

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

**Interpretative Opinion Recommendation 2007-01**

This Interpretative Opinion Recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee on March 29, 2007, in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is Mr. Phil Schlesinger of Avalara. The request was made on the prescribed form on February 12, 2007, and was made pursuant to the provisions for consideration contained in Rule 902, subsection (H).

Issue

The issue presented is an interpretation of the definition of “drug” in Appendix C, Part II of the Agreement. The specific question is whether the word “drug” is limited to an item or liquid that is consumed internally by the person or used externally on a person, or does it possibly extend beyond this in the context of item B of the definition to include medical supplies such as “Infectious Disease Testing Kits” that are intended to be used in the diagnosis of a disease.

Public Comment

No written public comments were received.

Recommendation

The Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that infectious disease testing kits do not meet the definition of “drug.” However, reagents, which are a component of the infectious disease test kits, do meet the definition of “drug.” The infectious disease test kits are made up of two or more distinct and identifiable products and are sold for one non-itemized price, which may or may not be a bundled transaction, depending on the tax laws in the state to which the sale is sourced. Since this will vary from state to state, the Committee recommends that each state make a determination of whether the sale of infectious disease test kits are taxable transactions according to the laws of their state.

Rationale

The definition of “drug” found in Appendix C, Part II, of the Agreement does not require the item to be internally consumed or externally applied to the patient in order for the definition to apply. However, in order to qualify as a drug it must meet at least one of the provisions provided in A, B, or C of the definition, and it must also meet the basic definition in the first paragraph: “Drug” means a compound, substance or preparation,

and any component of a compound, substance or preparation, other than “food and food ingredients,” “dietary supplements” or “alcoholic beverages.”

To take the position that an item qualifies as a drug merely because the item is intended to be used in the diagnosis, cure, mitigation, treatment, or prevention of disease, as described in B of the definition, would expand the definition of drug to include much of what is defined as durable medical equipment. For example, dialysis equipment is used in the treatment of disease, but is not a drug, because it is not a “compound, substance or preparation.”

The infectious disease test kits in question contain a chemical (reagents) and other items such as slides, plastic trays and droppers. The chemicals are also sold separately from the kits. Committee members agree that the chemicals meet the definition of “drug,” but the other items in the kit do not. Since the infectious disease test kits contain two or more distinct and identifiable products and are sold for one non-itemized price, the sale of the test kits may be a bundled transaction. Business representatives pointed out that the test kits in question are just one of many different test kits sold by various manufacturers for use by medical professionals. Each type of kit sold will contain different items with different costs for the components, so the results may differ for each type of kit. To make a determination about a specific test kit, one must know the contents of the kit and the seller’s purchase price or sales price of each item included in the kit. Whether sales and use tax applies to the sale of a bundled transaction, or to the sale of a transaction that meets the de minimis test, is based on the laws in the state to which the sale is sourced.

#### Committee members

Larry Wilkie, Committee Chair, Dale Vettel, Vice Chair, Tony Mastin, Andy Sabol, Joe VanDevender, Myles Vosberg and Delegate John Doyle