

AM9003 A motion by Kansas, Kentucky, and Washington to amend the SSUTA relating to vendor compensation: (referred to Executive Committee)

The intent of this revision of 3/23/2010 is to conform AM 09003 to the alternate compensation proposal which has been developed and present it to the Executive Committee for approval.

I. Vendor Compensation Requirement

A. Requirement for Collection Authority

1. In order for a Member State to require remote sellers to collect **state and local** sales and use tax on remote sales, a Member State must provide vendor compensation to all sellers, instate and remote, which meets **both** the requirements of the Governing Board and the ~~Mainstreet Fairness Act~~ **authorizing** federal legislation passed by Congress .
2. A state shall not be required to comply with the requirements for compensation in the federal legislation in order to be considered a Member State under the Agreement, but such state shall not have remote seller collection authority authorized **by** the federal act .

B. Petition for Collection Authority and Compensation Compliance Determination.

1. The Governing Board shall certify which Member States are in compliance with the minimum simplification and compensation requirements of ~~Section 7 of the Federal legislation~~ **the federal act** and shall reevaluate such certification on an annual basis.
 - (a) A Member State shall petition the Governing Board for certification that it meets all the compensation requirements of this section and the federal legislation. The petition must include the most recent Certificate of Compliance issued by the Compliance and Interpretation Committee (CRIC) which shows it to be in full compliance with the minimum simplification standards, other than compensation.
 - (b) A petition for collection authority may be submitted to the Governing Board at any time but ~~this~~ **the Governing Board shall not grant** state specific authorization to begin collections **until** 6-months after the general collection authority activation date provided in the ~~Main Street Fairness Act~~ **federal legislation**.
 - (c) Upon certification by the Governing Board, the Member State will be authorized to require collection by remote sellers. This authority will commence for a specific state on the first day of the next calendar quarter sixty days after the date the Governing Board makes its compensation determination. Such collection authority will continue as long as the Member State provides compensation to all sellers, both in-state and remote, and maintains its certification and compliance with the Agreement.
2. The Governing Board shall establish within its bylaws a Compensation Certification and Review committee comprised of no less than 11 members. Membership should be drawn

from both advisory councils, and delegates to the Governing Board. The Chair of the Compliance and Interpretations Committee should be ex officio.

The purpose of this committee is to:

- (a) review each Member State's petition pursuant to B, 1;
- (b) perform annual reviews of state compensation plans; and
- (c) make recommendations to the Governing Board for action on any matter related to compensation.

3. At any time after the Governing Board has made the determinations **required by the federal act in Section 4(e)** to grant collection authority to a state, any person who may be affected by the Agreement may petition the Governing Board for a determination on a Member State's compliance with the federal Act or the Agreement. Such request shall be deemed a petition for matters of compliance under Section 1002 of the Agreement and shall comply with the rules and procedures for issue resolution in Section 1001 of the Agreement.

4. Upon a final determination by the Governing Board that a Member State's compensation is not in compliance with the compensation requirements of the federal act, **[Section 7, 14(a) or 14(b),]** then a Member State's authority to require collection by remote sellers shall automatically terminate 30 days following the date the Member State is finally determined to be out of compliance.

5. Upon a final determination by the Governing Board that a Member State is not in compliance with the minimum simplification parts of the Agreement, other than compensation **[Section 7, 14(a) or 14(b),]** that Member State shall lose its remote seller collection authority the earlier of

- (a) the date specified by the Governing Board, or
- (b) the later of the first day of January at least two years after the Governing Board finally determined the state was not compliant or the first day of a calendar quarter following the end of one full session of the state's legislature beginning after the Governing Board finally determined the state was not compliant.

6. Any Member State that loses its collection authority must petition again to have its remote seller collection authority restored. The new petition, which may be submitted at any time, should identify how the issues which caused loss of certification have been addressed and why certification should be restored.

C. Standards for Compensation

1. The Member State shall provide reasonable compensation to all sellers for expenses incurred in administering, collecting, and remitting sales and use taxes (other than taxes paid on goods and services purchased for the consumption of the seller) to that Member State which may be reasonably related to actual costs incurred in collecting and remitting sales and use taxes. Compensation may

- (a) vary from state to state,
- (b) vary according to collection costs of sellers of different sizes,

- (c) vary according to the complexity of a state's laws, such as having a single state rate versus many local jurisdictions, clothing caps or thresholds, origin sourcing, etc.
- (d) deviate above the minimum standard,
- (e) be reasonably capped,
- (f) be adjusted in relationship to adjustments in the size of the small business exemption adopted by the Governing Board,
- (g) be reduced as additional simplifications and improvements in technology reduce collection costs,
- (h) be increased if provisions of the Agreement are adopted that increase collection costs.

2. Compensation will be paid as a percentage applied to tax remitted on an individual return. Appropriate adjustments in Rules will be made to accommodate differing filing periods.

3. Each State shall establish three tiers or rates of compensation which shall be a percentage of a portion of sales and use taxes remitted by a seller in any month. Rate 1 shall be paid on the first \$6,250.00 of the sales and use tax remitted by a seller in any month. Rate 2 shall be paid on the amount of sales and use tax remitted in a month which is in excess \$6,250.00 and not in excess of \$62,500.00. Rate 3 shall be paid on the sales tax remitted by a seller in a month which is in excess of \$62,500.00.

Rates 1, 2, 3 shall be established by each state in a manner to result in the payment of compensation, if calculated for the previous calendar year, which is not less than:

- 1) One percent (1%) of state and local sales and use tax revenue for states that require sellers to report tax by local jurisdiction; or
- 2) Nine-tenths of One percent (0.9%) of sales and use tax revenue for states that do not require sellers to report tax by local jurisdiction.

4. States that have a second state rate on groceries or drugs or clothing thresholds will be required to pay additional compensation on the tax collected at a lower rate or threshold.

5. Rules setting forth calculations of minimum compensation amounts, the percentage relationship among the three rates, and allowable caps must be approved by the Governing Board prior to any state exercising its collection authority.

6. Procedural rules to facilitate payment of compensation within the Simplified Electronic Return must be in place prior to any state exercising its collection authority.

7. All rules relating to compensation must be reviewed biannually by the Governing Board in time for states to incorporate any changes into their next legislative session. ¹

8. States may restrict sellers from altering the number of returns filed in order to enhance their own compensation or that of their affiliates.

9. Compensation, as defined by this Amendment, is applicable only to sales and use taxes.

10. Compensation will be paid in any month that a return is timely filed and paid. No compensation will be paid for a late-filed return.
11. A state may elect not to pay compensation on a seller's purchases for their own use.
12. States will not be required to pay compensation on sales for which a seller is using a Certified Service Provider and is being compensated for that service by the state.
13. States may make an exception to the requirement to provide compensation for transactions in which the seller is not responsible for collecting and remitting the tax, and for sellers with direct pay permits.

D. Obligation to Pay

1. States shall begin paying compensation for all remote sellers upon submission of the seller's first simplified electronic return (SER). For purposes of this section a remote seller shall be a retailer who registers with the Streamlined Sales Tax registration system after the passage of the federal act granting collection authority and has less than \$50,000 in property, payroll or sales in a particular state.
2. If a state determines that a remote seller had previously been registered in that state, compensation for that seller may be delayed until the state is required to pay compensation for all in-state retailers as set forth in D.3.
3. A state must elect one of the following methods for starting compensation for in-state sellers or remote sellers that had been previously registered in that state.
 - a. Each state will track and report in the aggregate its collections from these remote sellers who have registered and are collecting as a result of the federal grant of authority. When the amount of monthly collections for each of three months meets or exceeds the amount that would be required to pay the approved monthly level of vendor compensation for all other sellers, then vendor compensation will be due and owing beginning the first day of the following ~~month~~ quarter and thereafter for all sellers. In a state that is already compensating its vendors, only the difference above the currently paid amount will be required to accumulate before implementing the approved compensation.; or
 - b. States will have 12 months following the grant of collection authority before compensation to instate sellers or remote sellers that had been previously registered in that state. On the first day of a quarter no later than 3 months after this period expires, states must pay compensation to all sellers in accordance with this amendment.

4. ~~Twenty-four months~~ After obtaining remote collection authority, if a state is not receiving sufficient revenues **by the end of the first year** from remote sellers to pay the Governing Board-approved compensation rate to all vendors, then the state may notify the Governing Board that its remote collection authority should expire and terminate its obligation to pay vendor compensation at the Governing Board-approved rate.

II. Small Seller Exemption

A. The Governing Board shall determine which remote sellers without nexus in a state may be exempted from the requirement to collect sales taxes. In making such a determination the Governing Board should consider whether:

1. the sales are occasional and isolated;
2. the sales are of such low volume that the administrative expense of collection imposes too great a burden on both seller and state;
3. the collection burden on small sellers is offset by compensation;
4. the seller has a monthly filing requirement in a state;
5. CSP's for sellers in that industry group are readily available;
6. technology solutions are available to mitigate the filing burden.

In making the determination, the Governing Board should identify the total annual dollar volume of remote sales nationwide above which would trigger a collection responsibility for sellers without nexus under the federal act. "Remote Sales" are sales into a state in which the seller would not be required to collect tax but for the requirement imposed by Congress. The exemption threshold should be set at a relatively low level and over time should gravitate in the direction of being a threshold that excludes only occasional sales and sellers from the collection requirement. The threshold should be a single national threshold and not have a state-level component.

B. For the first year after collection authority is authorized by Congress, any remote seller and its affiliates with less than \$____,____² in gross remote sales nation-wide in the preceding 12 months is exempt from the collection requirement. That exemption is valid until the following year, when the seller would again have to determine if the small seller exemption applies based on sales volume of the seller and the annual policy determination of the board.³

C. In determining whether a retailer qualifies for the Small Seller Exemption, the total remote sales for the period of October 1 to September 30 must be computed. If the sales exceed the exemption amount, then the retailer would have to begin collection on January 1 of the following year. Once it is determined that a seller has exceeded the exemption threshold, the seller must be allowed one quarter to prepare before the collection obligation becomes effective. If a seller that is collecting currently falls below the threshold amount, that seller should be required to collect until the end of the following calendar quarter

D. In determining whether a seller has exceeded the specified exemption threshold, the sales of the seller should be grouped with its affiliates in the same line of business to avoid an incentive for a seller to split its operations among multiple entities in order to stay below the threshold. In

addition, there should be no exemption for individual sellers below a specified threshold if the affiliated group of which it is a part exceeds the overall threshold.

E. The Governing Board shall post information about the Small Seller Exemption on its website at least 90 days prior to the date on which it becomes effective on the first day of a calendar quarter.

F. This exemption must be reviewed annually, but may be adjusted no more frequently than once a year. Sellers claiming the exemption must file an exemption certificate with the online registration system, indicating they meet the exemption criteria.

G. Any seller utilizing a third party for hosting its sales and processing payments shall not be entitled to the small seller exception if the dollar volume of sales for all sellers using the host exceeds the threshold.

III. Effective Date

This amendment is effective upon passage of federal legislation granting states the right to require sellers without nexus to collect sales and use taxes.

IV. Voluntary Compensation for Remote Sellers

States may choose to compensate volunteer remote sellers as a measure of good faith, and offer such compensation as an inducement to registering to collect through the SST registration system. Such compensation must meet or exceed the standards in this amendment.

V. Repeal of Existing Sections

These sections are repealed:

Section 603: MONETARY ALLOWANCE FOR MODEL 3 SELLERS AND ALL OTHER SELLERS THAT ARE NOT UNDER MODELS 1 OR 2

Section 604: ADDITIONAL MONETARY ALLOWANCE REQUIRED FOR MEMBERS MAKING CERTAIN ELECTION (Effective January 1, 2010)

ENDNOTES (these were written for the July version Mainstreet Fairness Act as the federal bill)

¹ Ultimately, this must agree with the compensation formula that is being developed.

² Since the amount is measured in “gross remote sales nation-wide” this is still going to be a fairly generous exemption (as opposed to basing it on gross sales nation-wide), but a big improvement over using sales in a particular state, or something even more restrictive.

⁷ **Excerpts from the Small Seller/Compensation Task Force Report.**

√ At this point, the primary determinant of the threshold would be the “break-even” point for the state in terms of the vendor compensation being at such a level it would not warrant pursuing the tax. Likewise, a higher threshold could be considered to reduce the level of vendor compensation required for certain classes of sellers.

√ The Task Force believes the federal remote sales legislation should contain a small seller threshold below which a seller would not be required to collect tax in states where it does not have nexus under current law. A threshold is necessary to rationalize the costs and benefits of collection to both sellers and states and to recognize a reality that the smallest sellers cannot practically collect in all states at a reasonable cost relative to the amount of tax they would collect. At the same time, the Task Force believes that sales tax collection is an obligation of doing business and that fundamental fairness requires that, to the extent practical, all sellers should have a collection obligation.

√ The Task Force believes that the threshold should be set at a relatively low level and over time should gravitate in the direction of being a threshold that excludes only occasional sales and sellers from the collection requirement. The level at which the threshold can be set will be dependent on the degree to which tax compliance technology is made readily available to sellers at little or no cost, the simplifications incorporated in the Agreement, and the level of vendor compensation provided. The Task Force believes that the availability of technology must be improved and that additional simplifications must be adopted in order for the threshold to reach what it considers to be a desirable level. Specific suggestions are made below.

√ The Task Force believes that any threshold should be plain, simple and straightforward so that a seller can know his/her situation and plan accordingly. As a result, the Task Force recommends that any small seller threshold should be based simply on a seller’s gross remote sales “Remote Sales” is used here in the same manner as it is in H.R. 3396 and S. 34 as being a sale into a state in which the seller would not be

required to collect tax but for the requirement imposed by the legislation. for a specified twelve month period, e.g., the twelve months ending Sept. 30 each year. In addition, once it is determined that a seller has exceeded the threshold, the seller must be allowed a period of time (at least one quarter) to prepare before the collection obligation becomes effective. Likewise, if a seller that is collecting currently falls below the threshold, that seller should be required to collect until the end of the following calendar quarter (presuming that is the time allowed for a seller to prepare for the collection requirement.) The Task Force recommendation differs from the current federal legislation which based the threshold on “gross remote taxable sales.” The Task Force believes that the “taxable sale” requirement adds complexity to the threshold and increases the burden of any state audits to determine compliance with the threshold.

√ In determining whether a seller has exceeded the specified threshold, the sales of the seller should be grouped with affiliates in the same line of business (as in the current legislation) to avoid an incentive for a seller to split its operations among multiple entities in order to stay below the threshold. In addition, the Task Force does not recommend an exclusion for individual sellers below a specified threshold even though the affiliated group of which it is a part exceeds the overall threshold. In a similar vein, the Task Force believes the threshold should be a single national threshold and not have a state-level component, i.e., not contain a requirement that would say a seller with over X amount of sales in a particular state (where it has no physical presence) would be responsible for collection in that state even though it did not exceed the national threshold.

√ The Task Force expects that any small seller threshold would be implemented on a phased basis, i.e., the threshold would be reduced over time. Phasing is necessary for two reasons: (a) to allow the Streamlined organization to adjust to and work with the influx of registrants; and (b) achieving a threshold at the level envisioned by the Task Force is contingent on the adoption and implementation of additional simplifications and increases in the availability of technological solutions to a broad range of sellers.

√ The Governing Board should also give consideration to whether sellers making remotes sales should be required to certify in some fashion (e.g., via a report filed with the Streamlined Board) that they are below the threshold or whether enforcement of the threshold would be on an “after the fact” audit basis. Requiring some annual certification could be seen as intrusive, but it would allow a seller to think about its position and begin necessary planning as well as putting them in contact with the Streamlined organization so that assistance can be provided.

√ The Governing Board should review the small seller threshold regularly

(at least annually) to determine its effect and operation as well as other adjustments are necessary or warranted in light of changing technology and simplifications.