Scott Peterson, Executive Director
Streamlined Sales Tax Governing Board
4205 Hillsboro Pike, Suite 234
Nashville, TN 37215-3339

Re: Preliminary report on 2011 Annual Recertification

Dear Mr. Peterson:

This letter is in response to the September 21, 2011 preliminary report to the Compliance Review and Interpretations Committee for group 2 regarding potential issues identified regarding North Carolina’s compliance with the Streamlined Sales and Use Tax Agreement. Below are the identified issues in your report followed by responses:

**Issue #1:**

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

**Response:**

The comments for “soft drinks” under “food and food products” was updated to state “subject to tax on 50% of gross receipts when sold from vending machines.”

**Issue #2:**

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

**Response:**

The statutory reference G.S. 105-164.4(a)(4c) was added to all items noted on the taxability matrix as taxable under the sections “Telecommunications & related products” and...
“Telecommunications.” G.S. 105-164.4(a)(4c) states “[t]he combined general rate applies to the gross receipts derived from providing telecommunications service and ancillary service. A person who provides telecommunications service or ancillary service is considered a retailer under this Article. These services are taxed in accordance with G.S. 105-164.4C.” G.S. 105-164.4C was previously noted on the taxability matrix.

Issue #3:

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.

Response:

The sourcing provisions pursuant to G.S. 105-164.4B do not provide for sourcing of digital goods or computer software delivered electronically based on the location first available for transmission by the seller where the other general sourcing provisions do not apply as noted in the findings. The Department is in agreement with the items noted in the report. However, it is the Department’s opinion that the State is substantially compliant with the provisions of Section 310, General Sourcing Rules. Section 805, Compliance, states “[a] state is in compliance with the Agreement if the effect of the state’s laws, rules, regulations, and policies is substantially compliant with each of the requirements set forth in the Agreement.”

Issue #4:

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

Response:

Item D. states “[d]oes the state not require the filing of a return from a seller who registers under the Agreement, and indicates that it anticipates making no sales that would be sourced to the state?” The State does not require the filing of such returns as indicated on the 2011 Certificate of Compliance. For those entities that register through the Streamlined registration process and do not select North Carolina as a state where sales will be sourced, the Department excludes those taxpayers from the delinquency process and does not require returns to be filed by the taxpayers. The Department is in the process of updating information on the Department’s website relative to the Streamlined Sales Tax Project and will indicate that a return is not required to be filed by such registrants.

Item F. states “[d]oes the state give notice to a seller registered under the Agreement, that has no legal requirement to register in a state, who failed to file a return, a minimum 30 days notice prior to establishing a liability amount for taxes based solely on the seller’s failure to timely file?” Under the Department’s delinquency process, a taxpayer registered for sales and use tax purposes is not sent a notification of delinquency prior to sixty days from the original due date of the return.
Currently, the Department does not establish a potential liability before or at the time of sending the notice of delinquency.

**Issue #5:**

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

**Response:**

The Department provides sales tax charts to assist businesses with the collection of sales tax. The charts include the following statement “the tax amount is a mathematical computation of the sales price of the taxable property multiplied by the sales and use tax rate, rounded to the nearest whole cent.” Sales and Use Tax Technical Bulletin 1-5 C. has been updated to state “[t]he amount of tax shall be rounded up whenever the third decimal place is greater than four. The State allows the rounding rule to be applied to the aggregated state and local taxes.”

**Issue #6:**

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.

**Response:**

NCGS 105-264 provides that a taxpayer is not liable for any penalty or additional assessment attributable to erroneous advice, either in writing or verbal, furnished by the Department when all of the following conditions are satisfied: (1) The advice was reasonably relied upon by the taxpayer, (2) The penalty or additional assessment did not result from the taxpayer’s failure to provide adequate or accurate information, and (3) The Department provided the advice in writing or the Department’s records establish that it provided erroneous verbal advice. (Effective July 16, 2008; HB 2436, s. 28.16(e), S.L. 08-107.) NCGS 105-164.42I(c) states in part, “[a] certified service provider with whom a seller contracts is the agent of the seller. As the seller’s agent, the certified service provider, rather than the seller, is liable for sales and use taxes due this State on all sales transactions the certified service provider processes for the seller unless the seller misrepresents the type of products it sells or commits fraud.” NCGS 105-164.42I(d) states in part, “[i]n the absence of misrepresentation or fraud, a seller that contracts with a certified service provider is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. . . . A certified service provider is subject to audit.”

CSP’s and model 2 sellers are entitled to liability relief for reliance on the certification. Additionally, as CSP’s are agents for the sellers, liable for taxes on transactions processed by CSP’s, and subject to audit, the State would provide liability relief to CSP’s in the same manner as provided to sellers under Section 317. The certificate of compliance was updated to include 105-264 as a reference for paragraphs B and C under Section 502.
Issue #7:

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.

Response:

All noted items in issue #7 have been added to the certificate of compliance.

Issue #8:

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.

Response:

Section 308, paragraph B2, was changed from “No” to “Yes.”

Issue #9:

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

Response:

In Section 333, the “Yes” has been changed to “No” and references to software originally entered by the State have been removed from the certificate of compliance.

Sincerely,

Eric K. Wayne, Director
Sales and Use Tax Division
E-500F. The Secretary shall administer the tax imposed by this section on gross receipts in the same manner as the tax levied under G.S. 105-164.4(a)(2). See the filing requirements set out in Paragraph A. of this Bulletin.

E. White Goods Disposal Tax Return

The white goods disposal tax is imposed on each new white good sold by a retailer or purchased outside the State for storage, use or consumption in this State. The tax is an additional State sales and use tax and, except as provided in Article 5C, is to be collected and administered in the same manner as the State sales and use tax. The white goods disposal tax is to be reported to the Department of Revenue on the White Goods Disposal Tax Return, Form E-500H. See the filing requirements set out in Paragraph A. of this Bulletin.

F. Dry-Cleaning Solvent Tax Return

The tax is imposed on each gallon of dry-cleaning solvent sold by a retailer to a dry-cleaning facility or purchased by a dry-cleaning facility from outside the State for storage, use or consumption in this State. The dry-cleaning solvent tax is an additional State sales and use tax and, except for the application of exemptions and refunds, is to be collected and administered in the same manner as the State sales and use tax imposed by Article 5 of Chapter 105 of the General Statutes. The dry-cleaning solvent tax is to be reported to the Department of Revenue on the Dry-Cleaning Solvent Tax Return, Form E-500S. See the filing requirements set out in Paragraph A. of this Bulletin.

G. Solid Waste Disposal Tax Return

The solid waste disposal tax is imposed on the disposal of municipal solid waste and construction and demolition debris in a landfill permitted under Article 9 of Chapter 130A of the General Statutes and on the transfer of such waste an debris to a transfer station permitted under the same Article for disposal outside the State. The tax is payable and a return is due to be filed in the same manner as the State sales tax. The solid waste disposal tax is to be reported to the Department of Revenue on the Solid Waste Disposal Tax Return, Form E-500K.

History Note:
Authority G.S. 105-164.4; 105-164.16; 105-187.1-11; 105-187.15-19; 105-264;
Issued: June 1, 1996;
Revised: December 1, 2008; April 1, 2008; March 1, 2007;
February 1, 2004; December 1, 2002; June 1, 2002;
November 15, 2000; August 1, 2000; October 1, 1999;

1-5 MEASURE OF SALES AND USE TAX DUE

A. The tax is due on the merchant’s gross retail sales after deducting exempt sales and other nontaxable receipts. The merchant shall pay to the State the amount due, as provided by statute, at the applicable rates on his total taxable retail sales, whether or not he has collected the tax thereon and shall also pay any amount of tax collected in excess of the amount which should have been collected on taxable sales. If tax is collected on exempt or nontaxable sales, the tax erroneously collected must be paid to the Secretary, and no refund shall be made to a taxpayer unless the purchaser has received credit for or has been refunded the amount of tax erroneously collected.

B. When the customer purchases more than one article at one trading period, the applicable rate of tax can be applied to each article purchased or to the total charge for all articles purchased. Those businesses having cash registers at each counter or in each department shall collect a tax
equal to the tax due on the total charge for tangible personal property purchased by a customer at one trading period without leaving the place of business.

C. The tax computation must be computed to the third decimal place. The amount of tax shall be rounded up whenever the third decimal place is greater than four. The State allows the rounding rule to be applied to the aggregated state and local taxes.

History Note:  Authority G.S. 105-164.11; 105-264;  
Issued: June 1, 1996;  
Revised: October 21, 2011; December 1, 2008; March 1, 2007; February 1, 2004.

1-6 SALES FOR RESALE

A. A purchaser of tangible personal property who is properly registered with the Sales and Use Tax Division of the North Carolina Department of Revenue or in a taxing jurisdiction outside this State and is engaged in the business of selling tangible personal property or taxable services at retail or wholesale and makes purchases of tangible personal property or services for the purpose of resale shall furnish to his vendors as their authority for not collecting the tax, either:

1. a Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-596E; or

2. other evidence in writing adequate to support the conclusion that he is registered with the Department of Revenue or in a taxing jurisdiction outside this State for sales and use tax purposes and that the property or service is being purchased for the purpose of resale.

Such certificates or other written evidence shall be completed in duplicate and a copy retained by both the vendor and the vendee in their files. In the absence of such certificates or other adequate written evidence, vendors selling taxable tangible personal property or taxable services to wholesale and retail merchants shall be deemed to be making retail sales and will be liable for collecting and remitting the tax thereon at the applicable rate.

B. The Secretary may revoke the registration of any registered merchant who misuses a Certificate of Exemption. Vendors shall charge the applicable rate of tax on sales to registered merchants when the property sold is for use by the purchaser and not for resale. In the case of a sale for resale, a vendor who accepts a Certificate of Exemption from a purchaser of tangible personal property has the burden of proving that the sale is not a retail sale unless all of the following conditions are met:

1. For a sale made in person, the certificate is signed by the purchaser, states the purchaser's name, address, registration number, and type of business.

2. For a sale made in person, the tangible personal property sold is the type of property typically sold by the type of business stated on the certificate.

3. For a sale made over the Internet or by other remote means, the seller obtains the purchaser's name, address, registration number, and type of business and maintains this information in a retrievable format in its records.

Merchants purchasing tangible personal property for resale on a regular basis from a vendor shall only be required to furnish one Certificate of Exemption or other written evidence to the vendor for such purchases provided the tangible personal property purchased is of the type generally and ordinarily sold by the type of business operated by the purchaser and provided there is no change in the character of the purchaser's business which is known to the vendor or which should be known to him in the exercise of ordinary and reasonable care. Otherwise, the vendor shall require