

**STREAMLINED SALES AND USE TAX AGREEMENT
COMPLIANCE REVIEW AND INTERPRETATIONS COMMITTEE**

Interpretative Opinion 2011-03

This Interpretative Opinion recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this day of December 1, 2011 in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

Mr. Bruce Christensen requested the interpretation on August 31, 2011.

Issue:

May a state include its statutory appeal period in the 120-day period required by Section 317 D (1) of the Agreement? In the following example, must State A wait until the 120-day period has expired before issuing the audit assessment (i.e., does State A have to wait until after June 28, 2011) or can the 60-day appeal period be included in the 120 days such that State A can issue the audit assessment at any time after April 28, 2011 since the seller will still have until at least June 28, 2011 (120 days after the request for substantiation was provided to the seller) to provide those exemption certificates?

Example:

- State A issues a request to a seller on March 1, 2011 to substantiate certain exempt sales the seller claimed.
- One hundred twenty days from March 1, 2011 is June 28, 2011.
- Sellers are allowed 60 days after receiving a Notice of Amount Due from State A to either pay the amount due or file an appeal.
- If an adjustment to the seller's sales tax liability is made because a seller is missing some exemption certificates at the time the Notice of Amount Due is issued, State A will allow the seller to submit those exemption certificates during the 60-day appeal period.
- State A will treat the receipt of those exemption certificates during the 60-day appeal period as an appeal, review the exemption certificates to confirm the seller received them in good faith, and adjust the Notice of Amount Due accordingly.

Public Comment:

One state recommended that the interpretation not be accepted unless including the appeals period is optional.

Recommendation:

By a unanimous vote of the members present, the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that if a state will adjust the audit

assessment during the appeal period if acceptable documentation is provided, the appeal period can be included as part of the 120 days allowed to provide exemption certificate information. However, if a state will not adjust the audit assessment during the appeal period for exemption certificates accepted in good faith, the state may not include the appeal period as part of the 120 days that must be allowed.

Rationale:

Section 317 D (1) of the Agreement states:

“If the seller has not obtained an exemption certificate or all relevant data elements within 90 days subsequent to the date of sale as provided in Section 317, subsection (C), a member state shall provide the seller with 120 days subsequent to a request for substantiation by a member state, to either:

- a. Obtain a fully completed exemption certificate from the purchaser, taken in good faith which means that the seller obtains a certificate that claims an exemption that:
 - (i) was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced,
 - (ii) could be applicable to the item being purchased, and
 - (iii) is reasonable for the purchaser’s type of business; or
- b. Obtain other information establishing that the transaction was not subject to the tax.

A member state may provide for a period longer than 120 days for sellers to obtain the necessary information.”

The Agreement is silent on the issue of whether a state’s appeals period can be included in the 120 day period. If the state allows a seller to provide substantiation during the appeals period and receive an assessment adjustment, then the requirements of the Agreement have been met as long as 120 days have been allowed since the request for substantiation. A member state has the option of using their state’s appeal period as part of the 120 day period if the state will willingly adjust the audit assessment during the appeal period if acceptable exemption documentation is provided.

Participating Committee Members:

Tom Atchley, Craig Johnson, Richard Cram, and Tim Jennrich