

November 4, 2009

Scott Peterson
Executive Director
Streamlined Sales Tax Governing Board, Inc.
4205 Hillsboro Pike, Suite 305
Nashville, TN 37215

Re: Kansas Response to COST Letter Dated October 26, 2009

Dear Mr. Peterson:

COST has raised the following issues concerning Kansas' compliance with the Agreement:

- 1) Requirements for a fully completed exemption certificate pursuant to K.S.A. 79-3651(c) and (f) exceed those required in Section 317 of the Agreement
- 2) Unable to verify (in a law or regulation) that the Streamlined Sales Tax Exemption Certificate posted on its website is prescribed for use in Kansas.

Richard Cram had a teleconference with Fred Nicely and Kathy Neggers of COST on November 2, 2009 concerning the above issues, based on the above-referenced statute and Publication KS-1520, Kansas Exemption Certificates, which contains copies of all Kansas exemption certificates, including the SSUTA exemption certificate form, and Department guidelines concerning use of those certificates. Copies of K.S.A. 2008 Supp. 79-3651 and Publication KS-1520 are attached for reference.

Issue No. 1

COST points out that the Kansas exemption certificate forms and guidelines request a description of the property being purchased, whereas the SSUTA exemption certificate form does not. The Department is in the process of revising Publication KS-1520 to make clear that the request for a description of the property being purchased in the Kansas exemption certificate form is not a requirement, and the SSUTA exemption certificate form may be used in lieu of the Kansas exemption certificate form.

COST also notes that K.S.A. 79-3651(f) provides that for a tax-exempt entity claiming a sales tax exemption, the certificate must contain the exemption identification number issued to the entity by the Department, the subsection under which the exemption is being claimed, and if paper, must be signed by an officer, office manager or other administrator of the entity. Also, payment should be made on the entity's check, warrant or voucher.

The SSUTA form does provide a blank for a charitable, religious or educational organization to provide an exemption identification number issued by the Department, and requires that it be signed by an “authorized purchaser.” The SSUTA also provides: “A seller may not accept a certificate of exemption for an entity-based exemption on a sale made at a location operated by the seller within the designated state if the state does not allow such an entity-based exemption.” This raises the question: may a state impose any restrictions on acceptance of a tax-exempt entity exemption certificate in an over-the-counter sale to ensure that it is the authorized tax-exempt entity claiming the exemption? Section 317 of the Agreement provides that in this situation, a state may provide:
an exemption certificate that clearly and affirmatively indicates (graying out exemption reason types on the uniform form and posting it on a state’s website is an indicator) that the claimed exemption is not available in that state.

Is the state limited to graying out exemption reason types on the uniform SSUTA form?

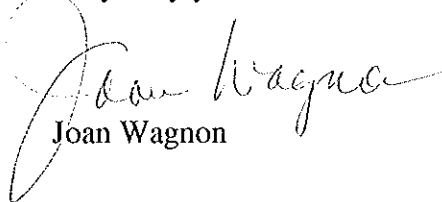
The Department issues identification numbers to all tax-exempt entities, and they are required to show this number on any exemption certificate, pursuant to K.S.A. 2008 Supp. 79-3692 (also attached). The Department is in the process of revising Publication KS-1520 to make clear that a tax-exempt entity may use the SSUTA exemption form for making direct purchases in lieu of the exemption certificate issued by the Department, and to the extent Kansas exemption certificate forms request information not included on the SSUTA exemption certificate form, such information is voluntary.

Issue No. 2

K.S.A. 79-3651(c) provides that the exemption certificate “shall be substantially in such form as the director [of taxation] may prescribe.” This statutory authority gives the director of taxation the flexibility to adopt and authorize use of the SSUTA exemption certificate form, which the director of taxation has done, as evidenced by the fact that the SSUTA exemption form is included in Publication KS-1520. However, the Department will add language to Publication KS-1520 to make clear that the SSUTA exemption certificate form may be used by any purchaser in lieu of any of the Kansas exemption certificate forms for making direct purchases.

We will plan to have to necessary revisions made to our Publication KS-1520 within the next few weeks.

Very truly yours,



Joan Wagnon