section 304); 2) sourcing for Internet access and ancillary services (Section 314); 3) relief from liability for purchasers (Section 331); 4) sellers and CSPs relief and 10 day rule (Section 502); and 5) definitions and taxability of computer software maintenance contracts (an information release issued September, 2010 does provide the information) (Section 330 and definitions).

RESPONSE

These proposed rules were filed with the Joint Committee on Agency Rule Review ("JCARR") on September 14, 2010. JCARR has jurisdiction over the rules for 65 days. On the 66th day, the Ohio Department of Taxation ("Department") will file them in final form, which will be November 19, 2010. The new rules would then become effective 10 days later on November 29, 2010.

ISSUE #2

The statute exempts durable medical equipment for home use in one section and the exemption for hospital beds sold to hospitals and other medical facilities is provided in another section. Hospital beds are durable medical equipment and the exemption should be for all durable medical equipment to such facilities.

RESPONSE

Currently, Ohio Rev. Code § 5739.02(B)(18) exempts hospital beds purchased by hospitals, nursing homes, or other medical facilities. As originally enacted in Amended Substitute House Bill 703 effective January 16, 1981, that provision exempted “hospital beds when purchased for use by persons with medical problems for medical purposes.” Am. Sub. H.B. 703 also added Ohio Revised Code § 5739.02(B)(19) which exempted prosthetic devices, braces or other devices for supporting weakened or non-functioning parts of the human body, devices to aid human perambulation and other items of tangible personal property used to supplement impaired functions of the human body. Effective June 26, 2003 House Bill 95 amended Ohio Rev. Code § 5739.02(B)(19) to read as it currently does to exempt:

Sales of prosthetic devices, durable medical equipment for home use, or mobility enhancing equipment, when made pursuant to a prescription and when such devices or equipment are for use by a human being.

H.B. 95 also adopted the Agreement’s definitions for these items.

Subsequently, Am. Sub. H.B. 66 effective June 30, 2005, amended Ohio Rev. Code § 5739.02(B)(18) to exempt hospital beds purchased by hospitals, nursing homes, or other medical facilities. Per the Legislative Service Commission’s analysis of that bill the change was intended to limit the exemption “so that sales of hospital beds . . . are exempt only when purchased by hospitals, nursing homes, or other medical facilities.” On June 2, 2006 the Issue Resolution Committee completed Appendix L, Health Care Item List. That list designates various types of hospital beds as “durable medical equipment.”

At the time the Ohio General Assembly enacted H.B. 95 Ohio was in compliance with the Agreement. Now, however, Ohio finds itself in an extremely difficult position. It must either

exempt all “durable medical equipment” including sales of such equipment to hospitals, or tax all “durable medical equipment.” Neither option is desirable, or likely to be supported by the Ohio General Assembly or Ohio consumers.

The exemption for hospital beds sold to individuals with medical conditions has been law since 1981. Further, the exemption for purchases of hospital beds by hospitals, nursing homes and medical facilities has been in effect since 2005. Expanding the exemption for “durable medical equipment” to include purchases by hospitals, nursing homes and medical facilities would increase Ohio’s budget dilemma and is not likely to win support in the General Assembly. Likewise, eliminating an exemption for individuals that has been in effect since 1981 is likely to draw much opposition. Thus, it is likely that Ohio will remain out of compliance on this issue.

ISSUE #3

The taxability matrix indicates that international, interstate and intrastate 900 services are taxable. The statute exempts 900 services.

RESPONSE

900 services are taxable under Ohio Rev. Code § 5739.01(B)(3)(i) which imposes sales tax on transactions by which “information services or tangible personal property is provided or ordered by means of a nine hundred telephone call.”

ISSUE #4

The statutes for sourcing and the definition of “receive” and “receipt” do not contain the provisions relating to digital goods. The state taxes electronic information services and electronic publishing services.

RESPONSE

Ohio Rev. Code § 5739.01(B)(3)(e) and (u) impose sales tax on all transactions by which “electronic information services” and “electronic publishing services” are provided. Pursuant to Ohio Rev. Code § 5739.01(X) providing a service “means providing or furnishing anything described in [Ohio Rev. Code 5739.01(B)(3)] for consideration.” Thus, “electronic information

services” and “electronic publishing services” are taxable services that are sourced according to the sourcing provisions for services in Ohio Rev. Code § 5739.033(C).

ISSUE #5

The pending rule that provides for sourcing Internet access and ancillary service strikes all of the language in the current rule. The current rule contains the definitions of “communications channel” and “customer channel termination point” that are needed for sourcing private communications service.

RESPONSE

These definitions were inadvertently deleted from the revised rule, Ohio Admin. Code § 5703-9-26. The Department will issue an Information Release stating that the definitions are still as set forth in the former rule. Further, the Department will revise the new rule to include these definitions.

ISSUE #6

The provision for bad debt (provided in a rule) provided that amounts collected that were previously written off be applied first to sales price and tax thereon. The word “proportionately” is left out.

RESPONSE

The Department has always applied recoveries of bad debt as required by the Agreement. The Department will issue an Information Release confirming this, and work toward amending the rule and adding this requirement to the statute.

ISSUE #7

Section 321 of the certificate of compliance is blank. Statutes covering confidentiality were found in the statutes.

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RESPONSE

As noted in the preliminary report, the confidentiality provisions are in Ohio Rev. Code § 5740.08. The Department will revise the certificate of compliance to include the statutory reference.

Sincerely,

A handwritten signature in black ink, appearing to read "Phyllis J. Shambaugh", with a stylized flourish extending to the right.

Phyllis J. Shambaugh
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