



Dave Heineman
Governor

STATE OF NEBRASKA

DEPARTMENT OF REVENUE
Douglas A. Ewald, Tax Commissioner
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September 21, 2011

Scott Peterson
Executive Director
Streamlined Sales Tax Governing Board
4219 Hillsboro Pike, #234
Nashville, TN 37215

Dear Mr. Peterson:

Nebraska is submitting this letter as a written response to your August 24, 2011 Preliminary Report on the 2011 Recertification of member states. The Report addresses six areas where Nebraska's statutes, regulations, and policies may not be in substantial compliance with the Streamlined Sales and Use Tax Agreement (SSUTA).

The first issue relates to the statutory citations in Sections 301 and 305 for the imposition and administration of county sales and use tax. The citation, Neb. Rev. Stat. §13-324, was inadvertently omitted from the compliance checklist and will be added to these sections.

The second issue relates to requirements in Section 305 and Nebraska's address-based rates and boundaries database. Nebraska's database provides more fields than required by SSUTA; therefore, the database provided meets the requirements of the Federal Mobile Telecommunications Sourcing Act. Our response to this question will be changed to indicate "YES".

The third issue relates to the sourcing of air-to-ground radiotelephone and prepaid calling service. Neb. Rev. Stat. §77-2703.04(1) states, in part, that "the sale of telecommunications service sold on a call-by-call basis shall be sourced toeach level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located." We believe this language covers the sourcing of air-to-ground service which is generally billed on a call-by-call basis.

The sourcing of prepaid calling service is specifically covered in Neb. Rev. Stat. 77-2703.04(5) which applies the general sourcing rules to sales of these services. In addition, the sourcing of prepaid wireless calling service includes, as an option, the location associated with the mobile telephone number. This specific statutory provision takes precedent over the general rules for sourcing mobile telecommunications to the customer's primary place of use found in Neb. Rev. Stat. §77-2703.04(3)(A)(i). Therefore, Nebraska is compliant with Section 314 with regards to the sourcing of prepaid calling services.

The fourth issue relates to the definition of "primary place of use" found in Neb. Rev. Stat. §77-2703.04(3)(iv). While this statute refers only to the customer's use of mobile telecommunications services, Neb. Rev. Stat. §77-2703.04(2) sources other telecommunications service and ancillary services to the customer's place of primary use. Therefore, we believe our statutes are substantially compliant with Section 314.

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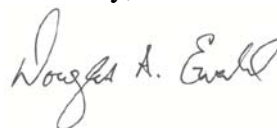
The fifth issue relates to the rounding rules found in Section 324. The Report indicates Nebraska's statutes and regulation do not address the rounding of tax when an aggregated rate of tax is used. Local Option Sales and Use Tax Regulation 9-006 refers to the "combined tax" which means the retailer can use an aggregated state and local tax rate. When the combined tax rate is used, the standard rounding rules apply as provided in Neb. Rev. Stat. §77-3,117. Local Option Sales and Use Tax Regulation 9-006 will be added as a citation in Section 324 to clarify the issue.

The sixth issue relates to Section 331 and the purchaser's relief from penalty when the purchaser's seller or CSP relied on erroneous data provided by the state. Nebraska Sales and Use Tax Regulation 1-070.01C and Local Option Sales and Use Tax Regulation 9-012.03 provide penalty relief for the purchaser or purchaser's CSP resulting from incorrect data provided by the state. These regulations address the penalty relief required by Section 331 and the references will be added to the Section 331 citations.

Thank you for bringing these issues to our attention.

If you have any further questions, please contact Tom Gillaspie at 402-471-5915 or by email at: Tom.Gillaspie@Nebraska.gov.

Sincerely,

A handwritten signature in cursive script that reads "Douglas A. Ewald".

Douglas A. Ewald
Tax Commissioner

DAE:ET:mra