

## AM9003A02

### A motion by Kansas, Kentucky, and Washington to amend the SSUTA relating to compensation

The intent of this amendment is to provide standards for and a method for determining compensation to all sellers in anticipation of action by Congress that would grant states the authority to require remote sellers to collect sales and use tax.

*This amendment should be inserted in a new section, Article VI, Section 605*

*This version contains the amendments by the Executive Committee on 3/30/2010 and also contains editorial changes suggested after the meeting by committee members. 04/07/10*

#### I. Definitions for purposes of this section

- A. “Remote sales” are sales into a state in which the seller would not legally be required to collect tax, but for the ability of that state to require such “remote seller” to collect tax as authorized by “federal legislation Congress but for the requirement imposed by Congress. This change makes the language consistent with B.
- B. “Remote seller” is a seller that would not register in a state but for the ability of that state to require such “remote seller” to collect tax as authorized by ~~Congress~~ “federal legislation”.
- C. “In-state seller” is any seller that is not a “remote seller” in a state and is legally required to collect tax in that state, regardless of the ability of that state to require such seller to collect tax as authorized by “federal legislation” Congress. This change makes the language consistent with B.
- D. “New remote seller” ~~shall mean~~ is a “remote seller” who ~~registered~~ registers with the Streamlined Sales Tax registration system after the passage of “federal legislation” granting “remote seller” collection authority and was not previously required to collect sales or use taxes. Is there need for the stuff in yellow given that it repeats E.
- E. “Federal legislation or federal act”, as used in this section, means legislation passed by Congress which grants member states the authority to require “remote sellers” to collect sales and use taxes on “remote sales” into that state.

#### II. Compensation Requirement

##### A. Requirement for Collection Authority

- 1. No member state may require “remote sellers” to collect state and local sales and use tax on “remote sales” unless such member state provides compensation to all sellers, in-state and remote, in accordance with the requirements of this section. Is it necessary to modify “all”?

2. A member state shall not be required to comply with the requirements for compensation in this section, but such member state shall not exercise collection authority over “remote sellers” as provided by federal legislation. This is confusing.

B. Petition for Collection Authority and Compensation Compliance Determination.

1. Upon a petition by the member state, the Governing Board shall certify which member states are in compliance with the minimum simplification and compensation requirements of the federal act and the Agreement and shall reevaluate such certification on an annual basis. Petitions for collection authority shall be conducted as follows: The first sentence does five things, and the remainder of this deals with only one thing. Petitions are not “conducted.” There is a consensus that all compensation requirements are in the SSUTA and not the federal legislation. There is no reason to mention the other simplification requirements.
  - a. A member state shall petition the Governing Board for certification that it meets all the compensation requirements of this section and the federal act. The petition must include the most recent Certificate of Compliance showing such Member state to be in full compliance with the minimum simplification requirements of the federal legislation and the Agreement, other than compensation.
  - b. A petition for collection authority may be submitted to the Governing Board at any time but the Governing Board shall not grant state specific authorization to begin remote seller collections until 6 months after the general remote seller collection authority activation date provided in the federal legislation. What is the point of the six months? Does this mean the Governing Board cannot act on any petition until 6 months after an “activation date” which might be a year after the federal legislation is passed?
  - c. Upon certification by the Governing Board, the Member state will be authorized to require collection by remote sellers. This authority will commence for such state on the first day of the next calendar quarter at least 60 days after the date the Governing Board makes its compensation determination certification. Such collection authority will continue as long as the Member state provides compensation to all sellers, both in state and remote, as required or permitted under the Agreement and consistent with II.C.3 of this section 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 shall be drawn from the Business Advisory Council, the State and Local Advisory Council and delegates to the Governing Board. The Chair of the Compliance Review and Interpretations Committee shall be ex officio.

The purpose of this committee is to:

- (a) Review each Member state’s petition pursuant to II. B.1;
- (b) Perform annual reviews of state compensation plans; and
- (c) Provide recommendations to the Governing Board for action on

Member states' petitions made pursuant to Section I.B.1.a.

3. At any time after the Governing Board has made the determinations required by the federal legislation to grant remote seller collection authority to a member state, any person affected by the Agreement may petition the Governing Board for a determination of a member state's compliance with 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. What is in yellow should refer to the SSUTA and not federal legislation.
4. Upon final determination by the Governing Board that a member state's compensation is not in compliance with the compensation requirements of the Agreement, a member state's authority to require collection by remote sellers shall automatically terminate 30 days following the date of such final determination.
5. Upon 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, that Member state shall lose its remote seller collection authority on the earlier of :
  - (a) The date specified by the Governing Board, or
  - (b) The later of the first day of January at least 2 years after the Governing Board finally determined the member state was not in compliance or the first day of a calendar quarter following the end of one full session of the member state's legislature beginning after the Governing Board finally determined the state was not in compliance.
6. Any Member state that loses its collection authority must file a petition with the Governing Board to have its remote seller collection authority restored. The 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 that is reasonably related to actual costs incurred in collecting and remitting sales and use taxes. The Governing Board may allow compensation to: "for consumption of the seller" doesn't seem quite right.
  - (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, including having a single state rate versus many local jurisdictions, clothing caps or thresholds, intra-state origin sourcing;
  - (d) Deviate above the minimum standard; If this means that a state can pay more than the minimum it would be more clear to say that.
  - (e) Be reasonably capped;

- (f) Be adjusted in relationship to changes in the size of the small business exemption adopted by the Governing Board;
  - (g) Be decreased 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 a return. The Governing Board shall promulgate rules to provide appropriate adjustments to accommodate differing filing periods of member states.
  3. Each member state shall establish three rates of compensation which shall be a percentage of a portion of sales and use taxes remitted by a seller in the reported month. Rate 1 shall be paid on the first \$6,250.00 of the sales and use tax remitted by a seller in the reported month. Rate 2, which shall not be less than fifty percent (50%) of a Rate 1, shall be paid on the amount of sales and use tax remitted in the reported month exceeding \$6,250.00 and less than or equal to \$62,500.00. Rate 3, which shall not be less than twenty-five percent (25%) of Rate 1, shall be paid on the sales and use tax remitted by a seller in the reported month exceeding \$62,500.00.

Each member state shall establish Rates 1, 2, 3 to provide total compensation not less than:

- 1) One percent (1%) of state and local sales and use tax collections 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 collections for states that do not require sellers to report tax by local jurisdiction.

Calculation of the compensation rate for the next succeeding calendar year **should** be based on remittances for the previous 12 months ending September 30 of the immediately prior calendar year and the methodology prescribed in the rules to be promulgated by the Governing Board. **“Should” is not direct enough; it is a requirement or it isn’t.**

No member state shall be required by the Agreement to pay compensation to a seller in any month on sales and use taxes remitted for such month in excess of

- (a) One Million Dollars (\$1,000,000.00) for member states with sales and use tax collections in the previous calendar year of not more than Two Billion Dollars (\$2,000,000,000.00); or
- (b) Five Million Dollars (\$5,000,000.00) for states with sales and use tax collections in the previous calendar year of more than Two Billion Dollars (\$2,000,000,000.00) and not more than Six Billion Dollars (\$6,000,000,000.00); or
- (c) Ten Million Dollars (\$10,000,000.00) for states with sales and use tax collections in the previous calendar year of more than Six Billion Dollars (\$6,000,000,000.00).

4. Member 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 and procedures to facilitate payment of compensation within the Simplified Electronic Return must be approved by the Governing Board prior to any member state exercising its collection authority. **This should be changed to be a direct requirement on the Governing Board, such as “the Governing Board shall ...”**
6. All rules relating to compensation must be reviewed biannually by the Governing Board in time for member states to incorporate any changes into their next legislative session. **Change to be a direct requirement on the Governing Board, such as “the Governing Board ...”**
7. Member states may restrict sellers from altering the number of returns filed in order to enhance their own compensation or that of another person. **This is not clear enough.**
8. Compensation, addressed by this Amendment, is applicable only to sales and use taxes remitted. **This repeats number 9.**
9. **Compensation will be paid for any month that a return is timely filed and fully paid. No compensation will be paid for an untimely or partially paid return. Why prohibit a state from paying compensation when the return is late or short paid?**
10. A member state is not required to pay compensation on any seller’s **purchases** for its own use. **This repeats what is in C 1.**
11. Member states will not be required to pay compensation on sales for which a seller is using a Certified Service Provider and such Certified Service Provider is being compensated for that service by the state.
12. **Member states are not required to provide compensation for transactions in which the seller is not responsible for collecting and remitting the tax, and for persons with direct pay permits. I know what a direct pay permit is, but I don’t know what the other is.**
13. **Member states shall not assess penalty or interest on tax due pursuant to II.B.1.c. on sales transactions occurring during the first six months following commencement of remote seller collection authority from a remote seller that registers, reports, and remits such tax by the due date for the return for the sixth month following commencement of remote seller collection authority. This isn’t clear enough.**

#### D. Obligation to Pay

1. Member states shall begin paying compensation to a “new remote seller” upon submission of the seller’s **initial simplified electronic return (SER)**. **When was the**

decision made to only pay remote sellers that use a SER? Almost no seller can create one.

2. If a member state determines that a “new 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 sellers” as set forth in D.3.

*[Editor Note: In discussion, the group was divided about this language in both 1. and 2. as to whether current volunteer registrants should be compensated immediately. Executive committee reached no conclusion since many of those registered have nexus in one or more, but not all states. Further discussion is needed.]*

3. A member state shall elect one of the following methods for commencing payment of compensation for “in-state sellers” or “new remote sellers” ~~that had been~~ previously registered in that state. **I changed the format of the following to make it clear that they are separate and distinct from each other.**
  - a. Option 1. Pay “in-state sellers” and “new remote sellers” previously registered in that state when tax collections from “new remote sellers” reaches a dollar threshold established by the state. Each A state utilizing this option shall will track and report its total collections from “new remote sellers” who have registered and are collecting as a result of the federal grant of remote seller collection authority. When the amount of monthly collections received from such sellers for each of four consecutive months occurring sometime after the date remote seller collection authority began meets or exceeds the amount that would be required to pay the approved average monthly level of compensation for all other sellers, then compensation will be due and owing beginning the first day of the following quarter and thereafter for all sellers. In a state that is already compensating its sellers, only the difference above the currently paid amount and the amount that would be required to pay the approved average monthly level of compensation for all other sellers will be required to accumulate before implementing the approved compensation; or
  - b. Option 2. Begin paying “in-state sellers” and “remote sellers” that had been previously registered in that state on the next return remitted fifteen months Member states will have 15 months following the grant of collection authority before compensation to in-state sellers or remote sellers that had been previously registered in that state will be required. Member states must begin paying compensation to all sellers in accordance with this provision with the submission of the seller’s next return due following this 15-month period; or
  - c. Option 3. A Member state may continue Continue paying pre-existing compensation to all the sellers receiving such payment as long as it such compensation meets the standards in this amendment requirements of this section.

4. ~~After obtaining remote seller collection authority, if a~~ A member state that does not receive sufficient sales and use tax collections from remote sellers to justify the state's continued participation, ~~then the member state~~ may notify the Governing Board that its remote collection authority should expire and may terminate its obligation to pay compensation at the Governing Board-approved rate. A member state which exercises this option shall give not less than 60 days' notice of its intent to relinquish remote collection authority.

## II. Small Seller Exemption

- A. The Governing Board shall develop a sales volume threshold for determining which small "remote sellers" qualify for ~~the small seller~~ an exemption from the requirement to collect sales or use taxes on "remote sales." In making such a determination the Governing Board shall consider whether:
  1. The sales are occasional or isolated;
  2. The sales are of such low volume that the administrative expense of collection imposes too great a burden on both seller and member state;
  3. The collection burden on the remote seller is offset by compensation;
  4. The remote seller has a monthly filing requirement in a member state; I don't understand how this is relevant. Does a state get to say some seller can't qualify for the small seller exemption based on some arbitrary decision on how often they need to file.
  5. Certified Service Providers for sellers in that industry group are readily available; and
  6. Technology solutions are available to mitigate the filing burden.

In making such determination, the Governing Board shall identify the total annual dollar volume of gross remote sales nationwide of the seller above which would trigger a collection responsibility for remote sellers. The exemption threshold shall be set at a relatively low level and over time adjusted downward so that only sellers making isolated or occasional sales are excluded from the collection requirement.

~~The threshold shall be based on national remote sales volume.~~

- B. For the first year after remote seller collection authority is authorized by Congress, any remote seller with less than \$100,000.00 in gross national remote sales volume 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 Governing Board. Is the "first year" twelve months or a calendar year? Does the Governing Board make a "policy determination" or adopt a rule or SSUTA amendment setting the small seller exemption?

In determining whether a remote seller qualifies for the Small Seller Exemption, the total gross national remote sales volume for the most recent 12-month period of beginning October 1 of one calendar year and ending September 30 of the next calendar year must be computed for such seller. If the total gross national remote sales volume for such period exceeds the small seller exemption threshold amount in effect for such period, then the remote seller shall begin

collection and remittance of sales and use tax on remote sales on January 1 of the following year. **Who is making this calculation, a state, the seller, or the Governing Board? It should say who is responsible for making this decision.**

- C. Once a seller has exceeded the exemption threshold, the seller must be allowed until the beginning of the first calendar quarter commencing within 60 days following the date such threshold is exceeded in order to prepare before the collection obligation becomes effective. If gross national remote sales volume for a seller that is currently collecting and remitting sales and use tax on remote sales falls below the small seller exemption threshold amount then in effect, such seller shall continue to collect and remit such taxes until the end of the following calendar quarter
- D. In determining whether a remote seller has exceeded the small seller exemption threshold, the remote sales of such seller should be totaled with the remote sales of any affiliated business owned in whole or substantial part by another remote seller selling the same or substantially similar products and doing business under the same or substantially similar business. No remote seller that is part of an affiliated group with a gross national remote sales volume above the small seller exemption threshold is eligible to qualify for the small seller exemption, even if such seller's gross national remote sales volume is below such threshold. *[Editor Note: The point here is to keep from separating the catalog and internet businesses into different companies to fall below the threshold. However, as the threshold goes lower, this may not be a concern and this provision could be eliminated.]*
- 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. The Governing Board shall review the small seller exemption threshold annually, and such threshold may be adjusted no more frequently than annually. Remote sellers claiming the small seller exemption must file an exemption certificate with the online registration system, stating that they qualify for the small seller exemption and meet such threshold. **How does this get enforced? What happens to a small seller that doesn't file an exemption certificate?**

### **III. Effective Date**

This Section shall not be effective until passage of federal legislation granting states the right to require remote sellers to collect sales and use taxes; however, it shall be automatically repealed eighteen months after its adoption by the Governing Board if such federal legislation has not been enacted within such time period.

### **IV. Voluntary Compensation for Remote Sellers**

States may choose to compensate remote sellers as a measure of good faith, and offer such compensation as an inducement to registering to collect through the SST registration system.

### **V. Amendment and Repeal of Existing Sections**

A. The Title of Article VI is hereby amended to read:

**MONETARY ALLOWANCES FOR NEW TECHNOLOGICAL MODELS AND ~~FOR ORIGIN~~  
SOURCING\_COMPENSATION FOR ALL SELLERS**

B. 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)