



STATE OF MICHIGAN  
DEPARTMENT OF TREASURY  
LANSING

RICK SNYDER  
GOVERNOR

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STATE TREASURER

October 16, 2014

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 2014 SSUTA Recertification – Response to Preliminary Report

Dear Messrs. Johnson and Vosberg:

This is in response to the Preliminary Report on Michigan's 2014 Annual Recertification submitted by Craig Johnson to the Compliance Review and Interpretation Committee. The Report identifies several items relating to Michigan. Our responses to those items, plus one raised by the BAC, are below.

**Michigan:**

**A. Report Issue 1. Taxability Matrix**

**1. Delivery charges (ref. nos. 11000, 11010) Change 205.92(f)(vi) and 205.51(1)(d)(vi) to 205.92(f)(iv) and 205.51(1)(d)(iv).**

These changes have been made.

**2. Meat and seafood products (ref. no. 41025) sold in an unheated state by weight or volume are shown as taxable whereas all food sold in an unheated state by weight or volume are shown as non-taxable. The meat and seafood category is a subset of ref. no. 41020 and should be taxed the same unless the law is changed to specifically tax them differently.**

Ref. no. 41025 has been changed to be consistent with Ref. No. 41020.

**3. Grooming and hygiene products with a prescription (ref. no. 51172) - has an "X" in the exempt column. All the other similar categories are left blank. Should this be blank also?**

Ref. No. 51172 has been changed so that it is blank.

**B. Report Issue 2: 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.

**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.**

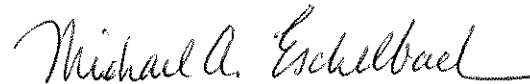
*Footnote 2 - Prewritten computer software, regardless of the form in which it is transferred, falls within the meaning of “tangible personal*

*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