

**Alternative Compensation Proposal**  
**Work Group Call**  
**3-24-10**

- 1) Explanation of Current Alternative Compensation Proposal
  - a. General Requirements
    - i. Must be paid to all sellers.
    - ii. Must apply to state and local sales and use taxes.
    - iii. Compensation requirement will be placed in the Agreement.  
Compensation must be provided prior to a state getting collection authority over remote sellers. The payment of compensation is not required for Governing Board Membership.
    - iv. Corresponding language will be included in federal legislation.  
This language must provide clear grant of collection authority for states meeting the requirements of the Agreement and assurance to retailers that states must comply with compensation requirement. Language must also allow for future reductions to compensation requirement as additional simplifications and improvements in technology reduce collection costs or increases in the compensation requirement if provisions are adopted that increase collection costs. A proposed structure for federal language would be to first adopt an amendment to the Agreement that provides the details on how compensation will be paid. The federal language would require reasonable compensation and would specifically state that the compensation provided for in the Agreement meets that standard given the current level of simplification. The level of compensation required in the Agreement could be lowered in the future as additional simplifications are adopted or raised if simplifications are removed. The process for adopting and appealing future changes to the level of compensation will need to be developed.
    - v. Compensation calculation will be incorporated into the electronic return so that amount of compensation can be determined from the information included on an individual return.
    - vi. A state may limit compensation ~~only for~~ to returns that are timely filed and fully paid.
    - vii. A state may elect to not pay compensation on a seller's purchases for their own use.
    - viii. States will be allowed to restrict sellers from altering the number of returns they file in order to enhance their compensation.
    - ix. States will not be required to pay compensation on sales for which ~~to~~ a seller that is using a CSP (if the state is paying for the CSP service).
  - b. Outline of Proposal

- i. Compensation will be paid as a percentage applied to tax remitted on an individual return. The figures in this proposal are based on a monthly return. Appropriate adjustments will be made to accommodate alternative filing periods.
- ii. Three “Tiers” of compensation are proposed to recognize that smaller sellers have much greater costs relative to the amount of tax they remit than do larger sellers. The Joint Cost of Collection Study grouped sellers into three categories. It categorized small retailers as those having annual sales of between \$150,000 and \$1 million, medium retailers as those having annual sales between \$1 million and \$10 million, and large retailers as those having annual sales in excess of \$10 million. Converting these annual sales numbers into monthly tax remitted numbers (assuming a 7.5% tax rate) results in small sellers being identified as those remitting less than \$6,250/month, medium sellers as those remitting less than \$62,500/month, and large sellers remitting over \$62,500/month. These classifications were used to develop the proposed tiers. Under this proposal, all sellers will be paid compensation on the first \$6,250 remitted each month at one rate, will be paid a lower rate on tax remitted each month between \$6,250 and \$62,500, and a lower rate on tax remitted each month in excess of \$62,500.
- iii. The rates that will be applied to Tier 1, Tier 2 and Tier 3 are proposed to be set in relation to the cost differences found in the JCCS. That study found that the cost for medium sized sellers was 40% of the cost for small sellers and that the cost for large sellers was 15% of the cost for small sellers. Recognizing the impact of the proposed cap on overall compensation and that some variable costs to retailers such as paying credit and debit card fees on the tax portion of a purchase do not decrease, are a larger share of the overall costs for larger sellers, it is proposed that the minimum requirement for Tier 2 compensation be 50% of that for Tier 1 and that the minimum requirement for Tier 3 be 25% of Tier 1. A state can pay a higher rate for all Tiers or an individual Tier as long as the minimum level of compensation is maintained for each Tier.
- iv. Each state will determine the compensation rates for each Tier pursuant to the requirements of the Agreement. The Governing Board will determine if the proposed state rates are in compliance. Based on data from the previous year, the minimum rates shall be set so that the total compensation that would have been paid during that year will equal .9% of total sales and use tax revenue for states without local jurisdictions and 1% for states that require sellers to report tax for local jurisdictions (allowing for exceptions specifically allowed in the Agreement).

- v. States that have a second state rate on groceries or drugs will be required to pay additional compensation on the tax collected at that rate.
- vi. A state may cap the compensation ~~Compensation will be capped by allowing states to not pay compensation~~ on tax remitted monthly above a certain amount. For states with annual sales and use tax collections below \$2 Billion the amount proposed is \$1 Million/month, for states with collections between \$2 Billion and \$6 Billion the amount is \$5 Million/month, and for states with collections above \$6 Billion the amount is \$10 Million/month. These amounts represent the minimum level a state can use for the upper limit on Tier 3.
- ~~vii. The states continue to work on ways to provide additional compensation to small retailers that will have a new collection obligation. Any proposal must recognize the administrative difficulty of making such payments. Discussion concerning this type of compensation must also take into account the level to be set for the small seller exception.~~
- ~~viii. A trigger mechanism that addresses the timing of the requirement to compensate all sellers with the receipt of new money from remote collection authority and the concern over the uncertainty of the amount of funds states may receive must be part of the proposal. The amendment that has been filed by Kansas addresses both of these concerns. For each individual state, the requirement to provide compensation to new streamlined sellers shall apply on the day remote collection authority is implemented. The state shall provide compensation to all other sellers within 15 months after the date remote collection authority is implemented. A new streamlined seller is a seller that registers through the streamlined registration system that was not previously collecting sales or use taxes. A state may establish a target for funds collected through remote collection authority and opt out of the requirement to provide compensation if the target is not met. Remote collection authority would cease to be in effect on the date that the state opts out.~~
- ix. This compensation proposal is not applicable to other communication taxes. An appropriate provision for those taxes must be developed.
- x. An exception to the requirement to provide compensation must be allowed for transactions in which the seller is not responsible for collecting and remitting the tax and for sellers with direct pay permits (this is a state option).
- xi. We are continuing to review the issues faced by sellers that have a large share of tax exempt sales. Any issues that can be resolved quickly can be addressed in the upcoming Governing Board meeting. Other issues can be studied further.

xii. A provision requiring additional compensation for states with a clothing threshold will be included.

c. Other Issues

i. Small Seller Exception

ii. Small Seller Implementation Compensation- Possible proposal- For each state in which a seller is determined to be a remote seller, the seller would be allowed to an implementation allowance of 10% up to \$500. The total implementation allowance for all states would be capped at \$5,000. This would be limited to small sellers.