



STATE OF ARKANSAS
Department of Finance
and Administration

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October 6, 2011

Mr. Scott Peterson
Executive Director
Streamlined Sales Tax Governing Board, Inc.
4219 Hillsboro Pike, Suite 234
Nashville, TN 37215

RE: Response to BAC Compliance Subcommittee Report on 2011 Annual Recertification

Dear Mr. Peterson:

The following is Arkansas's response to the potential compliance issue noted in the BAC Compliance Subcommittee Report on 2011 Annual Recertification issued to the Compliance Review and Interpretations Committee on September 23, 2011.

Issue: *Sales Price Definition and Installation Charges* – The “sales price” definition allows a state to toggle the taxability of installation charges on or off as part of the “sales price” definition. This toggle is only applicable to separately stated installation charges on an invoice. Arkansas separately imposes a sales tax on certain installation services outside of its “sales price” definition (*see* A.C.A. §26-52-301(3)(B)). While the limitations in §327 of the SSUTA do not generally apply to definitions in Part I of the Library of Definitions (*e.g.*, where the “sales price” definition is located) §327 of the SSUTA also begins with the following qualifier: “Except as provided in Sections 316 and 332 and the Library of Definitions.” This introductory clause prohibits a state from using a definition inconsistent with its intended application. The toggle for installation charges under paragraph (E) of the “sales price” definition does not allow Arkansas to exclude installation charges from its “sales price” definition and at the same time still tax installation charges as a separate service.

Arkansas disagrees with the characterization that Arkansas is using a definition inconsistent with its intended application and with the BAC's interpretation of the Agreement.

The Library of Definitions defines various products and services. As provided in §327, those definitions must be used when a state is deciding whether to tax or exempt those products or services. However, the “sales price” definition in the Library of Definitions does not define any taxable products or services. Instead, it defines what is measured as the amount of consideration received for products or services.

In the Agreement's Library of Definitions "sales price" is defined as:

"applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:...

E. Installation charges

States may exclude from "sales price" the amounts received for charges included in [paragraph E] above, if they are separately stated on the invoice."

The "sales price" definition allows toggles so that states can make adjustments to that measure. Installation charges are one toggle and Arkansas uses that toggle to adjust installation charges out of "sales price" when they are separately stated on the invoice or billing document. Thus, Arkansas does not levy its sales tax on installation charges as part of "sales price."

Under §103 of the Agreement, "the Agreement shall not be construed as intending to influence a state to impose a tax on or provide an exemption from tax for any item or service." This provision preserves a state's taxing authority.

Under this grant of authority, Arkansas levies its sales tax on services that meet the definition of "initial installation" as that term is defined in Arkansas law and Rules. The tax on certain initial installation services is applicable to all sales that include the service including those that involve no sale of personal property. This levy is not inconsistent with the intended application of "sales price" because "sales price" does not set out which services may be taxed.

For the reasons stated above, Arkansas urges the Committee to find that Arkansas is not out of compliance with the Agreement as argued by the BAC Compliance Subcommittee. It is Arkansas's position that it is in compliance with the Agreement.

Sincerely,



Tom Atchley, Administrator
Office of Excise Tax Administration

TA/gmd

cc: Mr. Fred Nicely, Tax Counsel
Council on State Taxation