

STREAMLINED SALES AND USE TAX AGREEMENT
COMPLIANCE REVIEW AND INTERPRETATIONS COMMITTEE

Compliance Determination 2008-01

New Jersey

This Compliance Determination is made to the Streamlined Sales Tax Governing Board by the Compliance Review and Interpretations Committee this 5th day of June 2008 in accordance with Article IX, Rule 904 of Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party petitioning for the compliance determination is the Streamlined Sales Tax Governing Board. The petition was approved by motion at their April 2, 2008 meeting. To expedite the process, the Governing Board suspended the minimum notice and response requirements in Rule 904. The Executive Director provided written notice to New Jersey of the Governing Board's petition and the hearing by the Compliance Review and Interpretations Committee.

The Compliance Review and Interpretation Committee met on May 8 and determined that the petition was warranted. The Committee conducted hearings on May 8 and June 5. At these hearings the Committee took testimony from New Jersey officials and members of the public.

Issue:

Is New Jersey out of compliance with the Streamlined Sales and Use Tax Agreement (SSUTA) for failing to adopt certain telecommunication provisions and for having an excise tax on clothing with fur?

Determination:

It is the determination of the Compliance Review and Interpretation Committee that the Governing Board find that New Jersey is not in substantial compliance with the Streamlined Sales and Use Tax Agreement (SSUTA).

Rationale:

Compliance with the SSUTA is governed by Section 805: "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."

According to the SSUTA a state must:

1. Adopt the telecommunications service definition and not taxes services which are specifically excluded in the definition under the definition of telecommunications service.

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2. Adopt a definition for ancillary services and not consider such services to be telecommunications service under the state definition.
3. Adopt the definition of international telecommunications services and not tax those services under the interstate definition.
4. Adopt the definition of and sourcing for prepaid wireless calling service.
5. Not include thresholds, such as exempting coin-operated calls only for the local calling rate when the SSUTA contains a definition for coin-operated telephone service that includes all such services whether they are local or not.

It is the determination of the Compliance Review and Interpretations Committee that in their totality, the above constitute a lack of substantial compliance. The Committee's finding does not include the state's excise tax on clothing with fur as the Governing Board's interpretation (2006-05) found Minnesota was not out of compliance for having an excise tax on clothing with fur.

Committee Members:

This determination was supported by Myles Vosberg, Tony Mastin, Joe Vandevender, John Doyle and Andy Sabol. This determination was not supported by Larry Wilkie and Dale Vettel.