Washington Annual Compliance Review

Introduction

This document addresses five comments raised for Washington in the preliminary report on 2011 annual recertification (the "Report"). This document provides Washington's responses to these comments. The Report's comments fall into the following categories as follows:

- Taxability Matrix citations
- Certificate of Compliance citations
- Local services clarification
- Rounding rule
- Uniform returns

Taxability Matrix citations

REPORT COMMENT:
"The following citations are needed for digital products on the taxability matrix: RCW 82.04.050(2)(g) and (8), 82.04.190(11), 82.08.010(1), and 82.12.020(1)(e)."

DISCUSSION:
Washington has provided valid citations for all digital products in its Taxability Matrix. However, many of the citations continue to list the bill number rather than the now codified statutory references. The Report suggests updating these citations to reflect the codifications.

While there is no obligation in the Agreement requiring this type of update, we believe providing the codified citations will be helpful to sellers and other taxpayers. Accordingly, we will update Washington's Taxability Matrix as suggested.

WASHINGTON RESPONSE:
Washington is not out of compliance with the Agreement. However, we will update the citations as suggested.

Certificate of Compliance citations

REPORT COMMENT:
"The following citations are needed on the certificate of compliance: Section 302, second question – 82.14.070; Section 330, paragraph A – 82.08.195; Section 330, paragraph D – WAC 458-20-15501."

DISCUSSION:
Washington believes is has provided adequate citations in its Certificate of Compliance. That said, we agree the additional citations will be helpful to sellers and other taxpayers. Washington's Certificate of Compliance will be amended consistent with the Report's suggestions.

WASHINGTON RESPONSE:
Washington is not out of compliance with the Agreement. However, we will add the citations as suggested.

Local services clarification

REPORT COMMENT:
"On the taxability matrix, the local service exemption should indicate that it applies to residential service only."

DISCUSSION:
The SSUTA permits states to define "local services" in any manner in accordance with Section 327 of the Agreement. *See Appendix C Library of Definitions, Part II Product Definitions, Telecommunications.* The Taxability Matrix requires a citation for member states imposing a tax on local services. Washington provides this citation on its Taxability Matrix, i.e., RCW 82.08.0289. There is no requirement that Washington further describe what is in the exemption. Moreover, Washington does not use the "residential telecommunication service" definition in the Agreement in its entity-based exemption, and adding the suggested language would only invite confusion. We believe the existing citation provided is adequate. Washington has met its obligation under the Agreement for disclosure and need provide no further explanation.

WASHINGTON RESPONSE:
Washington is not out of compliance with the Agreement and no change is needed.

Rounding rule

REPORT COMMENT:
"The state's rounding rule requires that state and local taxes be aggregated. The Agreement provides that the state 'shall allow' the rounding rule to be applied to aggregated state and local taxes."

DISCUSSION:
SSUTA Section 324 provides, "Each state shall allow sellers to elect to compute the tax due on a transaction on an item or an invoice basis, and shall allow the rounding rule to be applied to the aggregated state and local taxes."

The rounding aggregation language was placed in the Agreement as a simplification for sellers. It was designed to give sellers an option for aggregation of state and local taxes if they did not have such option. While the language clearly contemplates that member states must allow aggregation of state and local taxes, there is no similar language requiring disaggregation of these same taxes. Accordingly, member states may require aggregation only without violating the SSUTA.

Washington statute RCW 82.08.054 requires aggregation of state and local taxes. This language is consistent with SSUTA section 324 as discussed, and thus Washington is not out-of-compliance with this Section 324.

WASHINGTON RESPONSE:
Washington is not out of compliance with SSUTA Section 324.

Uniform returns

REPORT COMMENT:
- *Sub-issue 1:* In Section 318, paragraph D (sellers who do not expect to have sales in the state) is marked yes, but no citation is given. Is this position documented

elsewhere?

- *Sub-Issue 2:* In Section 318 paragraph F (30 day notice if failed to file a return) is marked yes, but no citation is given. Is this position documented elsewhere?

DISCUSSION:

Sub- issue 1

Under SSUTA Section 318.D, Washington cannot require a seller registered under the SSUTA to file a return, if at the time of registration the seller indicates that it anticipates making no sales in Washington. This exemption is lost upon the making of taxable sales into the state.

Under RCW 82.32.045(1), tax returns are due only "after the end of the month in which the taxable activities occur." Therefore, if a seller indicates upon registration that it anticipates no taxable sales in Washington under the SSUTA, we do not require these sellers to file a retail sales tax return. We have not previously included this citation because the nature of our reporting requirements simply precluded violation of Section 318.D. However, we agree the additional citation might be helpful to sellers and other taxpayers. Accordingly, while Washington is not out of compliance with the SSUTA, we will add a citation to RCW 82.32.045(1) as additional information.

Sub- issue 2

Under SSUTA Section 318(F), if a seller registered under the SSUTA without a legal requirement to register in Washington fails to file a required return, Washington must send a minimum thirty days notice to file thereafter prior to establishing a liability amount solely based on the seller's failure to timely file a return.

Under RCW 82.32.100, the Department has broad authority to determine and thereafter establish estimated taxes where returns are not filed. As a matter of Department policy, the Department generally first attempts to contact a seller by phone and thereafter sends a notice to sellers giving them thirty or more days before establishing a liability. With respect to Streamlined registrants without a requirement to register, this policy is strictly applied pursuant to RCW 82.02.210. RCW 82.02.210 provides, "It is the intent of the legislature that the provisions of this title relating to the administration and collection of state and local sales and use taxes be interpreted and applied consistently with the agreement." Accordingly, sellers not required to register receive at least thirty days notice prior to the Department establishing a liability. Accordingly, while Washington is not out of compliance with the SSUTA, we will add the citations RCW 82.32.100 and RCW 82.02.210 as additional information.

WASHINGTON RESPONSE:

- *Sub-Issue 1:* Accordingly, while Washington is not out of compliance with the SSUTA, we will add a citation to RCW 82.32.045(1) as additional information.
- *Sub-Issue 2:* Accordingly, while Washington is not out of compliance with the SSUTA, we will add citation for RCW 82.32.100 and RCW 82.02.210 as additional information.