



STATE OF MICHIGAN  
DEPARTMENT OF TREASURY  
LANSING

RICK SNYDER  
GOVERNOR

ANDY DILLON  
STATE TREASURER

October 23, 2013

Mr. Craig Johnson, Executive Director  
Streamlined Sales Tax Governing Board, Inc.  
100 Majestic Drive, Suite 400  
Westby, WI 54667

Mr. Myles Vosberg, Chairman  
Compliance Review and Interpretation Committee  
Streamlined Sales Tax Governing Board, Inc.  
100 Majestic Drive, Suite 400  
Westby, WI 54667

Re: Michigan's 2013 SSUTA Recertification – Response to Preliminary Report

Dear Messrs. Johnson and Vosberg:

This is in response to the Preliminary Report on Michigan's 2013 Annual Recertification submitted by Craig Johnson and Pam Cook to the Compliance Review and Interpretation Committee. The Report identifies two items relating to Michigan. Our responses to those items, plus one raised by the BAC, are below.

**Michigan:**

- A. Report Issue 1. Direct Mail Sourcing – The state was declared out of compliance by the Governing Board because the new sourcing rules and definitions for direct mail have not been adopted.**

Response: This matter will require action by the Michigan Legislature. Draft legislation has been submitted for further handling.

- B. Report Issue 2. Remittance of Funds – The statutes cited do not address due dates when the Federal Reserve bank is closed. Is this documented elsewhere?**

Response: We do not think we need to make any changes. Our state statutes provide as follows:

1. "If a due date falls on a Saturday, Sunday, state holiday, or legal banking holiday, the taxes are due on the next succeeding business day." MCL 205.56(7); MCL 205.96(6).

2. MCL 435.101 sets out the dates that are banking holidays in Michigan – they include all of the dates when the Federal Reserve Bank is closed.

“Section 1. The following days namely: January 1, New Year's day; the third Monday in January in conjunction with the federal holiday, Martin Luther King, Jr. day; February 12, Lincoln's birthday; the third Monday of February, Washington's birthday; the last Monday of May, Memorial or Decoration day; July 4; the first Monday in September, Labor day; the second Monday in October, Columbus day; November 11, Veterans' day; December 25, Christmas day; every Saturday from 12 noon until 12 midnight, which is designated a half holiday; and the fourth Thursday of November, Thanksgiving day, for all purposes regarding the presenting for payment or acceptance, and the protesting and giving notice of the dishonor of bills of exchange, bank checks, and promissory notes, also for the holding of courts, except as otherwise provided in this act, shall be treated and considered as the first day of the week, commonly called Sunday, and as public holidays or half holidays. Bills, checks, and notes otherwise presentable for acceptance of payment on these days shall be considered as payable and presentable for acceptance or payment on the next secular or business day following the holiday or half holiday. A law in this state shall not affect the validity of, or render void or voidable, the payment, certification, or acceptance of a check or other negotiable instrument or any other transaction by a bank in this state, because done or performed on a Saturday between 12 noon and midnight, if the payment, certification, acceptance, or other transaction would be valid if done or performed before 12 noon on that Saturday. This act does not compel a bank, savings and loan association, or building and loan association in this state, which by law or custom is entitled to close at 12 noon on a Saturday, to keep open for the transaction of business or to perform the acts or transactions described in this section, on a Saturday after that hour except at its own option in construing this section, every Saturday, unless a whole holiday, shall for the holding of court and the transaction of business authorized by the laws of this state be considered a secular or business day. If the return or adjourn day in an action, matter, or hearing before a court, officer, referee, or arbitrators, falls on any of the days mentioned in this section except Sunday, then that action, matter, or proceeding, commenced or adjourned, shall not, by reason of coming on any of those days except Sunday, abate, but shall stand continued on the next succeeding day, at the same time and place unless the next day is the first day of the week, or a holiday, in which case it shall stand continued to the day succeeding the first day of the week or holiday, at the same time and place. When the first day of the general term of a circuit court, as fixed by the order of a circuit judge, falls upon either of the days mentioned in this

section or when a circuit court is adjourned to a day mentioned in this section, that court may be adjourned to the following secular day. This act shall not prevent or invalidate the entry, issuance, service, or execution of a writ, summons, or confession of judgment, or other legal process, the holding courts or the transaction of lawful business except banking on any of the Saturday afternoons designated in this act as half holidays, nor shall this act prevent a bank, savings and loan association, or building and loan association from keeping its doors open or transacting its business on Saturday afternoons, if by vote of its directors it elects to do so. The legislative body of a county or city may, by ordinance or resolution, provide for the closing of county or municipal offices for any or for all purposes on every Saturday. This act shall not affect state employees working on a Sunday in accordance with their employment as construed by the civil service commission.”

**C. BAC Issue: Access to prewritten software.**

Response: A State may impose a sales tax on prewritten computer software however transferred under SSUTA’s definition of tangible personal property. It is up to each individual State to determine what is necessary to trigger the imposition of that State’s sales/use tax, whether it is a physical copy or an electronically accessed or transferred copy. The definition of Tangible Personal Property is uniformly defined in all Governing Board States. The fact that an individual state chooses to impose its sales or use tax on a defined product is not a violation of the SSUTA or the Sales and Use Tax Administration Act passed by each Governing Board State.

**1. Tangible Personal Property Issue Paper dated April 15, 2002** Below is an excerpt:

“It is recommended that the project adopt the definition of tangible personal property in Alternative 3, substituting the already defined term of “prewritten” for “canned” and eliminating the last sentence. The recommended definition will read as follows: “Tangible personal property” means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, and prewritten computer software. *To exclude prewritten software delivered electronically from taxation, a state must draft an exemption for “prewritten computer software delivered electronically.”*”

**2. September 2003 – Draft Document Digital Equivalent of Tangible Personal Property Issue Paper.**

*Footnote 2 - Prewritten computer software, regardless of the form in which it is transferred, falls within the meaning of “tangible personal property” included in the Streamlined Sales and Use Tax Agreement. The definition reads, “‘Tangible Personal Property’ means personal property that can be seen, weighed, measured, felt, or touched, or that is any other manner perceptible to the senses. ‘Tangible personal property’ includes electricity, water, gas, steam, and prewritten computer software.” Thus, **digitally delivered forms of this software are tangible personal property** even though they may also satisfy the elements of a “digital equivalent of tangible personal property.*

**3. The BAC misunderstands the purpose of Section 333.** The BAC is misinterpreting the language in Section 333. The purpose of the language is to permit states to include computer software in their definition of tangible personal property.

**Section 333: USE OF SPECIFIED DIGITAL PRODUCTS (Effective January 1, 2010)** A member state shall not include any product transferred electronically in its definition of “tangible personal property.” “Ancillary services”, “*computer software*”, and “telecommunication services” *shall be excluded from the term “products transferred electronically.”* For purposes of this section, the term “transferred electronically” means obtained by the purchaser by means other than tangible storage media.

Sincerely,

Michael A. Eschelbach, Director  
Bureau of Tax Policy