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November 10, 2009

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

Dear Mr. Peterson:

As a result of the Compliance Review and Interpretations Committee (CRIC) discussions during last week's recertification call, Kentucky offers the following additional comments to clarify our state's continued efforts to maintain compliance with the terms of the Streamlined Sales and Use Tax Agreement (SSUTA).

Sourcing of Digital Property

During the 2009 Kentucky General Assembly, the legislature adopted a placeholder provision to source the sale of digital property to "the place of primary use" because of a lack of complete guidance in Section 310 sourcing provisions regarding digital property "delivered electronically." Retailers with sales of digital property subject to Kentucky sales and use tax should continue to rely upon the sourcing hierarchy set forth in Section 310 of the SSUTA which is also codified in Kentucky tax law under KRS 139.105(1) to the extent the delivery address of digital property is unknown. Furthermore, the Department of Revenue will soon be promulgating an administrative regulation to further confirm and clarify this guidance. In addition, the Department looks forward to working with the State and Local Advisory Council to develop further guidance on the sourcing of digital property accessed without an electronic download.

120-Day Rule for Good Faith under Section 317C.1.

The Business Advisory Council (BAC) has requested clarification that Kentucky honors the 120-day time frame provided under Section 317 for allowing a seller to obtain proof of an exempt transaction even if the taxpayer did not obtain the exemption certificate or relevant data elements within 90 days subsequent to the date of the



sale. Our current law under KRS 139.270(3)(b) provides that “the seller or retailer may offer additional documentation to the department that the transaction is not subject to tax after the ninety (90) day period which the department may consider.”

This current language reflects Kentucky’s longstanding administrative practice to allow sellers the opportunity to document an exempt sale during the audit or at each administrative stage of an audit protest. The 120-day period was not inserted into current law so as not to restrict the opportunity for documenting an exemption to only 120 additional days. Kentucky will maintain its current practice of allowing documentation for more than just a 120-day time frame until there are subsequent amendments to our statutory guidance. In addition, once the final standard of good faith is adopted with the amendment of Section 317, Kentucky will re-examine this language and seek to clarify its compliance with the 120-day requirement.

We thank the CRIC for the opportunity to provide this additional information for consideration. If you should have any further questions regarding these issues, then please do not hesitate to contact my office for more detail.

Sincerely,



Richard Dobson
Executive Director
Office of Sales and Excise Taxes