

To: Compliance Review and Interpretations Committee

From: Scott Peterson and Pam Cook

Re: Preliminary report on 2011 Annual Recertification – Group 2

Date: September 21, 2011

Georgia:

Under prepared food, add the following citation – 48-8-3(57).

On the certificate of compliance, add the following citation: Section 321, paragraphs E and F – Information Bulletin SUT 2010-10-13.

The citation given in Section 602 applies to CSPs (Section 601) and does not mention Model 2 sellers.

The definition of “prepaid wireless calling service” uses the words “units of dollars” instead of “units or dollars.”

Indiana:

The following citations need to be added to the taxability matrix: Telecommunications nonrecurring charges – 6-2.5-1-5(b)(7); Optional computer software maintenance contracts – all prewritten – 6-2.5-1-14.5; Optional computer software maintenance contracts – all percentages – 6-2.5-4-17, Information Bulletin #2; Ancillary services – 6-2.5-4-6, Information Bulletin #51-T; All intrastate telecommunications categories as needed (except prepaids) – 5-2.5-4-6; All prepaid calling service and prepaid wireless calling service – 6-2.5-4-13; Intrastate value-added non-voice data service – 6-2.5-4-6(b)(4), Information Bulletin #51-T.

The statute cited for exemption of free drug samples appears to only apply to insulin and insulin analogs. If that is true, the taxability matrix needs to reflect the limitation.

The taxability matrix indicates that value-added non-voice data service is taxable. The statute says it is not a taxable sale.

The following citations need to be added or changed on the certificate of compliance: Section 301, question 2 – 6-2.5-8-1; question 4 – 6-2.5-9-8; Section 303, question 3 – change 6-2.5-11-2 to 6-2.5-11-5; question 4 – change 6-2.5-11-2 to 6-2.5-11-5 and add 6-2.5-11-10; All questions – Commissioner’s Directive #27; Section 403, paragraph C – change 6-2.5—11-1 to 6-2.5-11-10; Section 313, paragraph A2 – change 6-2.5-13(c) to 6-2.5-13(b); paragraph A4 – change 6-2.5-

13(c) to 6-2.4-13(d); paragraph B3 – change 6-2.5-13(c) to 6-2.5-13(b); Section 330, paragraph A – 6-2.5-4-15; Section 502, paragraph E – 6-2.5-11-12; Prepared food – 6-2.5-5-20; Ancillary services – Information Bulletin #51-T; Vertical services – Information Bulletin #51-T.

In Section 301, change the “N/A” to “Yes” in questions 1,2 and 4.

In Section 318, change the “N/A” to “Yes” in paragraph A.

In Section 318, the statute cited in paragraph F does not address giving a minimum of 30 days notice prior to establishing liability based solely on failure to file a return.

The statute cited for the rounding rule (Section 324) does not address allowing sellers to elect to compute tax on an item or invoice basis.

In Section 328, paragraph D, change the “Yes” to “N/A.”

No statutory authority could be found for the effective date rules for services covering a period of time (Section 329).

Iowa:

The following citations need to be added or changed on the taxability matrix: Computer and Prewritten computer software – 423.1(1); Mandatory computer software maintenance contracts with respect to prewritten computer software – 423.2(1)(a)(5); all computer software maintenance contracts that provide updates and upgrades delivered electronically – 423.3(67); All oxygen delivery equipment and kidney dialysis equipment – change 423.3(60)(c) to 423.3(60)(d).

The taxability matrix indicates that value-added non-voice data service is taxable. The rule cited states that such services are not taxable.

The following citations need to be added or changed on the certificate of compliance: Section 301, question 1 – change 423B.6(3)(b) to 423B.6(2)(b) and add 423B.6(2)(a); question 2 – 423B.5, 423B.6; question 5 – 423B.6; Section 304, paragraph C – 423.46; Section 305, paragraphs F1 and F2 – Rule 701.240.1; Prewritten Computer Software – 423.1(36) and change Rule 701-18.20(34)“a”(3) to 701-18.20(34)“b”(3); Paging Service – Rule 701-18.20(7)“b”(18).

In Section 306, the statute cited provides that if an address-based database is provided, for assigning taxing jurisdictions, the director is not required to provide liability relief for errors resulting from reliance on the information provided by the state. The Agreement provision only allows the state to not provide relief from liability for errors in a zip code based database if an address based database is provided.

Section 322, paragraph B2 should be changed from “Yes” to “No.”

The statute cited for the rounding rule required in Section 324, paragraph B1 does not address allowing rounding to be applied to aggregated state and local taxes.

Section 328, paragraphs A1 and D should be changed from “No” to “Yes.”

The rule cited for Section 329, paragraphs 1 and 2 provides that the rate changes will applied on a bill after the effective date of the change instead of “on or after” the effective date.

Sections 333 and 334 should be changed from “N/A” to “No.”

The statute cited for “telecommunications nonrecurring charges” does not define the term. No definition is needed since it is included in the sales price definition. This should be changed from “Yes” to “N/A” and the statute deleted.

Michigan:

The statute for taxing telecommunications service excludes one-way paging service. Paging service is defined in the Agreement and includes both one-way and two-way service. This was an issue from the 2009 review that was referred to the Governing Board. The Governing Board ruled in their August 2010 meeting that they would have to be all taxable or all exempt.

The taxability matrix indicates that international prepaid calling service and international prepaid wireless calling service are taxable. The statute cited specifically excludes prepaid calling service and international telecommunications service.

The statute cited for the taxation of intrastate and interstate prepaid calling service taxes prepaid telephone calling cards and prepaid authorization numbers for telephone use. These terms are not defined in the Agreement.

Several exemption statutes provide that the exemption applies to the extent used for exempt purposes and that a percentage will be developed. How is this administered?

The answer for the question of whether tax is imposed on products transferred electronically other than specified digital products should be changed from “Yes” to “No” and the comment deleted. This section specifically excludes software from consideration.

The included/excluded columns on the taxability matrix are not marked for food sold by manufacturers without eating utensils. Under the Agreement, this is considered prepared food unless specifically excluded. There is nothing in the statute to exclude such sales and the include column should be marked.

The following citations should be added, changed or deleted in the certificate of compliance: Section 314, paragraphs C4a-d - delete the citation (could not be found); paragraph E - change 205.93c(2) to 205.93c(3)(c); Section 317, paragraph G3 - add 205.62(9); Section 319, paragraph A1 - change the first 205.96(1), (2) to 205.56(1), (2); paragraph A2 - change the first 205.96(2) to 205.56(2); Section 331, paragraphs A1-3, B – delete 205.57; Section 502, paragraph B – change 205.825(1) to 205.825(3); Tobacco – change 205.51a(q) to 205.51a(r); Mobile wireless service – change 205.93b(4)(h) to 205.93b(9)(h).

In Section 333, change the “Yes” to “No” and delete the citations and comment. Prewritten computer software is specifically excluded from this section.

New Jersey:

On the taxability matrix, the following citations need to be added: All non-prewritten computer software – NJAC 18:24-25.3; All non-prewritten computer software maintenance contracts – NJAC 18:24-25.6; All mandatory and optional prewritten computer software maintenance contracts (as needed) – NJSA 54:32B-3(b)(2), 54:32B-2(f), NJAC 18:24-25.6; Digital products – 54:32B-2(g).

The following citations need to be changed or added on the certificate of compliance: Section 313, paragraph A2 – change 54:32B-3.1 to 54:32B-3.3; Section 317, paragraphs A6, A8, B, C, G3 – NJAC 18:24B-1.2; Section 321, paragraphs E, F, G – Comments should be NJAC not NJSA; paragraphs H, I – NJAC 18:24B-1.8; Section 325, paragraph D – NJSA 54:32B-14(h); Section 404, question 1 – NJAC 18:24B-1.6.

In Section 314, paragraph D, change the “Yes” to “NA” and delete the citation.

In Section 317, paragraphs A7, A8, B and C, the citation given is for the old rule which requires good faith. This was an issue last year and the state indicated the rule would be repealed.

As indicated in the recertification letter, the state is unable to accept the SER from anyone except Model 1 sellers (Section 318).

In Section 333, change the “Yes” to “No.”

North Carolina

On the taxability matrix, the comments for “soft drinks” should be clarified to say “50% of gross receipts when sold from vending machines.”

On the taxability matrix, add the following citation for all ancillary and telecommunications services – 105-164.4(a)(4c).

Under the general sourcing rules for sales, the fifth option does not include “from which the digital good or computer software delivered electronically was first available for transmission by the seller.” Digital goods and prewritten computer software transferred electronically are taxable.

The responses for Section 318, paragraphs D and F are “yes” but no citations are given. Is this documented anywhere?

The rounding rule does not address allowing the aggregation of state and local taxes.

The citations given in Section 502, paragraph B do not address relief from liability for reliance on the certification of the CAS. In paragraph C, the citations do not address liability relief for CSPs in the same manner as that provided for sellers in Section 317.

The following citations need to be added on the certificate of compliance: Section 301, first question – 105-483, 105-498, 10-507.2, 105-509.1, 105-510.1, 105-511.3; Section 303, last question – 105-164.42I; Section 305, first question – 105-509.1, 105-510.1, 105-511.3; Section 317, paragraphs A1 and 2 – Sales and Use Tax Technical Bulletin 52-5A; paragraph B – 105-164.28A; Section 319, paragraph A2 – 105-164.16; Value-added non-voice data service – change Bulletin 21-1 J.2.s to Bulletin 21-1 J.2.u.

In Section 308, paragraph B2, change the “No” to “Yes.” This question is asking if the sales tax rate and use tax rate is the same.

In Section 333, change the “Yes” to “No.” Software is excluded from this question.

Ohio:

The following citations are needed on the taxability matrix: All clothing – 5739.01(B)(1); Computer and all prewritten computer software – 5739.01(B)(1); All non-prewritten computer software categories including maintenance contracts – Admin. Code 5703-9-46(A)(2)(c); Dietary supplements and soft drinks – 5739.01(B)(1), 5739.01(EEE)(1); All taxable drug categories – 5739.01(B)(1); Over-the-counter drugs with a prescription – Information Release 2010-03; All nontaxable drug categories (as needed) – 5739.02(B)(18); All drugs for animal use – 5739.01(B)(1); All durable medical equipment not for home use except oxygen delivery equipment – 5739.01(B)(1), 5739.02(B)(19); All durable medical equipment sold without a prescription except oxygen delivery equipment - 5739.01(B)(1), 5739.02(B)(19); Mobility enhancing equipment and prosthetic devices Including hearing aids without a prescription - 5739.01(B)(1), 5739.02(B)(19); All corrective eyeglasses, contact lenses and dental prosthesis - 5739.01(B)(1), 5739.02(B)(19), 5739.01(JJJ); Coin-operated telephone service – 5739.01(B)(3)(f).

The following citations need to be added or changed on the certificate of compliance: Section 305, paragraph A – change 5471.021(A)(2) to 5741.021(A)(2); Section 308, paragraph B2 – 5741.021(A), 5741.022(A), 5741.023(A); Section 317, paragraph D1 – 5741.02€(3), change 5739.03(A)(4) to 5739.03(B)(4); paragraph D2 – 5739.03(B)(4), 5741.02€(3); paragraph G3 – Admin. Code 5703-9-03(D); Section 319, paragraph A1 – Change “No” to “Yes”; paragraph A2 – change the “N/A” to “Yes” and add 5739.122(B), 5741.121(B); Section 320, paragraph E – 5739.121(D); paragraph F – 5739.121(E); Mobility enhancing equipment – change 5730.01(III) to 5739.01(III); Over-the-counter drug – 5739.012(A)(3).

In Section 305, paragraphs B and C, the citation given for effective dates related to catalog sales and boundary changes limits the notice requirement to sellers registered under the centralized registration system. The Agreement provides for notice to all sellers.

The rounding rule in the statute requires state and local taxes to be aggregated (Section 324).

In Section 333, change the “Yes” to “No” and delete the citation and comment. (Prewritten computer software is excluded from this question).

The definition of “prepaid wireless calling service uses the term “units of dollars” instead of “units or dollars.”

The rule that provides for sourcing Internet access and ancillary service amended a sourcing rule by striking all of the language in that rule. The previous rule contained the definitions of “communications channel” and “customer channel termination point” that are needed for sourcing private communications service. This was an issue in the 2010 review and Ohio was ruled out of compliance by the Governing Board. The certificate of compliance indicates that the rule is in the process of being amended.

South Dakota:

The following citations need to be added on the taxability matrix: Direct mail transportation, shipping and similar charges – 10-45-1.14; All computer software maintenance contracts – ARSD 64:06:02:78; All food and food products and prepared food options – 10-45-2; All taxable drug categories (except grooming and hygiene) – 10-45-2.

Under the telecommunications category, for all services with “NA” in the citation column, the “NA” should be changed to 10-45-6.1 & 10-45-1.17.

The following citations need to be added, changed or deleted on the certificate of compliance: Section 301, first question – 10-52-41; Section 302, first question – delete all except 10-52-2 (rest repealed); Section 305, paragraph B – delete 10-52-13; Section 315, paragraph M – change 10-45-1.18 to 10-45-1.17; Section 318, paragraph C2 – delete 10-45-28 (repealed); Sections 601

and 602 – 10-45C-5; Computer – ARSD 64:06:02:78; Specified digital products – delete citation and change “Yes” to “NA”; Conference bridging – change “No” to “Yes.”

In Section 318, paragraphs D (no filing of returns if no sales expected) and F (30 days notice before establishing a liability amount for failure to timely file) are marked “Yes” and no citation is given. Are these positions documented anywhere?

No response is given in Section 334 (Replacement Taxes).

In Section 502, the response given to paragraphs B (liability relief for reliance on certified systems), C (liability relief for CSPs for exemptions), and E (10 days to correct classification errors) is “Yes” and no citation is given. Are these positions documented anywhere?

Tennessee:

The state’s recertification letter details the changes that are needed to be in full compliance with the Agreement and which become effective 7/1/2013:

- Section 302 State and Local Tax Base – single article local tax limitation on tangible personal property, video programming services, interstate telecommunications sold to business, manufacturer’s energy fuels, and common carrier’s locomotive diesel fuel;
- Section 305A-C Local Rate and Boundary Changes – effective dates of local rate and boundary changes;
- Section 308 State and Local Tax Rates – video programming services, interstate telecommunications, intrastate telecommunications, manufacturer’s energy fuels and water, tangible personal property sold to common carriers for export, specified digital products, additional state tax on single articles of tangible personal property;
- Section 310 General Sourcing;
- Section 311 General Sourcing Definitions;
- Section 313 Direct Mail Sourcing;
- Section 314C(3) Telecommunications Sourcing – sourcing for prepaid calling services;
- Section 317A(8) Exemption Administration – drop shipment;
- Section 318A & C Uniform Tax Returns – one return per entity per reporting period per state and the option to use the SER by taxpayers that have a location in this state;
- Section 323 Caps and Thresholds – video programming services, additional state tax rate on single articles of tangible personal property priced in excess of \$1600 to \$3200, single article local tax limitation on tangible personal property priced in excess of \$1600; and
- Section 330A Bundled Transaction – adoption and use of bundled transaction definition and deletion of bundling language from sales price definition.

The following citation needs to be changed on the taxability matrix: Value of trade-in – change 67-6-102(82)(A)(vi) to 67-6-102(B)(iv).

The following citations need to be added or changed on the certificate of compliance: Section 301, fourth question – change 67-6-1-102(b)(10) to 67-1-102(b)(10); Section 314, paragraph E – 67-6-905(C); Section 318, paragraph B1 – 67-6-504(a); Section 322, paragraph 3 – change 67-6-393(b)(8) to 67-6-393(b)(7); Section 333 – change 67-6-205(b)(3)&(9) to 67-6-205(c)(3)&(9).

The definition of “prepaid wireless calling service” uses the words “units of dollars” instead of “units or dollars.”

The definition of “post-paid calling service” does not exclude prepaid wireless calling service.

There is no written provision allowing 90 days after the sale to obtain an exemption certificate or for 120 days after a request by the state to prove the exemption is valid. This was an issue in the 2010 review.

Utah:

The following citations need to be added to the taxability matrix: Value of trade-in – 59-12-104(17); Sport or recreational equipment 59-12-102(110); Computer – 59-12-102(24); Prewritten software delivered electronically and by load and leave – 59-12-102(113); Mandatory computer software contracts for prewritten computer software- delivered electronically and by load and leave – 59-12-103(1)(g); Optional computer software maintenance contracts for prewritten computer software – delivered electronically and by load and leave – 59-12-103(1)(g); Optional computer software maintenance contracts for prewritten computer software and support services (all categories) – 59-12-103(1)(g); Corrective eyeglasses and contact lenses (all categories) – 59-12-102(84).

The following citations need to be added on the certificate of compliance: Section 301, first question – 59-12-204(4), (6); Section 304, paragraph A1 – 59-12-103; Section 306 – 59-12-125; Section 317, paragraph A6 – R865-19S-23; paragraph G3 – 59-12-106; Section 318, paragraph B2 – R865-19S-12; Section 319, paragraph E1 – R865-19S-12; Section 332, paragraph A – 59-12-102.

In Section 317, change the “N/A” to “Yes” in paragraph G.

In Section 319, the provisions for effective dates with respect to rate decreases for services covering a period of time only address repeals of a tax and are based on bill periods instead of the dates bills are rendered. Bills can be rendered several days after the actual billing period date.

Wisconsin:

The following citations need to be added or changed on the taxability matrix: All clothing categories – 77.52(1)(a); All taxable durable medical equipment categories – 77.54(22b); Durable medical equipment paid by Medicare/Medicaid – change 11.45(4) to 11.45(6).

The following citations need to be added on the certificate of compliance: Section 319, paragraph D – 77.58(1m); Section 502, paragraph C – 77.52(14)(bm).

The rounding rule in the statute provides that the rule shall (as opposed to be allowed to) be applied to aggregated state and local taxes.

In Section 333, change the "Yes" to "No" and delete the comment.

As noted in the state's recertification letter, the prepaid wireless calling definition uses the term "dollar units" instead of "units or dollars."

Wyoming:

The taxability matrix indicates that delivery charges are excluded from the definition of "sales price." Delivery charges are included in the statutory definition, but exempted elsewhere in the statutes. The included columns should be "X", not the excluded column and the exemption noted (with citation) in the comments.

Under Digital Products on the taxability matrix, the question about whether the state taxes products transferred electronically other than specified digital products is marked "Yes." Section 333 of the certificate of compliance is also marked "Yes" that products transferred electronically (excluding prewritten computer software) are included in the state's interpretation of the definition of tangible personal property. This was an issue last year and the state changed this to "No."

The digital audio-visual works sold to other than the end user, sold with rights of use less than permanent use, and conditioned on continued payment are marked "Yes" as taxable but the statute limits the taxability to end user, permanent use and not conditioned on continued payment.

The following citations need to be added or changed on the taxability matrix: Non-prewritten computer software – change Sec (d)(i) to Sec 15(d)(i); Computer software maintenance contract percentage section – delete statute cited and add Rules Chapter 2 Sec 15(oo); Prepared food – 39-15-101(a)(xlvi); Intrastate telecommunications service – 39-15-101(xxxix)(U);

The statute exempts "the sale of the service of transmitting radio waves to a one-way paging unit." The state interprets this to include one-way and two-way paging. A rule is being promulgated to clarify this position.

The state was ruled out of compliance in 2010 for not having a statute or rule related to exemption administration 90 day and 120 day rules (s. 317). Rules to provide for these provisions are in the process of being promulgated.

The state was ruled out of compliance in 2010 for not following the requirements for effective dates for rate changes with respect to services covering periods starting before and ending after the statutory effective date (s.329). Rules to correct this are in the process of being promulgated.

The definition of “prepaid wireless calling service” uses the words “units of dollars” instead of “units or dollars.”

The following citations need to be added, deleted or changed on the certificate of compliance: Section 305, paragraph E – Rules Chap 2 Sec 4(f); Section 313, paragraphs A2, A3, and B3 – change the “N/A” to “Yes” and add 39-15-104(f)(vi); paragraph A4 – change the “N/A” to “Yes” and add 39-15-104(f)(vii); Section 313.1 – change the “N/A” to “No”; Section 314, paragraph D – change the “Yes” to “N/A” and delete the citation; Section 315, paragraph B – change the “No” to “Yes” and add 39-15-101(xxxix)(C); paragraph M – change the “No” to “Yes” and add 39-15-104(f); Section 317, paragraph A8 – Rules Chap 2 Sec 15(i); Section 318, paragraph A – 39-15-107(a)(i); paragraph B2 – Rules Chap 2 Sec 7(c); Section 331, paragraph A4 – change 39-11-102(b) to 39-11-102(D); Section 332, paragraph A – change the “Yes” to “No” and add 39-15-101(a)(xlili) and 39-15-101(a)(xxxix)(C); paragraphs D1, D2 and D3 – 39-15-103(a)(i)(P); Section 401, paragraph B – 11-15-405; Direct Mail – change 39-15-10(a)(xlii) to 39-15-101(a)(xlii); Electronic – change 39-15-101(a)(xx) to 39-15-101(a)(xxx); Alcoholic beverages – change “No” to “Yes”; Bottled water, candy – change “Yes” to “N/A”; Dietary supplement – Rules Chap 2 Sec 2(P); Food and food ingredients – 39-15-101(a)(xli) (comment says taxable but would appear to be exempt); Food sold through vending machines – change the “Yes” to “No” (comment says taxable but rule being promulgated say exempt); Prepared food – 39-15-101(a)(xlii); Tobacco – change “N/A” to “Yes” and add Rules Chap 2 Sec 2(ww); Ancillary services – change 39-15-103(a)(i)(C) to 39-15-101(a)(xxxix)(C); Detailed telecommunications billing – change 39-15-101(xxxix)(E) to 39-15-101(xxxix)(F); Directory Assistance – change 39-15-101(xxxix)(E) to 39-15-101(xxxix)(G); Vertical service – change 39-15-101(xxxix)(E) to 39-15-101(xxxix)(Y); Voice mail service – change 39-15-101(xxxix)(E) to 39-15-101(xxxix)(Z); Telecommunications service – change 39-15 to 39-15-101(xxxix)(U); 800 service – change 39-15-101(xxxix)(E) to 39-15-101(xxxix)(A); 900 service – change 39-15-101(xxxix)(E) to 39-15-101(xxxix)(B); Fixed wireless service – change 39-15-101(xxxix)(E) to 39-15-101(xxxix)(H); Mobile wireless service – change 39-15-101(xxxix)(E) to 39-15-101(xxx9x)(N); Paging service – change 39-15-101(xxxix)(E) to 39-15-101(xxxix)(O); Prepaid calling service – change 39-15-101(xxxix)(E) to 39-15-101(xxxix)(Q); Prepaid wireless calling service – change 39-15-101(xxxix)(E) to 39-15-101(xxxix)(R); Private

communications service – change 39-15-101(xxxix)(E) to 39-15-101(xxxix)(S); Value-added non-voice data service – change 39-15-101(xxxix)(E) to 39-15-101(xxxix)(W); Coin-operated telephone service – change the “No” to “Yes” and add 39-15-101(xxxix)(D); International – 39-15-101(xxxix)(J); Interstate – 39-15-101(xxxix)(K); Intrastate – 39-15-101(xxxix)(M); Pay telephone service – change the “No” to “Yes” and add 39-15-101(xxxix)(P); Residential telecommunications service - change the “No” to “Yes” and add 39-15-101(xxxix)(T).