



Streamlined Sales Tax Project

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ISSUE PAPERS

November 2001

The Streamlined Sales Tax Project has prepared Issue Papers to explain in more detail the provisions of the proposals approved by the Project in December, 2000 (amended January, 2001.) In some instances, the draft issue papers contain alternative positions. These papers were discussed at the Project meeting in Minneapolis, MN in August 2001 and some were reviewed at the Project meeting in Louisville, KY in October 2001.

These papers will be reviewed and considered at a Project meeting teleconference on November 19, 2001.

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STREAMLINED SALES TAX PROJECT

BAD DEBT ISSUE PAPER

Background:

The development of a uniform allowance for bad debts was on the original list of uniformity features designated as necessary for the development of a streamlined sales and use tax system, which was provided to the Project by the National Governors Association (NGA), National Conference of State Legislatures (NCSL), Multistate Tax Commission (MTC), and the Federation of Tax Administrators (FTA) at its initial meeting in March, 2000. The issue was assigned to the Sourcing and Other Simplifications Work Group. The work group recommended a provision, which was incorporated into the draft of the Streamlined Sales and Use Tax Agreement (the Agreement”), at section 318. The Agreement was adopted by the Streamlined Sales Tax Project (SSTP) on December 22, 2000. A copy of section 318 of the Agreement is Attachment 1 to this report.

Following adoption of the SSTP Agreement, some concerns about the bad debt provision have been raised. The greatest concern centered primarily on whether the language allowed states to offer the bad debt allowance to parties other than vendors, such as purchasers of retail debt. Other issues concerned the definition of a bad debt, the payment of interest on refunds of bad debt allowances, and the treatment of monies recovered on debts that previously had been claimed as bad debts.

On January 27, 2001, the Executive Committee of the National Conference of State Legislatures (NCSL) endorsed the SSTP’s Uniform Sales and Use Tax Administration Act and the Agreement with several amendments. One of the amendments was the removal of section 318 from the Agreement for further consideration.

Proposed Revisions:

At the SSTP meeting in Milwaukee, WI on May 7, 2001, a meeting was held between the co-chairs of the Sourcing and Other Simplifications workgroup, the co-chairs of the SSTP, and representatives of industry that had expressed concerns about the bad debt language in the SSTP Agreement. At this meeting, language was developed to address these issues in the draft bad debt provision.

One industry representative later raised a concern at the Project meeting in Raleigh, NC on June 25 and 26 about the language of paragraph c. of the proposed language. That language currently requires a bad debt to be “charged off for federal income tax purposes” before the debt can be claimed for sales tax. The representative stated that many states allow the bad debt deduction to be claimed when the debt is determined to be uncollectible in the taxpayer’s books and records. The representative felt the current language made claimants wait until a federal return is filed in order to claim a state bad debt allowance. The possible advantages of the proposed change would include allowing claimants of the bad debt deduction to make claims sooner and not carry them until the federal return is filed. For states, an advantage would be that bad debt claims spread out over the year and situations where taxpayers are in credit situations might be reduced.

At the Project meeting in Minneapolis, MN on August 22 and 23, 2001, this latter issue was addressed by the project. The Project determined that it would be more appropriate to allow claimants to take the bad debt allowance at the time when the debt is written off as uncollectible in the claimant’s books and records.

As a result, revised language for the bad debt provision has been drafted. A copy of the revised language is Attachment 2 to this document. The differences between this language and the language found in the SSTP Agreement are discussed below.

Preliminary Paragraph.

Industry was concerned that the preliminary language of the SSTP Agreement, by only mentioning “bad debts incurred by a seller,” implied that only sellers would be provided bad debt allowances. It was noted that several states already allow third party purchasers to claim a bad debt allowance. To clarify the point that states can provide allowances to whatever parties they deem appropriate, and to specify that the uniform procedures will apply to all claimants, and not just sellers, two sentences were added to the preliminary language.

Paragraph a.

The paragraph was shortened and the reference to refunds was removed. Since refund provisions occur later in the proposed language, it was felt unnecessary to refer to refunds in this paragraph.

Paragraph b.

This paragraph would be shortened by defining a bad debt by reference to the federal definition in I.R.C. section 166. Items excluded from the amount of the bad debt remained the same as in the SSTP Agreement with the exception of the exclusion for “debts sold or assigned to third parties for collection.” That language was removed. Industry felt that language implied that states could not provide third parties with a bad debt allowance. Removal of the language would cause no harm to states since a seller that sold or assigned a debt could not claim the debt under federal law.

Paragraph c.

The first sentence of this paragraph is modified to change the time for claiming the bad debt on a sales or use tax return from after the debt is charged off for federal income tax purposes, to the return for the period during which the bad debt is written off in the claimant’s books and records as uncollectible. A new sentence has been added to provide similar treatment for claimants that do not file federal income tax returns that allows a bad debt to be claimed when the debt is written off in the claimant’s books and records if it would be deductible for federal purposes if the claimant was required to file federal returns. The sentence defining “charged off for federal income tax purposes” is deleted since that term is no longer used in the provision.

Paragraph d.

No substantive change.

Paragraph e.

The SSTP Agreement allowed a claimant that had bad debts exceeding sales to file for a refund “within a twelve month period defined by that bad debt.” The proposed change would allow the claimant to file a refund claim for the period during which the bad debt is written off. The claim would have to be filed within the state’s statute of limitations, which would be measured from “the due date of the return on which the bad debt could first be claimed.”

Paragraph f.

No substantive change.

Paragraph g.

The proposed change removes language referring to “computing a bad debt deduction.” The section will still apply the allocation of payments received on a previously claimed bad debt to tax and purchase price first and to “interest, service charges and any other charges” second. Subsequent to the Milwaukee meeting, one industry representative requested reconsideration of this provision. He advocated a position that any such payments should be applied to purchase price, tax, interest and service charges proportionally, rather than to tax and price first. Since this was not a change that came out of the meeting in Milwaukee, it has not been adopted in the language of Attachment 2.

Paragraph h.

This is a new paragraph added at the request of an industry representative. It deals with situations where a claimant has records that support an allocation of its bad debts among the member states. It says in such a case, the allocation will be permitted. The industry representative explained that some multi-jurisdiction sellers can identify and compute their bad debts, but have difficulty determining what debts are charged to which jurisdictions. In such a case, the proposed language would allow an allocation of the debts so long as the claimant can support the allocation in its records.

Additional Issue:

In correspondence, a representative of the Electronic Commerce Association expressed concern with the use of the federal definition of a bad debt in paragraph b. of the proposed language. That paragraph defines a bad debt in terms of the Internal Revenue Code definition of a bad debt. The concern is that this definition would exclude payment processors from claiming a state bad debt allowance, even if a state should wish to provide it to them. In comments submitted on April 26, 2001, the issue was explained as follows:

In cases of worthless credit card payments, there might be a loss absorbed by the payment processor. That loss is a legal deduction for federal income tax purposes, but not as a bad debt. The Electronic Commerce Association maintains that bad debt deductions should be available to whatever entity does not receive payment for purchases on which there is a state sales tax, especially because the Streamlined Sales Tax Project is encouraging vendors to use third parties to handle their transactions.

In an e-mail dated July 2, 2001, the representative of the Electronic Commerce Association suggested an amendment to second sentence the initial paragraph

of the proposed language. The suggested amendment to that sentence would read, “To the extent a member state provides a bad debt deduction to any other party, the same procedures will apply **(with the exception of the bad debt definition in (b)).**” This change would make the definition of a bad debt apply only to sellers and allow states to use whatever definition they wished for other parties. One problem with the proposed amendment is that it creates an exception to when the “procedures” of the rule apply. The referenced paragraph (b) does not set out a procedure; it is a definition. If a change of the nature suggested by the ECA is desirable, different language, perhaps in paragraph (b) should be considered.

The work group has not made a recommendation on this suggested change. At the Minneapolis meeting, the Project determined not to address this issue in the proposed bad debt language. This will be an issue for the member states that adopt the Streamlined System.

Conclusion:

Attachment 1 contains the provision for bad debts that was included in the agreement proposed by the Project. The Project is presenting Attachment 2, which contains an alternative provision that addresses most of the concerns expressed.

The Member States of the Streamlined Sales Tax System need to confirm that the bad debt provision will be addressed in the agreement. If a bad debt provision will be included the States need to determine if it will be the original language, the alternative presented by the Project as Attachment 2, or some other language.

Attachment 1

318 UNIFORM RULES FOR DEDUCTIONS OF BAD DEBTS

In order to reduce the complexity and administrative burden of taking a deduction for bad debts incurred by a seller, the member states must:

- a. In computing the amount of tax due, allow a seller to deduct bad debts from the total amount upon which the tax is calculated for any return. Any deduction taken or refund paid which is attributed to bad debts shall not include interest.
- b. Define for purposes of this section, "bad debt" to mean any portion of the purchase price of a transaction that a seller has reported as taxable and for which the seller legally claims as a bad debt deduction for federal income tax purposes. Bad debts include, but are not limited to, worthless checks, worthless credit card payments, and uncollectible credit accounts. Bad debts do not include financing charges or interest, sales or use taxes charged on the purchase price, uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid, expenses incurred in attempting to collect any debt, debts sold or assigned to third parties for collection, and repossessed property.
- c. Allow bad debts to be deducted within twelve months following the month in which the bad debt has been charged off for federal income tax purposes. For purposes of this paragraph, "charged off for federal income tax purposes" includes the charging off of unpaid balances due on accounts as uncollectible, or declaring as uncollectible such unpaid balance due on accounts in the instance of a seller who is not required to file federal income tax returns.
- d. Require that if a deduction is taken for a bad debt and the seller subsequently collects the debt in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.
- e. Allow a seller to obtain a refund of tax on any amount of bad debt that exceeds the amount of taxable sales within a twelve month period defined by that bad debt.
- f. Where a seller's filing responsibilities have been assumed by a Certified Service Provider, allow the service provider to claim, on behalf of the seller, any bad debt allowance provided by this section. The CSP must credit or refund the full amount of any bad debt allowance or refund received to the seller.

- g. Provide that for the purposes of computing a bad debt deduction or reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first to the price of the property or service and sales tax thereon, proportionally, and secondly to interest, service charges and any other charges.

Attachment 2

318 UNIFORM RULES FOR RECOVERY OF BAD DEBTS

This Section addresses the procedures that member states will use to provide a deduction for bad debts to a seller. To the extent a member state provides a bad debt deduction to any other party, the same procedures will apply. In order to reduce the complexity and administrative burden of taking a deduction for bad debts incurred by a seller, the member states must:

- a. Allow a deduction from taxable sales for bad debts. Any deduction taken which is attributed to bad debts shall not include interest.
- b. The federal definition of “bad debt” in IRC §166 shall be used as the basis for calculating bad debt recovery. However, the amount calculated pursuant to IRC §166 shall be adjusted to exclude: financing charges or interest; sales or use taxes charged on the purchase price; uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid; expenses incurred in attempting to collect any debt, and repossessed property.
- c. Allow bad debts to be deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant’s books and records and is eligible to be deducted for federal income tax purposes. For purposes of this paragraph, a claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the claimant’s books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.
- d. Require that, if a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.
- e. Provide that, when the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed within the Member State’s otherwise applicable statute of limitations for refund claims; however, the statute of limitations shall be measured from the due date of the return on which the bad debt could first be claimed.

- f. Where filing responsibilities have been assumed by a Certified Service Provider, allow the service provider to claim, on behalf of the seller, any bad debt allowance provided by this section. The CSP must credit or refund the full amount of any bad debt allowance or refund received to the seller.
- g. Provide that, for the purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges.
- h. In situations where the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among the member states, such allocation shall be permitted.

NOTE: Bad Debt Questionnaire is located at the end of document beginning on page 78.

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STREAMLINED SALES TAX PROJECT

ROUNDING SURVEY ISSUE PAPER

Background

Last year, the Sourcing and Other Simplification Issues Work Group determined a need for uniform application by states for rounding the tax due on a sale. This was supported by comments received from sellers who make sales in multiple states having different rounding statutes or rules. The sellers did not specify which statute or rule they preferred only that uniform rules be developed. The Work Group recently asked each state to complete a survey regarding the Streamlined Sales Tax Project's rounding recommendation. Twenty-five states responded. Nineteen states responded that there would be little, if any impact if they adopted the Work Group's recommendation. Four states responded that there would be a major impact, mostly from a revenue standpoint. Two states indicated that they have not yet completed an analysis to determine if they will have a revenue impact.

Methods of Rounding

The survey showed that states use three different methods for sellers to determine the tax due on a sale when involving a fraction of a cent. Three states use a bracket system to determine the tax owed and 22 states allow rounding when the tax due on a sale or on a return involves a fraction of a cent or dollar. Of those 22 states, four states indicated they round up to the nearest cent, and nine round up for anything .5 and over and round down for anything below .5. The Work Group recommended that states adopt the latter method because we felt it was the most acceptable method for consumers who might otherwise feel that the state was being enriched at their expense. For those states that have a round up rule or brackets, this change will have some revenue impact.

Decimal Points for Tax Due

The survey also shows that states employ different rules for how far sellers are required to carry out the decimal places in determining the tax due. One state carries out to one decimal place, one state carries out two decimal places, 14 states carry out to three decimal places, one carries out to four places, and one state carries out to six decimal places. Last year, the Work Group recommended that sellers be required to carry out to three decimal places, since this was the method most used by states.

Rounding on Tax Returns

Last year, the Work Group recommended the states which allow taxpayers to round to the nearest dollar on their tax returns when they report the tax owed be allowed to continue this practice. Our survey shows that four states require taxpayers to use this method and one state encourages (but does not require) this method.

Taxing Separate Items or Invoice

The Work Group also considered two alternate approaches to a rounding statute. One approach requires the seller to charge tax on the aggregate taxable amount of the sale if there are multiple taxable items being purchased at one time. The other approach would have sellers charge tax on each individual taxable item being sold where multiple taxable items are being purchased at one time. The Work Group heard from some sellers that they would prefer to charge tax separately on each taxable item included in the sale rather than on the total amount. The Work Group was concerned, however, that some customers may find this confusing and some vendors without computer systems would find it difficult to comply. The survey shows that 16 states either require or allow rounding on the total invoice amount and six states allow the sellers to choose either method, as long as it is consistently used. One state reports requiring rounding on the invoice amount except in cases where a maximum tax is involved. Another state reports that rounding on the total invoice is required for certain taxpayers, while rounding on each item on the invoice is required for others. The Work Group determined it would be best to leave this issue to the sellers. Since this proposal calls for arithmetic rounding, any differences caused by sellers using different approaches should be insignificant.

Summary

Overall the most significant issue shown by the survey is that four states will experience a revenue loss if they adopt these recommendations.

Streamlined Sales Tax Project Rounding Survey <i>April 2001</i>					The Streamlined Sales Tax Project is recommending that states adopt the following. What impact, if any, would your state experience if you adopted the Project's recommendations (Please indicate the revenue impact for each of the recommendations mentioned.)		
State Name	Does your state allow rounding when the tax due on a sale or on a return involves a fraction of a cent or dollar?	If yes, does your state allow/require rounding on each invoice item or on the total invoice amount?	How many decimal places are sellers required to use in determining the amount of tax due when rounding is used?	Does your state require rounding to the nearest dollar when reporting the tax amount on your return?	Round up for anything .5 and over, and round down for anything below .5.	When determining the amount of tax due, carry out to the third decimal place.	Round to the nearest dollar when reporting the amount on your return.
AR	Yes	Total invoice	When calculating the amount of tax a customer owes, the seller can round up at .005. When calculating the amount of tax a seller owes the state, the seller is required to round up to the nearest dollar .5.	Yes	No impact for reporting tax on returns – major impact if this applies to sales to customers.	No impact	
CT	Yes	Total invoice	Four	No	No impact		
GA	We have a bracket system that provides the calculation necessary to uniformly round these fractions.	The total invoice	Our bracket system rounds up on the half cent beginning at 11 cents and changes at 25 cent intervals.	No, but I wish we did.	This is similar to what we do and should not have a material fiscal impact in GA.	Minimal fiscal impact	

IN	Yes. If the tax computed results in a fraction of \$.005 or more, the amount of tax shall be rounded to the next additional cent.	Total invoice amount	Three	No	This is in line with current Indiana practices.	This may require a statute change in Indiana. We are unable to determine the revenue impact of such a change, but we have to assume it would be a positive number.
IA	Yes	Either	Three	Yes	This recommendation is similar to the way we handle rounding and as such we have not identified any revenue impact.	
KS	For Kansas sales tax reporting, rounding is only allowed to a cent.	Kansas has a state sales and use tax rate of 4.9%. Tax is calculated on the total invoice amount - not on the individual invoice line items. When this calculation is made, rounding to the nearest cent is allowed. That is, rounding should be done for anything \$00.005 and over, and down for anything below \$00.005.	For Kansas sales tax reporting rounding is only allowed to a cent.	No. It is not required, or even allowed. Rounding is only allowed to a cent.	There would be significant costs associated with changing our system from its current programming to one that allows rounding. In addition to the costs, a great deal of time would be expended. The streamlined system envisions the filing of computer-generated tax returns. If we are moving to computer-generated filings, why would there be any benefit in rounding to the nearest dollar? Computer reporting is not labor intensive and such reporting should reduce or eliminate the chances of human error. The sales numbers reported to the States will be generated directly from customer billings and then handled by computers thereafter until an electronic return is filed. The traditional benefits from rounding to a dollar amount, such as reducing the chances of human error or the time spent entering two more numbers, will be eliminated when the streamlined sales tax reporting system is adopted. Clearly, rounding to the nearest dollar had real benefit for States under older reporting systems. However, rounding to the nearest dollar should not be a concern under the streamlined system or provide any benefit under any other system where tax reporting is handled by computer. Please note that my concerns are not a statement that Kansas opposes rounding to the nearest dollar amount - I simply am suggesting that rounding to the nearest dollar benefits States that utilize older reporting systems. There should be no benefit to States under the streamlined system. As noted, the numbers reported to the States will be generated directly from customer billings and then handled by computers thereafter until an electronic return is filed.	
KY	Yes	Total invoice amount	Third decimal point	No	Very little if any.	

MD	Maryland law required rounding to the next highest cent.	Maryland law requires the tax to be applied to the total invoice amount.	One. The Maryland tax is imposed on each separate sale and not upon gross receipts.	No	Revenue loss in the range of \$15, but potentially a lot higher. More importantly, every cash register in the State would have to be reprogrammed.	At present, the Maryland 5% sales tax is calculated on each separate sale and not upon gross receipts. If this is a proposal to convert the tax to a 5% tax on gross receipts, the revenue impact is the same as in the first recommendation. In order for Maryland to produce the same amount of money as the present tax, a rate in the range of 5.006% would be required.	If this is a proposal simply to drop cents from the face of returns, it probably has no revenue impact.
MI	Yes	Either	At least 3	No	Rounding to the nearest dollar amount would represent a change in Michigan's practices. We would expect the revenue impact of such a change to be neutral or minimal. Michigan's sales tax statute provides a bracket tax schedule for the first 99 cents of a sale. This bracket schedule is not based on a true mathematical rounding methodology. The brackets are not strictly adhered to, and as a result we expect that a change to mathematical rounding would substantially represent a reflection of actual business practice in Michigan.		
MN	Yes	Total invoice.	Three	Yes.	No impact. This is current practice.		
MO	Sale - yes, two decimal places. Return - No.	Sale - on the total invoice amount. Return - N/A.	Sales - The taxpayer may use our tax rate charts which we provide for them or use three decimal places in determining the amount of tax due. Return - N/A.	No	We have not completed an analysis to determine revenue impact for these recommendations.		We do not have this information available.
NE	Yes. Fraction of a cent.	The total invoice amount	Three	No	No impact		

NV	Yes, rounding to nearest cent	Yes, either or both	No requirement	No	Negligible		Initial tests indicate this will be a wash. However, we will need an estimated 12 programmer weeks to modify, test and implement the changes in all of the affected programs.
NJ	New Jersey has a table that determines when the next penny is due. Currently, we do not have a rounding rule.	The table is applied to the total invoice.	N/A	No	\$500,000 to \$2.5 million - very rough, non-scientific estimate.	None	
NC	Rounding is allowed on a sale. We currently do not provide for rounding on a return.	Rounding is predominately done on the total invoice except in cases where a maximum tax is involved.	Three	No, we do not require rounding on a return.	No impact		Impact unknown at this time.
ND	On a sale: No, North Dakota sales tax law provides for a bracket system that applies to transactions under \$1.00, as well as the portion of larger sales in excess of an even dollar amount. On a return: Yes, the taxpayer computes tax on the gross receipts and is instructed to round to the nearest whole dollar.	N/A	N/A	Yes	Small fiscal effect		Currently being applied - no revenue effect.

OH	Yes, Ohio does allow rounding in lieu of using the bracketed tax collection schedules when computing tax on a sale. However, the rounding rule requires always rounding up to the next cent in tax.	Total invoice amount	Six	Recent legislation allows the commissioner to require rounding to the nearest dollar on tax returns. This legislation went into effect in September 2000 (after tax return booklets and instructions were designed for tax year 2001) Rounding instructions will be placed in tax return booklets and will go into effect for sales/use tax returns filed for periods in year 2002.	Significant impact. The revenue impact study done by our Tax Analysis Office was predicted on an "Average Taxable Sale Amount". Assuming an Average Sale Amount of \$10, the projected annual revenue loss would be \$53 Million. For a \$15 Average Sale Amount, a loss of \$35 Million. For an Average Sale Amount of \$25, the projected loss would be \$21 million.	About the same as the first recommendation.	Minimal impact.
RI	Yes	Either, but the retailer has to use one or the other.	Three	No	With the exception of rounding the return to the nearest dollar, there would be no impact. Under the rounding rules proposed, there should be minimal impact rounding the returns due to the offset of rounding up as well as down.		
SD	Yes	There is nothing in statute or regulation requiring or allowing either. The taxpayer must choose the option that most reflects the most accurate tax collection.	There is nothing in statute or regulation. The department's practice is to round to the nearest penny using the third decimal.	We do not allow rounding to the nearest dollar on tax returns.	None		We are working on this estimate.

UT	Yes. A vendor may not collect as tax an amount, without regard to fractional parts of one cent, in excess of the tax computed at the rates prescribed by this chapter. (See Utah Tax Code Annotated Section 59-12-107(2)(b)).	Invoice amount. The Tax Commission furnishes tables that may be used to determine the proper amount of 5ax on each transaction. (See Administrative Rule R865-19S-6)	For calculating the tax on each invoice, 2 decimal places. For reporting the tax on the return, nearest dollar.	We are in the process of amending our procedures to require rounding to the nearest dollar for sales tax reporting. Currently, reporting is to 2 decimal places.	No revenue impact, as we will be requiring rounding to the nearest dollar for sales tax reporting.	Would probably result in a positive revenue impact.	Would expect little revenue impact since we are amending our reporting procedures to be in line with this procedure.
TN	Yes, round to the nearest cent on the total invoice amount to calculate the tax on a sale. Yes, round to the nearest dollar on the sales and use tax return.	Pursuant to Rule 1320-5-1-.77, rounding is allowed on the total invoice amount for certain types of taxpayers. Other taxpayers must calculate the tax on the sales price of item on an invoice. The reason for this has been the need to determine the amount of local option sales tax due on each "single article" of tangible personal property. The first \$1,600 of a "single article" of tangible personal	Three	Tenn. Code Ann. 67-6-504(e) – Any dealer who is liable for the tax imposed by this chapter may round off all figures used to the nearest dollar amount. Tennessee does not require a taxpayer to do this. Our sales and use tax returns all have 00 in the cents column.	No fiscal impact since Tennessee already does this.		
VT	Vermont requires collection based on a rate chart which rounds to the next higher whole cent. It allows reporting and payment by rounding gross sales and nontaxable sales to the nearest whole dollar.	The statute is silent and there is no published rule. We have understood the requirement to be to compute the tax on the total taxable charges on an invoice.	No rule.	No.	I believe that the only impact will be on the vendors, who now keep the overcollection "breakage" caused by rounding up at collection, but not at paying. It would put pressure on the state to allow a vendor discount (which we don't now). I have no estimate of the actual dollar impact.		

WA	Yes on returns. No on individual items within an invoice. This reflects what I understand our practice to be. We don't have laws or rules covering this.	We would allow rounding on the total invoice amount, but not on each invoice item. Again, this reflects my understanding of our practice and is not covered by rule or law.	Don't really have an answer. On the return, taxpayers compute to the cent and round to the dollar.	We encourage it, but don't require it.	At this time, we don't know the impact, if there is one, for any of the three. Our research people are looking at this. We will keep you informed.
WI	Yes, we provide 2 methods of rounding to the nearest cent. One is through the bracket system - the tax to be collected for the portion of a sale that is not equal to an even dollar is predetermined. For example, the tax due on a sale of an item costing \$1.12 is \$0.05 on the dollar portion of this sale and \$0.01 for the portion of the sale between \$0.10 and \$0.29. So, the retailer would collect \$0.06. The other method is the Alternative bracket system - the retailer multiplies the aggregate sales price of all items sold in a single transaction by the tax rate. Then the tax collected is rounded to the nearest cent.	Rounding is done on the total invoice (taxable items). The retailer is not allowed to round tax on each item, they must use an aggregate sales price of all taxable items sold on a single invoice before calculating the tax amount.	Three.	No.	Fine. Minimal revenue impact.
WY	Yes, we allow rounding when the tax due on a sale or on a return when it involves a fraction of a cent. Not a fraction of a dollar.	We allow rounding of the total invoice.	We require rounding to the third place.	We do not allow rounding to the nearest dollar on returns.	We would have to adjust our systems to allow rounding on the return to the nearest dollar.

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STREAMLINED SALES TAX PROJECT

DIRECT PAY PERMIT ISSUE PAPER

Background:

The Sourcing and Other Simplification Issues Work Group has been asked to review the issue of Direct Pay Permits.

As part of its work on uniform sourcing rules, the Work Group created a "multiple points of use" exemption. (see Section 310 of the Streamlined Sales And Use Tax Agreement).

This concepts states that "...a business purchaser that is not a holder of a direct pay permit that knows at the time of its purchase of a digital good or a service that the digital good or service will be concurrently available for use in more than one jurisdiction shall deliver to the seller in conjunction with its purchase a form disclosing this fact ("Multiple Points of Use or MPU" Exemption Form)." Upon receipt of this MPU Exemption Form, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct pay basis.

Coincidentally, but not in conjunction with the SSTP, a Model Direct Payment Permit Regulation was being developed through the FTA-led EDI process. This process involved both the public and private sectors. This document was endorsed by both the FTA and the MTC and was adopted in July 2000. This model regulation has received widespread support from industry and tax agencies.

In April 2001, a 4-question survey was sent to all SSTP states asking them to provide information on their states' position regarding direct pay in general and this document in particular. The four questions asked were:

1. Does your state currently have a Direct Payment provision for sales and use tax purposes for registered taxpayers?
2. Is Direct Payment offered to all registered taxpayers in your state or are there restrictions as to whom may report through a direct pay provision?
3. Are there certain transactions not permitted to be reported by Direct Payment?
4. Attached is the FTA/MTC Model Direct Payment Permit Regulation (adopted July 28, 2000). Has your state adopted this model regulation? If not, has it been considered in your state? Are there any reasons why it was not adopted? Would your state have any problem if this document were to be used as a draft for the creation of a Direct Pay Provision for the SSTP Project?

Survey Results:

To date, 25 states have responded to this survey request:

(AR CT GA ID IL IA KS KY MD MI MN MO NE NV NJ NC ND OH RI SD TN UT WA WI WY)

Their answers to the inquiries are as follows:

1. Of the 25 states that responded, 22 indicated that they currently have some form of Direct Pay provision in their state and 3 indicated that they did not (NV, RI, UT).
2. All 22 states that offered a Direct Pay provision had some type of restriction as to who was eligible for it. Restrictions included:
 - Only manufacturers and contractors
 - Only to perpetually audited taxpayers
 - Requiring written application
 - Demonstration of accounting and technical capability to comply
 - Sales or use tax liability greater than a certain dollar amount
 - In the best interests of their state
 - Available only to taxpayers who, at the time of purchase, cannot determine tax status
 - Business must agree that its name will be published as a Direct Payment permit holder
 - Remit taxes by electronic funds transfer
 - Taxpayer must be in good standing
3. Most states acknowledge some transactions that were restricted from Direct Payment. The more common transactions not allowed to be reported through direct pay are:
 - Food and mixed drinks

- Meals, lodgings, automobiles, new construction, vessels, aircraft, snowmobiles, telecom, utilities, and procurement card purchasers
 - Contractors or their suppliers, suppliers of gasoline
 - Only for tangible personal property
 - Gas, electricity, water, heat, pay television, communication services, motor vehicles
 - Energy and energy-producing fuels
 - Petty cash purchases made by company employees
 - Admissions to places of amusement or athletic events
 - Cash purchases
4. As of this date, no state had adopted the FTA/MTC proposed Model Regulation although several stated that it was so similar to their current policy that there was no need to adopt it or they based their policy on the model. States that had considered the model regulation and did not pass it mentioned reasons such as:
- it did not include an expiration date
 - it might provide an exemption for items purchased for use outside the state
 - they did not like the ability of a taxpayer to revoke the procedure "at any time"
 - there was no "out" for a state to deny issuance where it feels issuance is not in the state's best interest
 - did not allow payment of local taxes

Review of FTA Model Direct Pay Permit Regulation:

The FTA Model Direct Pay Permit Regulation addressed many of the concerns voiced by the SSTEP members in response to our survey. To highlight, the Model Regulation addressed the following:

1. Defined "direct pay permit" as a permit issued by a taxing authority that allows a holder of such permit to accrue and pay state and local taxes directly to that taxing authority.
2. Required a taxpayer to apply to the taxing authority for permission to directly pay in a form as described by that taxing authority.
3. Detailed qualifications and requirements of the applicant such as the taxpayer's ability to comply with requirements, the taxpayer's business purpose for applying (i.e. reduced administrative work of determining taxability, provide for improved and more accurate compliance, provide for more accurate calculations).

4. Imposed requirements on the taxing authority for review and acceptance or denial of permit application.
5. Outlined record-keeping requirements and reporting requirements.
6. Permitted a taxing authority to limit direct pay permit usage in certain type transactions (i.e. meals, lodging, etc.)
7. Enumerated permit holders duties and vendor's responsibilities.
8. Addressed the issue of local taxes (requires the direct pay permit holder to report and pay local sales and use taxes on these purchases).

Summary and Recommendations:

Most states felt the FTA/MTC Model Regulation was a good document. No state indicated any foreseen problem with the SSTP using the FTA/MTC Model Regulation as a starting point for the creation of a Direct Pay Provision.

Based on the original survey of member states and the requested feedback to this paper (very limited), it is recommended that all member states be required to allow direct pay to purchasers but allow each state to set their own limits and requirements (type of businesses eligible, criteria, eligible transactions). It is also recommended that a Uniform Direct Pay Permit application and certificate be drafted for use by all states.

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STREAMLINED SALES TAX PROJECT

FOOD ISSUE PAPER

Issue:

Should the definition of food be referenced to the federal food stamp definition used in determining food eligible for purchase with federal food stamps?

Background:

Federal law requires that a state that wishes to participate in the program may not impose its sales and use taxes upon sales of food purchased with the use of federal food stamps. In addition, seven states exempt food eligible for purchase with food stamps (even though not purchased with food stamps) with certain exceptions for food for immediate consumption, etc. (see page 6 for a summary of those states).

The Food Stamp Act of 1977, as amended (7 U.S.C. §§ 2011 to 2036), governs the Food Stamp Program. It is amended regularly. The Act provides that eligible households within the State shall be provided an opportunity to obtain a more nutritious diet through the issuance to them of an allotment. The coupons so received by such households shall be used only to purchase food from retail food stores that have been approved for participation in the food stamp program.

The Act (7 U.S.C. § 2013) defines food as follows:

“Food” means

- (1) any food or food product for home consumption except alcoholic beverages, tobacco, and hot foods or hot food products ready for

immediate consumption other than those authorized pursuant to clauses (3), (4), (5), (7), (8), and (9) of this subsection.

- (2) seeds and plants for use in gardens to produce food for the personal consumption of the eligible household,
- (3) in the case of those persons who are sixty years of age or over or who receive supplemental security income benefits or disability or blindness payments under title I, II, X, XIV, or XVI of the Social Security Act [(42 U.S.C. 1381 et seq.)], and their spouses, meals prepared by and served in senior citizens' centers, apartment buildings occupied primarily by such persons, public or private nonprofit establishments (eating or otherwise) that feed such persons, private establishments that contract with the appropriate agency of the State to offer meals for such persons at concessional prices, and meals prepared for and served to residents of federally subsidized housing for the elderly,
- (4) in the case of persons sixty years of age or over and persons who are physically or mentally handicapped or otherwise so disabled that they are unable adequately to prepare all of their meals, meals prepared for and delivered to them (and their spouses) at their home by a public or private nonprofit organization or by a private establishment that contracts with the appropriate State agency to perform such services at concessional prices,
- (5) in the case of narcotics addicts or alcoholics, and their children, served by drug addiction or alcoholic treatment and rehabilitation programs, meals prepared and served under such programs,
- (6) in the case of certain eligible households living in Alaska, equipment for procuring food by hunting and fishing, such as nets, hooks, rods, harpoons, and knives (but not equipment for purposes of transportation, clothing, or shelter, and not firearms, ammunition, and explosives) if the Secretary determines that such households are located in an area of the State where it is extremely difficult to reach stores selling food and that such households depend to a substantial extent upon hunting and fishing for subsistence,
- (7) in the case of disabled or blind recipients of benefits under title I, II, X, XIV, or XVI of the Social Security Act, or are 3-1 individuals described in paragraphs (2) through (7) of subsection (r), who are residents in a public or private nonprofit group living arrangement that serves no more than sixteen residents and is certified by the appropriate State agency or agencies under regulations issued under section 1616(e) of the Social Security Act or under standards determined by the Secretary to be comparable to standards implemented by appropriate

State agencies under such section [(42 U.S.C. 1382e(e))], meals prepared and served under such arrangement

- (8) in the case of women and children temporarily residing in public or private nonprofit shelters for battered women and children, meals prepared and served, by such shelters, and
- (9) in the case of households that do not reside in permanent dwellings and households that have no fixed mailing addresses, meals prepared for and served by a public or private nonprofit establishment (approved by an appropriate State or local agency) that feeds such individuals and by private establishments that contract with the appropriate agency of the State to offer meals for such individuals at concessional prices.

The U.S. Department of Agriculture administers the Food Stamp Program at the federal level through its Food and Nutrition Service (FNS). State agencies administer the program at State and local levels, including determination of eligibility and allotments and distribution of benefits.

The FNS provides the following information for purposes of determining what qualifies for purchase with food stamps:

“Households can use food stamps to buy any food or food product for human consumption, and seeds and plants for use in home gardens to produce food.

Households CANNOT use food stamps to buy:

- Alcoholic beverages and tobacco
- Lunch counter items or foods to be eaten in the store
- Vitamins or medicines
- Pet foods
- Any non-food items (except seeds and plants)

Restaurants can be authorized to accept food stamps from qualified homeless, elderly, or disabled people in exchange for low-cost meals. Food stamps cannot be exchanged for cash.”

A contact made with the Midwest Regional Office of Food and Consumer Services of the U.S. Department of Agriculture (Chicago) indicates there are no rules or regulations that define food products, alcoholic beverages, tobacco, hot foods, or hot food products ready for immediate consumption.

The FNS receives numerous requests for ruling each year as to whether products qualify for purchase with food stamps. While they keep a record of determinations they have made at a regional level, there is no overall guidance

provided to qualifying retailers as to what products do and do not qualify. Determinations previously made by FNS change periodically with no specific notification system in place. Several state agencies that administer food stamp programs have provided lists to retailers. Determinations of qualifying food and food products may differ among states due to differing interpretations.

Discussion:

The Tax Base Work Group discussed whether the starting point for defining food should be the definition of food under the federal Food Stamp Act. The Group dismissed that approach for the following reasons:

- States that exempt food based on food stamp eligibility are still required to make determinations of whether food qualified for food stamps and were, therefore, exempt from sales or use tax.
- Federal law and any changes to it would be determinative of tax treatment. The states were not sure they wanted to be bound by federal determinations. Changes in federal eligibility could have fiscal impacts upon states.
- There are no clear definitions for terms used in the federal code. States were concerned as to whether they would be able to obtain timely federal determinations for products not enumerated by the federal agency as qualifying for food stamp purchase.
- The federal food stamp program may not give states the option of maintaining exemption for certain products that are currently not eligible for purchase with food stamps.

Effect on States:

The following states generally tax all food items so are not affected by the use of food stamp eligibility in defining food.

Alabama	Mississippi	Utah
Arkansas	New Mexico	Virginia
Hawaii	Oklahoma	West Virginia
Idaho	South Carolina	Wyoming
Kansas	South Dakota	
Louisiana	Tennessee	

Of the 30 states that exempt food with certain exceptions, 23 do not use federal food stamp eligibility to define what is and is not “food” for purposes of exemption from sales and use taxes (23 of 30).

Alternatives:

- Use the definition of “food” in the Food Stamp Act, as amended, for purposes of determining federal food stamp eligibility.
- Develop our own definition of “food.”

Recommendation:

Define “food” independent of the Food Stamp Act as follows:

“Food and food ingredients” means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. “Food and food ingredients” does not include:

- (1) “Alcoholic Beverages” which means beverages that are suitable for human consumption and contain one-half of one per cent or more of alcohol by volume, and
- (2) “Tobacco” which means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

Summary of States That Exempt Food Eligible for Purchase with Food Stamps

State	General Tax Treatment	Exception Related To Prepared Food
Colorado	Exempt food that are eligible for purchase with food stamps except:	<ul style="list-style-type: none"> • Prepared salads and salad bars. • Packaged and unpackaged cold sandwiches. • Deli trays.
Georgia	Exempt food that are eligible for purchasing with food stamps	Nothing further.
Iowa	Exempt food that are eligible for purchasing with food stamps except:	<ul style="list-style-type: none"> • Food prepared for immediate consumption, including food prepared on or off the premises of the retailer, which is consumed on the premises of the retailer. • Foods sold by caterers. • Hot or cold foods prepared for immediate consumption off the premises of the retailer, except bakery.
Maryland	Exempt food stamp eligible food except	<ul style="list-style-type: none"> • Food that the vendor serves for consumption on the premises of the buyer or of a third party. • Food for immediate consumption.
Missouri	Food eligible for food stamp purchase taxed at a reduced rate 1.225 except:	<ul style="list-style-type: none"> • Meals and drinks furnished at any hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist cabin, tourist camp or other place in which rooms, meals or drinks are regularly served to the public taxed at 4%. • The term "food" shall not include food or drink sold for consumption on or off the premises by a restaurant, delicatessen, cafe, or other eating establishment that derives more than 80% of its total gross receipts from food sales.
Nebraska	Exempt food that are eligible for purchasing with food stamps except:	<ul style="list-style-type: none"> • Meals other food prepared for immediate consumption on or off the premises of the retailer. • Other food prepared for immediate consumption on or off the premises of the retailer.
North Carolina	Exempt food that are eligible for purchasing with food stamps	Nothing further.

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STREAMLINED SALES TAX PROJECT

PREPARED FOOD ISSUE PAPER

Background:

The Streamlined Sales and Use Tax Agreement (Agreement) as approved on December 22, 2000 (and amended on January 24, 2001) provides for a definition of prepared food that may be used as an exception to an exemption for “food and food ingredients” at the option of a state. Therefore, a state that chooses to exempt “food and food ingredients” may choose to tax “prepared food.”

The Agreement provides the following definition of “prepared food”:

1. Food sold in a heated state or heated by the seller;
2. Two or more food ingredients mixed or combined by the seller for sale as a single item; or
3. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws.

The Agreement also provides that “prepared food” does not include food that is only sliced, repackaged, or pasteurized by the seller.

Issue:

Should the definition of the prepared food be modified for three independent suggestions:

1. Remove “or heated” from the phrase “Food sold in a heated state or heated by the seller.”

Concerns:

- a. Many types of food are heated by the seller in preparation of food, but are not sold heated. A state that chooses to exempt food but tax prepared food may be required to impose tax on a number of items on which it currently does not impose tax. For example:
 - A grocer’s deli prepares a casserole that involves boiling pasta, mixing in vegetables, meat, and other ingredients, and baking it in an oven for 30 minutes. After cooling, it is placed in a display case for sale to customers at room temperature. With the current definition in the agreement, the sale of servings of the casserole that the customer will take home and reheat is prepared food.
 - A bakery makes cakes, rolls, doughnuts, and other baked goods. The ingredients are mixed, placed in pans, and baked. They are sold at room temperature by the bakery to customers. Under the current definition in the agreement, the baked goods are prepared food.
 - A food processing company manufactures and sells canned vegetables. The vegetables come in from the fields and are cleaned, sorted, and boiled in water prior to canning. The canned vegetables are sold at the company’s retail outlet to consumers for home consumption. Under the current definition in the agreement, the canned vegetables are prepared food because the seller heated the vegetables during its manufacturing process.
 - A convenience store receives frozen baked goods, such as donuts and cookies, from its suppliers. The convenience store thaws the donuts and cookies by applying heat and places them in display cases for sale at room temperature. Under the current definition in the agreement, the cookies and donuts are prepared food.
 - b. States have already taken steps to statutorily adopt the definition to put forward by the project as amended by January 24, 2001. If a revised definition is adopted by the project, the states that have enacted what they thought were conforming amendments will be out of compliance.
2. Add “that does not require further preparation by the consumer” to the phrase “Two or more food ingredients mixed or combined by the by the seller for sale as a single item”

Concerns:

- a. A state that chooses to exempt food but tax prepared food may be required to impose tax on a number of items on which it currently does not impose tax. For example:
 - A grocery store meat department mixes raw meat with a marinade of herbs and liquid which is available for purchase by customers. The customer will take the meat home, cook it, and eat it. Under the current definition in the agreement, the marinated meat is prepared food because the seller mixed or combined several food ingredients for sale as a single item.
 - A grocery store inserts bread stuffing into a raw turkey and offers it for sale. The customer will take the meat home, cook it, and eat it. Under the current definition in the agreement, the turkey is prepared food because the seller mixed or combined several food ingredients for sale as a single item.
 - b. Use of the phrase “require further preparation by the consumer” is too broad. It requires a subjective determination by the seller of intent as to whether the item must be further prepared by the customer. Further preparation could mean removing a lid, brushing with butter, stirring before serving, sprinkling with a topping such as sugar, and other trivial acts.
 - c. States have already taken steps to statutorily adopt the definition to put forward by the project as amended by January 24, 2001. If a revised definition is adopted by the project, the states that have enacted what they thought were conforming amendments will be out of compliance.
3. Allow states the option of removing from “Two or more food ingredients mixed or combined by the seller for sale as a single item” and/or “food sold in a heated state or heated by the seller” one or more of the following:
- Items manufactured and sold at retail by the manufacturer
 - Deli items (room temperature or cold), such as potato salad, fruit salad, etc.
 - Bakery products

Concerns:

- a. The current definition may result in taxation of items not currently taxed including: bakery items made and sold by a seller, deli items made and sold by a seller, items that are made and sold by a manufacturer at retail (these items are usually exempt when sold to a grocer for resale by the grocer).

States that currently exempt food, but tax sub-categories of food, need more options in the definition of "prepared food."

- b. There should be no concern from states that have already taken steps to statutorily adopt the prepared food definition of the project as amended January 24, 2001. This provision is optional to states. Those states that do not adopt these options will still be in compliance.

Proposed Solution:

The following modified definition is proposed (changes appear in italics):

"Prepared food" means:

1. Food sold in a heated state or heated by the seller;
2. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws.
3. Two or more food ingredients mixed or combined by the seller for sale as a single item *not requiring cooking by the consumer as recommended by the Food and Drug Administration in its Food Code so as to prevent food born illnesses.*

States may exclude any of the following from items 1 and 3 above:

- a. *Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 31, except subsector 3118.*
- b. *Food sold in an unheated state by weight or volume as a single item.*
- c. *Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas.*

"Prepared food" does not include food that is only sliced, repackaged, or pasteurized by the seller.

Alternatives:

1. Adopt the modified definition of prepared food described above.
 - The modified definition maintains uniformity in food definitions while providing states flexibility to avoid significant revenue gains or losses.
 - The modified definition allows those states that exempt deli foods and bakery to

maintain that tax treatment.

- The modified definition adds complexity. The definition of prepared food will not be identical among states with the assumption that states will use the options a. through c. above differently.

Example 1: Wisconsin could define prepared food as follows, using all three additional options and thereby exempt factory store sales, cold deli food sold by the pound, and bakery:

“Prepared food” means:

1. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws.
2. Two or more food ingredients mixed or combined by the seller for sale as a single item and food sold in a heated state or heated by the seller, except:
 - a. Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 31, except subsector 3118.
 - b. Food sold in an unheated state by weight or volume as a single item.
 - c. Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas.

Example 2: Iowa could define prepared food as follows, using only two additional options, and thereby exempt factory store sales and bakery, but not cold deli food sold by the pound:

“Prepared food” means:

1. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws.
2. Two or more food ingredients mixed or combined by the seller for sale as a single item and food sold in a heated state or heated by the seller, except
 - a. Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 31, except subsector 3118.

- b. Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas.

2. Retain the “Agreement” definition previously adopted by the project.

- The “Agreement” definition will likely result in revenue gains (additional tax) for states that exempt food but tax prepared food. However, this may be offset by other changes proposed in the food definitions.
- States may risk their participation in the simplification efforts if they must tax food products that have traditionally been exempt from tax.
- The “Agreement” definition provides an identical definition of prepared food among all states that choose to use it.

Effects on States:

Attachment A summarizes the sales and use tax treatment of “prepared food” for states that have a sales tax.

The following states generally tax all food items so are not affected by the modified “prepared food” definition.

Alabama	Mississippi	Tennessee
Arkansas	New Mexico	Utah
Hawaii	Oklahoma	Virginia
Idaho	South Carolina	West Virginia
Kansas	South Dakota	Wyoming
Louisiana		

The following states exempt food and tax prepared food in some manner. These states will benefit from flexibility in the modified prepared food definition.

Arizona	Maryland	Ohio
California	Massachusetts	Pennsylvania
Colorado	Minnesota	Rhode Island
Connecticut	Nebraska	Texas
Florida	Nevada	Vermont
Indiana	New Jersey	Washington
Iowa	New York	West Virginia
Kentucky	North Dakota	Wisconsin
Maine		

Prepared Food — State-by-State Summary

State	General Tax Treatment	Exception Related To Prepared Food
Alabama	Tax food	
Arizona	Exempts food except:	<p>"Food for consumption on the premises" which includes:</p> <ul style="list-style-type: none"> a) Hot prepared food. b) Hot or cold sandwiches. c) Food served by an attendant to be eaten at tables, chairs, benches, booths, stools, counters and similar conveniences and within parking areas for the convenience of in-car consumption of food. d) Food served with trays, glasses, dishes or other tableware. e) Beverages sold in cups, glasses, or open containers. f) Food sold by caterers. g) Food sold within the premises of theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, fairs, races, contests, games, athletic events, rodeos, billiard and pool parlors, bowling alleys, public dances, dance halls, boxing, wrestling and other matches and any business which charges admission, entrance or cover fees for exhibition, amusement, or entertainment. h) Any items contained in subdivisions (a) through (g) of this paragraph even though they are sold on a "take-out" or "to go" basis, and whether or not the item is packaged, is wrapped or is actually taken from the premises.
Arkansas	Tax food	

State	General Tax Treatment	Exception Related To Prepared Food
California	Exempt food except:	<ul style="list-style-type: none"> • Food products served as meals on or off the premises of the retailer. • Food products furnished, prepared, or served for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware whether provided by the retailer or by a person with whom the retailer contracts to furnish, prepare, or serve food products to others. • Food products ordinarily sold for immediate consumption on or near a location at which parking facilities are provided primarily for the use of patrons in consuming the products purchased at the location, even though those products are sold on a "take out" or "to go" order and are actually packaged or wrapped and taken from the premises of the retailer. • Food products sold for consumption within a place, the entrance to which is subject to an admission charge, except for national and state parks and monuments, marinas, campgrounds, and recreational vehicle parks. • Food products sold are furnished in a form suitable for consumption on the seller's premises, and both of the following apply: <ul style="list-style-type: none"> 1. Over 80 percent of the seller's gross receipts are from the sale of food products. 2. Over 80 percent of the seller's retail sales of food products are sales subject to tax pursuant to paragraphs (1), (2), (3), or (7). • Hot prepared food products.
Colorado	Exempt food that are eligible for purchase with food stamps except:	<ul style="list-style-type: none"> • Prepared salads and salad bars. • Packaged and unpackaged cold sandwiches. • Deli trays.
Connecticut	Exempt food except:	<ul style="list-style-type: none"> • Meals sold by an eating establishment or caterer.

State	General Tax Treatment	Exception Related To Prepared Food
Florida	Exempt food, except:	<ul style="list-style-type: none"> • Food products sold as meals for consumption on or off the seller's premises. • Food products furnished, prepared, or served for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware, whether provided by the seller or by a person with whom the seller contracts to furnish, prepare, or serve food products to others. • Food products ordinarily sold for immediate consumption on the seller's premises or near a location at which parking facilities are provided primarily for the use of patrons in consuming the products purchased at the location, even though such products are sold on a "take out" or "to go" order and are actually packaged or wrapped and taken from the seller's premises. • Sandwiches sold ready for immediate consumption on or off the seller's premises. • Food products sold ready for immediate consumption within a place, the entrance to which is subject to an admission charge. • Food prepared, whether on or off the premises, and sold for immediate consumption. This does not apply to food prepared off the premises and sold in the original sealed container, or the slicing of products into smaller portions. • Bakery products sold by bakeries, pastry shops, or like establishments which have eating facilities, except when sold for consumption off the seller's premises. • When food products are served, prepared, or sold in or by restaurants, lunch counters, cafeterias, hotels, taverns, or other like places of business. • Food products sold as hot prepared food products.
Georgia	Exempt food that are eligible for purchasing with food stamps	Nothing further.
Hawaii	Tax food	
Idaho	Tax food	
Illinois	Food for consumption off premises taxed at a lower rate except:	<ul style="list-style-type: none"> • Food that has been prepared for immediate consumption.

State	General Tax Treatment	Exception Related To Prepared Food
Indiana	Exempt food except:	<ul style="list-style-type: none"> • Food furnished, prepared, or served for consumption at a location, or on equipment, provided by the retail merchant. • Meals served by a retail merchant off the merchant's premises. • Food sold by a retail merchant who ordinarily bags, wraps, or packages the food for immediate consumption on or near the merchant's premises, including food sold on a "take out" or "to go" basis.
Iowa	Exempt food that are eligible for purchasing with food stamps except:	<ul style="list-style-type: none"> • Food prepared for immediate consumption, including food prepared on or off the premises of the retailer, which is consumed on the premises of the retailer. • Foods sold by caterers. • Hot or cold foods prepared for immediate consumption off the premises of the retailer, except bakery.
Kansas	Tax food	
Kentucky	Exempt food except	<ul style="list-style-type: none"> • Meals served on or off the premises of the retailer. • Food furnished, prepared, or served for consumption at tables, chairs, or counters, or from trays, glasses, dishes, or other tableware provided by the retailer. • Food sold by retailers who ordinarily sell for consumption on or near the premises of the retailer even though the food is sold on a "take out" or "to go" order and is actually bagged, packaged, or wrapped and taken from the premises of the retailer. • Food sold by street vendors.
Louisiana	Tax food	
Maine	Exempts grocery staples	<p>Grocery staples do not include prepared food.</p> <p>"Prepared food" means meals served on or off the premises of the retailer; drinks or food furnished, prepared or served for consumption at tables, chairs or counters or from trays, glasses, dishes or other tableware provided by the retailer; food that is ordinarily sold by the retailer for immediate consumption on or near the location of the retailer, even though the products are sold on a take-out or to-go order and are actually packaged or wrapped and taken from the premises; food that is sold from a retail location from which food is ordinarily sold for consumption without further preparation or storage; heated food or drinks; and sandwiches.</p>

State	General Tax Treatment	Exception Related To Prepared Food
Maryland	Exempt food stamp eligible food	<ul style="list-style-type: none"> • Food that the vendor serves for consumption on the premises of the buyer or of a third party. • Food for immediate consumption.
Massachusetts	Exempt food except:	<ul style="list-style-type: none"> • Meals consisting of any of the items defined as food products in this paragraph for consumption on or off the premises where sold. <p>Meals" shall mean any food or beverage, or both, prepared for human consumption and provided by a restaurant, where the food or beverages is intended for consumption on or off the restaurant premises, and includes food or beverages sold on a "take out" or "to go" basis, whether or not they are packaged or wrapped and whether or not they are taken from the premises of the restaurant.</p> <p>The following food or beverages sold by a restaurant for consumption off the restaurant premises shall not be deemed to be a meal for the purposes of this chapter:</p> <ol style="list-style-type: none"> a) Food sold by weight, liquid or dry measure, count, or in unopened original containers or packages, including, but not limited to, meat, bread, milk, specialty foods, cream and ice cream; provided, that such foods are commonly sold in such manner in a retail food store which is not a restaurant; b) Beverages in unopened original containers or packages when sold as a unit having a capacity of at least twenty-six fluid ounces; and c) Bakery products including but not limited to doughnuts, muffins, bagels, and similar items sold in units of six or more. Prepared meals, snacks, sandwiches, food platters, poultry, fish or meat items, or other food combinations, to the extent that such items are sold by a restaurant whose principal business is the preparation or sale of such items in such form as to be available for immediate consumption without further significant preparation, whether for on or off premise consumption, shall not be excluded under clause (a), (b), or (c).

State	General Tax Treatment	Exception Related To Prepared Food
Michigan	Exempt food except:	<ul style="list-style-type: none"> • Prepared food intended for immediate consumption - means a retail sale of 1 or more of the following: <ul style="list-style-type: none"> a) Food or drink prepared and served for immediate consumption at or near the premises or ordinarily sold on a takeout basis for immediate consumption either on or off the premises. b) Food or drink furnished, prepared, or served for immediate consumption at a table, chair, or counter or from a tray, glass, dish, container, or other tableware. c) Food or drink arranged on a plate or platter, whether intended for individual or multiple servings and whether sold by the pound or by the serving; a sandwich, either hot or cold; or a combination of taxable and nontaxable items when sold as a plate or packaged as a meal, even though intended for more than 1 serving. d) Food that is cooked to the order of the purchaser, or that is cooked and maintained at a temperature higher than the surrounding air temperature before sale, or prepared food that is sold by the piece rather than by weight or measure. e) Carbonated beverages sold from a mobile facility or vending machine, or food or drink heated or cooled mechanically, electrically, or by other artificial means to an average temperature above 75 degrees Fahrenheit or below 65 degrees Fahrenheit before sale and sold from a mobile facility or vending machine, except milk, noncarbonated beverages containing 10% or more juice content, and fresh fruit. <p>Prepared food intended for immediate consumption does not include bakery products for off-premises consumption, such as doughnuts, pastry, bread, and cakes or meals eligible to be purchased with federal food stamps.</p>

State	General Tax Treatment	Exception Related To Prepared Food
Minnesota	Exempt food except:	<ul style="list-style-type: none"> • Food or drinks sold by the retailer for immediate consumption on the retailer's premises. • Food or drinks prepared by the retailer for immediate consumption either on or off the retailer's premises. • All food for immediate consumption sold from concession stands and vehicles. • Party trays. • All meals and single servings of packaged snack food sold in restaurants and bars. • Bakery products: <ul style="list-style-type: none"> a) prepared by the retailer for consumption on the retailer's premises; b) sold at a place that charges admission; c) sold from vending machines; or d) sold in single or individual servings from concession stands, vehicles, bars, and restaurants.
Mississippi	Tax food	
Missouri	Food eligible for food stamp purchase taxed at a reduced rate 1.225 except:	<ul style="list-style-type: none"> • Meals and drinks furnished at any hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist cabin, tourist camp or other place in which rooms, meals or drinks are regularly served to the public taxed at 4%. • The term "food" shall not include food or drink sold for consumption on or off the premises by a restaurant, delicatessen, cafe, or other eating establishment that derives more than 80% of its total gross receipts from food sales.
Nebraska	Exempt food that are eligible for purchasing with food stamps except:	<ul style="list-style-type: none"> • Meals other food prepared for immediate consumption on or off the premises of the retailer. • Other food prepared for immediate consumption on or off the premises of the retailer.
Nevada	Exempt food except:	<ul style="list-style-type: none"> • Prepared food intended for immediate consumption.

State	General Tax Treatment	Exception Related To Prepared Food
New Jersey	Exempt food sold for consumption off premises except:	<ul style="list-style-type: none"> • Sale of food and drink in or by restaurants, taverns, vending machines or other establishments or by caterers. • Food for consumption on the premises where sold. • A meal, or food prepared and ready to be eaten, of a kind obtainable in restaurants as the main course of a meal, including a sandwich, except where food other than sandwiches is sold in an unheated state and is of a type commonly sold in the same form and condition in food stores other than those which are principally engaged in selling prepared foods. • Food from caterers for off-premises consumption is taxable if the vendor (or any person whose services are arranged for by the vendor) serves, cooks, heats, or provides other services with respect to the food or drink.
New Mexico	Tax food	
New York	Exempt food except:	<ul style="list-style-type: none"> • Food and sold in or by restaurants, taverns or other or by caterers: <ul style="list-style-type: none"> a) in all instances where the sale is for consumption on the premises where sold; b) in those instances where the vendor or any person whose services are arranged for by the vendor, after the delivery of the food or drink by or on behalf of the vendor for consumption off the premises of the vendor, serves or assists in serving, cooks, heats or provides other services with respect to the food or drink.
North Carolina	Exempt food that are eligible for purchasing with food stamps	Nothing further.
North Dakota	Exempt food for off premises consumption	Food products prepared for immediate consumption on or near the premises of the retailer, even though they are sold on a “take out” or “to go” basis.
Ohio	Food for human consumption off the premises where sold	Constitutional.
Oklahoma	Tax food	

State	General Tax Treatment	Exception Related To Prepared Food
Pennsylvania	Exempt food except:	<ul style="list-style-type: none"> • Food or beverages, whether sold for consumption on or off the premises or on a "take-out" or "to go" basis or delivered to the purchaser or consumer, when purchased: <ul style="list-style-type: none"> a) from persons engaged in the business of catering; or b) from persons engaged in the business of operating establishments from which ready-to-eat food and beverages are sold, including, but not limited to, restaurants, cafes, lunch counters, private and social clubs, taverns, dining cars, hotels, night clubs, fast food operations, pizzerias, fairs, carnivals, lunch carts, ice cream stands, snack bars, cafeterias, employe cafeterias, theaters, stadiums, arenas, amusement parks, carryout shops, coffee shops and other establishments whether mobile or immobile.
Rhode Island	Exempt food except:	<ul style="list-style-type: none"> • Meals served on or off the premises of the retailer; or drinks or food furnished, prepared, or served for consumption at tables, chairs, or counters, or from trays, glasses, dishes, or other tableware provided by the retailer. • Meals and other food products ordinarily sold for immediate consumption on or off the premises of the retailer is a taxable sale even though the products are sold on a "take out" or "to go" order, and are actually packaged or wrapped and taken from the premises.
South Carolina	Tax food	
South Dakota	Tax food	
Tennessee	Tax food	
Texas	Exempt food except:	<ul style="list-style-type: none"> • Foods and drinks (which include meals, milk and milk products, fruit and fruit products, sandwiches, salads, processed meats and seafoods, vegetable juices, ice cream in cones or small cups) served, prepared, or sold ready for immediate consumption in or by restaurants, lunch counters, cafeterias, vending machines, hotels, or like places of business or sold ready for immediate consumption from pushcarts, motor vehicles, or any other form of vehicle.
Utah	Tax food	
Vermont	Exempt food for off premises consumption	Nothing further.
Virginia	Tax food	

State	General Tax Treatment	Exception Related To Prepared Food
Washington	Exempt food except:	<ul style="list-style-type: none"> • Food products sold for immediate consumption on or near a location at which parking facilities are provided primarily for the use of patrons in consuming the products purchased at the location, even though such products are sold on a "takeout" or "to go" order and are actually packaged or wrapped and taken from the premises of the retailer. • Food products are sold for consumption within a place, the entrance to which is subject to an admission charge, except for national and state parks and monuments. • Food products when sold by the retail vendor, which by law must be handled on the vendor's premises by a person with a food and beverage service worker's permit under RCW 69.06.010, including but not be limited to sandwiches prepared or chicken cooked on the premises, deli trays, home-delivered pizzas or meals, and salad bars but excluding: <ul style="list-style-type: none"> a) Raw meat prepared by persons who slaughter animals, including fish and fowl, or dress or wrap slaughtered raw meat such as fish mongers, butchers, or meat wrappers; b) Meat and cheese sliced and/or wrapped, in any quantity determined by the buyer, sold by vendors such as meat markets, delicatessens, and grocery stores; c) Bakeries which only sell baked goods; d) Combination bakery businesses, as prescribed by rule of the department, to the extent that sales of baked goods are separately accounted for and the baked goods claimed for exemption are not sold as part of meals or with beverages in unsealed containers; or e) Bulk food products sold from bins or barrels, including but not limited to flour, fruits, vegetables, sugar, salt, candy, chips, and cocoa.
West Virginia	Tax food	
Wisconsin	Exempt food except:	<ul style="list-style-type: none"> • Food and beverages for on premises consumption. • Meals. • Sandwiches. • Heated food and beverages.
Wyoming	Tax food	

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STREAMLINED SALES TAX PROJECT

VENDING ISSUE PAPER

Issues:

1. Should the taxation of sales of tangible personal property through vending machines be different than other methods of retailing?
2. Should any caps or threshold limitations in any agreement apply to vending receipts?
3. Should the Streamlined Sales Tax project define “vending machine?”
4. Should vending sales retain existing treatment?

Discussion:

The Streamlined Sales and Use Tax Agreement (as approved on December 22, 2000, and amended on January 24, 2001) provides that “food sold through vending machines” may be used as an exception to the exemption for “food and food ingredients” if a state so chooses. This was provided due to the varying treatment of vending receipts in states and the need to minimize revenue impacts.

The National Automated Merchandising Association has voiced its concerns regarding these and other provisions of the Agreement through letters to the Co-Chairs of the Steering Committee of the Streamlined Sales Tax Project and the Co-Chairs of the NCSL Executive Committee Task Force on State and Local Taxation of Telecommunications and Electronic Commerce. The Association

has informed the Project that its large, multi-state vending and food service companies are not seeking uniform sales tax laws for vending machine sales.

The Association has questioned whether the sales of tangible personal property through vending machines should receive different treatment than other methods of retailing. In a recent July 24, 2001 letter, the Association has specifically asked that the reference to Section 312(D)(3)(a) of the Agreement (referencing “food sold through vending machines”) be removed from the Agreement.

The Association also raised concerns regarding that the application of the Agreement’s provisions regarding sales tax thresholds and multiple sales tax rates that are applied to vending machine sales in various states. In the July 24, 2001 letter mentioned above, the Association has informed the Project that it opposes Section 308(a)(3) of the Agreement eliminating caps and thresholds after December 31, 2005.

Vending Machine or Bulk Vending Machine Definition

Most states do not have a specific definition of “vending machine.” Some states do have a definition of vending machines or something similar like “coin-operated devices.” Some states also define “bulk vending machines” so that different tax treatments can be afforded sales from those machines. Attached is a chart setting out the participating states and whether each state has a definition for vending machines or bulk vending machines.¹

Due to the technological advances of debit cards, electronic credit card readers, and even the potential of payments being made over the Internet, some of the current existing definitions may not cover sales involving these types of payments.

In addition, new items are being sold in what may be considered vending machines that were not contemplated when these statutory definitions were created (phone cards for example).

Different Methods of Taxation of Vending Machine Sales

There are various methods that the participating states currently use to tax sales made through vending machines.

These methods may be grouped into the following categories:

1. Normal Retail Sale

¹ This report deals with vending machines that dispense tangible personal property and does not include other coin operated devices such as amusement devices or pay telephones etc. when no tangible personal property is dispensed.

- Sales made through vending machines are taxed in the same manner as other retail sales for sales tax purposes.

2. Tax on Cost of Merchandise

- Tax is imposed on the cost price of merchandise sold through vending machines (cost price may be a percentage used to approximate retail price – such as sales tax is imposed on 135% or 150% of cost price).

3. License Fees or Decal Fees in Lieu of Sales Tax

- License fees or decal fees are imposed in lieu of sales tax on the gross receipts from vending machine sales.

4. Vending Tax in Lieu of Sales Tax

- A separate tax other than a sales tax may be imposed on the items sold through vending machines.

5. Exclude Sales Below a Certain Threshold

- Sales of items through vending machines with sales prices below a certain threshold (1 cent or 25 cents, etc.) are exempt from sales tax.

6. Certain Items or Types of Items Are Exempt or at a Lower Tax Rate

- Sales of certain items, such as food, are exempt from sales tax or are taxed at a lower (or higher) sales tax rate than other general merchandise.

Issue 1: Vending machines versus other methods of retailing food

Alternatives:

a) Retain Section 312(D)(3)(a) of the Agreement referencing “food sold through vending machines.” This provision is similar to how a number of states currently tax sales of food through vending machines differently than other retail methods. Some states tax sales of tangible personal property in vending machines and restaurants differently than other retailing methods. This alternative will minimize revenue impacts to the states and provide states with flexibility.

b) Eliminate 312(D)(3)(a) of the Agreement referencing “food sold through vending machines.” This alternative will tax sales of food in the same manner regardless of whether the sale was made through a vending machine or in some

other manner. This alternative is consistent with the Agreement's underlying methodology for determining which sales of food may be made taxable (foods prepared by the retailer) and which foods may be made exempt.

Issue 2: Caps and thresholds

Alternatives:

a) Retain the prohibition against caps and thresholds of Section 308(a)(3) applicable to all types of sales including sales made through the use of vending machines. The cap and threshold limitation is aimed at reducing situations where retailers must cap the application of tax on individual transactions. Sales made through the use of vending machines would be treated uniformly and would not be treated differently than any other type of sales.

b) Exclude vending machine sales from the caps and thresholds prohibition of Section 308(a)(3). Providing an exception to the caps and threshold limitations for vending machine sales would not appear to place a burden on multi-state retailers. Sales through the use of vending machines are unique in that separate charges for tax are impracticable and the retailers themselves have lobbied for such varied treatment. Providing such an exemption would not result in changes to the tax base and would be supported by the industry.

Issue 3: Definition of Vending Machine

Alternatives:

a) No definition of vending machine be included in the Agreement. By not requiring a definition of vending machine in the Agreement at this time, the states would not be required to treat sales through the use of vending machines in a uniform manner unless that treatment conflicted with another provision of the Agreement.

b) Provide a definition of vending machine in the Agreement. If a definition of vending machine is provided in the Agreement, then the states have the choice of either taxing or exempting items sold through vending machines. States could also exempt all sales from vending machines and then impose either an alternate form of tax or licensing requirement on the operators of the vending machines.

Issue 4: Possible addition to agreement

Suggestion:

a) Add at the end of Section 312, (Uniform Definitions) Paragraph A: "Furthermore, notwithstanding the foregoing requirements of this subsection or any other provision of this Agreement, a State may maintain its tax treatment of sales made through vending machines in the same manner as exists on the effective date of this Agreement."

Conclusion:

Most of the issues raised by the vending industry can be resolved by adding to the agreement the phrase presented in Issue 4. This would not affect revenues and is supported by the National Automatic Merchandising Association. The Member States need to determine the resolution of these issues.

State	Definition	Current Treatment	Impact of SSTP Definition
Alabama	None found	Taxes food and food products, not including beverages other than coffee, milk, milk products, and substitutes therefor, at 3% of cost. General merchandise rate 4%.	
Arkansas	Vending device “means any machine or manual device which dispenses tangible personal property after a coin or other thing of value is inserted. The term “vending device” shall not include devices used exclusively for the purpose of selling cigarettes, newspapers, magazines or postage stamps.” Reg. § 1995-2.	Owners of vending machines have 3 options: (1) pay sales/use tax on the purchase of the products going into the vending machines; or (2) pay a vending device decal fee and then purchase the items tax exempt as a sale for resale; or (3) purchase items tax exempt as a sale for resale and then pay a vending tax of 5.5% in lieu of sales tax.	
Connecticut		Exempts sales of any items for fifty cents or less from vending machines; or sales of food products, as defined in subsection (23) of Section 12-412, sold through coin operating vending machines. Section 12-412(27)	
Idaho	No statutory definition for “vending machine.”	The sales price of tangible personal property when sold through a vending machine for more than \$.11 and less than \$1.01 is deemed to be sold at 117% of the cost of the merchandise paid by the owner of the machine. There is no exemption for sales of food.	
Illinois	none – vending machines "Bulk vending machine" defined as a nonelectrically operated	Low rate of tax of 1% applied to all food sold through vending machines except soft drinks and hot food products (taxed at 6.25%). No tax is applied to sales from bulk vending machines.	

	vending machine, containing unsorted confections, nuts or other merchandise which, when a coin of a denomination not larger than one cent is inserted, are dispensed in equal portions, at random and without selection by the customer.		
Indiana	“Vending machine – coin or currency operated device which is used to sell tangible personal property without requiring the vendor’s physical attention at the time of sale.”	All sales (including food) are subject to tax when sold through a vending machine except when operated by certain exempt organizations.	
Iowa	Food & Consumer Safety provisions - “Vending machine means a food establishment which is a self-service device that, upon insertion of a coin, paper currency, token, card or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between vending operations.”	Food sold through vending machines are subject to tax if sold for consumption on premises of retailer or if prepared by retailer for immediate consumption off premises. Candy, candy-coated items, candy products, and soft drinks are subject to tax when sold from a vending machine.	

Kansas	None found	Sales from vending machines treated as retail sales.	
Kentucky	Bulk vending machine “means a vending machine containing unsorted merchandise which, upon insertion of a coin, dispenses the same in approximately equal portions, at random and without selection by the customer.” § 139.470.	Gross receipts from sale of tangible personal property sold through coin-operated bulk vending machines, if the sale amounts to fifty cents (\$0.50) or less are exempt from sales and use tax. (KRS 139.470) Bulk vending machine “means a vending machine containing unsorted merchandise which, upon insertion of a coin, dispenses the same in approximately equal portions, at random and without selection by the customer.” § 139.470 Exempts food, but taxes food sold from vending machines and nonmechanical self-service vending systems. (KRS 139.485)	
Louisiana	None found	Tax is charged on items purchased for resale by vending machine operators.	
Maine	None found	“Retail sale” includes the sale of products for internal human consumption to a person for resale through coin-operated vending machines when sold to a retailer whose gross receipts from the retail sale of tangible personal property derived through sales from vending machines are more than 50% of the retailer’s gross receipts.	
Maryland	None found	Provides that sales and use tax is computed on “if retail sales of tangible personal property or a taxable service are made through vending or other self-service machines, 95.25% of the gross receipts from the retail sales.	
Michigan	None found	Taxes all sales of tangible personal property personal property sold through vending machines except through a nonelectrically operated vending machine where the consideration is 10 cents or less. Also exempt from tax are food items which essentially are all food items sold through vending machines except if they are heated above 75 degrees F or cooled below 65 degrees F, however with a special exclusion for milk, nonalcoholic beverages in a sealed container and fresh fruit. Taxpayers may choose to pay tax on actual gross receipts or pay tax on 45% of the proceeds of	

		taxable or nontaxable sales, other than sales of carbonated beverages.	
Minnesota	“Vending machines are any coin-operated devices dispensing food, drinks, or tangible personal property or providing amusement. Reg. § 8130.2300.	Food is taxable if sold from vending machines.	
Mississippi	None found	Taxed at 8% on cost price of food for human consumption to full service vending machine operators to be sold at vending machines not connected with any taxable business. General rate 7%.	
Missouri	Vending machine is defined as “a coin or currency operated device which is used to sell tangible personal property without requiring the vendor's physical attention at the time of sale.”	Sales of tangible personal property, other than photocopies, cigarettes, cigars, or other tobacco-related products, by a vendor through a vending machine are retail sales taxed at 135% of cost price of the items sold.	
Nebraska	A coin-operated machine is defined to “include all machines where coins or substitutes for coins are inserted to render the machine operable.”	All sales taxable from vending machines. Food sold from vending machines is taxable.	
New Jersey	None found	Exemption for items sold for 25 cents or less. Vending machines that dispense food and beverages are taxed on the wholesale price of the food and beverages computed as 70% of the selling price, except for sales of milk, which shall not be taxed..	
Nevada	None found	Sales from vending machines treated as retail sales.	

North Carolina	None found	Items sold from vending machines for 1 cent are exempt. "Sales price" or amount subject to tax depends on items sold - closed-container soft drinks and tobacco products taxed at 100% of sale price, all other items taxed at 50% of sale price.	
North Dakota	None found	All items taxable if the selling price exceeds 15 cents.	
Ohio	None found	All sales from vending machines are treated as retail sales except coin operated car wash and vacuum. Sales of food from vending machines are only taxed to the extent they are for on premises consumption. Premises is a defined term that "includes any real property or portion thereof upon which any person engages in selling tangible personal property at retail or making retail sales and also includes any real property or portion thereof designated for, or devoted to, use in conjunction with the business engaged in by such person." Since Ohio's tax is collected based on brackets, persons selling via vending machines can enter into agreements to pay effective tax rates based on a study of their price structure relative to the brackets and their % of taxable sales.	
Oklahoma	Coin-operated vending device "means any and all machines or devices which, upon the payment or insertion of a coin, token or similar object, dispenses tangible personal property, including but not limited to cigarettes, candies, gum, cold drinks, hot drinks, sandwiches, or chips. It shall not mean vending machines or devices used	Annual fee charge instead of sales tax on merchandise. Fee is dependent upon price of items sold by machine 25 cents and over - \$50, less than 25 cents - \$10. Bulk vending machines, 25 cents or more - \$5 to \$15, under 25 cents - \$2.	

	<p>exclusively for the purpose of selling services, such as pay telephone booths, parking meters, gas and electric meters or other distribution of needful service.”</p> <p>Coin-operated bulk vending device “means a machine or device which, upon the payment or insertion of a coin, token or similar object dispenses to the purchaser ballpoint pens, combs, cigarette lighters, prophylactics, filled capsules, peanuts, gum balls, mints, perfume or novelties.”</p>		
Rhode Island	None found	All sales from vending machines treated as retail sales. Foods sold through vending machines are taxable as “meals.”	
South Carolina	None found	Other than for sales of cigarettes and soft drinks in closed containers, tax is incurred on the cost price of the items sold.	
South Dakota	None found	All sales from vending machines treated as retail sales.	
Tennessee	None found	Dealers that make sales through vending machines may elect to pay the gross receipts tax of 1.5% thereon in lieu of sales tax (8.25%).on items other than tobacco products. The gross receipts for tobacco products is 2.5%. Paying the gross receipts tax instead of sales tax is limited to an individual sales transaction that is \$5.00 or less. Items that are vended that are more than \$5.00 are subject to sales tax.	
Texas	None found	All sales from vending machines treated as retail sales. Sales	

		of food & drinks by vending machines are subject to tax.	
Utah	None found	All sales from vending machines treated as retail sales. Sales of food, beverages, and dairy products for \$1 or less may be alternately taxed at 150% of cost.	
Vermont	None found	All sales from vending machines treated as retail sales. Sales of food from vending machines are taxed the same other sales of food (tax imposed on heated foods, non-prepackaged food, and food sold in restaurants).	
Washington	Vending machines “mean machines which, through the insertion of a coin will return to the patron a predetermined specific article of merchandise or provide facilities for installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers. It includes machines which vend photographs, toilet articles, cigarettes and confections as well as machines which provide laundry and cleaning services.”	<p>Sales from vending machines that are made exclusively in amounts less than the minimum sale on which a 1¢ tax may be collected from the purchaser, and the kind of merchandise sold through such machines is not sold by the operator over the counter or other than through vending machines at that location, the selling price for purposes of the retail sales tax shall be 60% of the gross receipts of the vending machines through which such sales are made.</p> <p>Sales of any food products dispensed by vending machines are subject to sales tax under a formula which requires the tax to be reported and paid by the vending machine owner or operator upon fifty-seven percent of the gross receipts from such machines. However, sales tax must be reported and paid upon one hundred percent of the gross receipts of vending machines which dispense hot prepared food products, e.g., hot coffee, soups, tea, chocolate, etc.</p>	
West Virginia	None found	Sales of food by vending machines are subject to tax regardless of where the machine is located.	
Wisconsin	None found	The total gross receipts from sales of food and beverages through vending machines shall be presumed derived from on-premise consumption and therefore taxable, unless the operator has records showing the portion of gross receipts	

		<p>from sales made for off-premise consumption involving exempt food.</p> <p>Effective July 1, 2001, sales from a vending machine are deemed to be for off-premises consumption (vending sales will be just like sales from a grocery store sales - all sales of food and beverages from vending machines will be exempt except for the following:</p> <ul style="list-style-type: none"> a. Meals and sandwiches, whether heated or not. b. Heated food or heated beverages. c. Soda fountain items such as sundaes, milk shakes, malts, ice cream cones and sodas. d. Candy, chewing gum, lozenges, popcorn and confections. e. Medicines, tonics, vitamins and medicinal preparations in any form. f. Fermented malt beverages as defined in s. 125.02. g. Intoxicating liquors h. Soda water beverages as defined in s. 97.29(1)(i), bases, concentrates and powders intended to be reconstituted by consumers to produce soft drinks, and fruit drinks and ades not defined as fruit juices in s. 97.02 (27), 1967 stats. 	
Wyoming	None found	All sales (except sales of postage stamps) from vending machines treated as retail sales.	

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STREAMLINED SALES TAX PROJECT

CANDY ISSUE PAPER

Issue:

Create a uniform definition of “candy.” that is acceptable to both state governments and industry while simplifying compliance with tax laws.

Discussion:

The Tax Base working group of the Streamlined Sales Tax Project (SSTP) has the goal of providing uniform definitions of taxable items for the new sales tax system. The purpose is to ease the burden on those involved in interstate commerce by minimizing the complexities inherent in the current system. The group intends to develop definitions that will allow all states to support and adopt a new system.

To achieve this streamlining, the group proposes to develop uniform definitions without making determinations about the taxability of those items when possible. Uniform definitions would lay the groundwork for further uniformity and simplification while giving each state the flexibility they will need for implementation. This approach should also minimize some of the difficulties anticipated with transition to a new system.

The scope for the working group was to focus on those items for which the states’ definitions lack clarity and consistency, or where a uniform definition was specifically requested. Early group discussions centered on what should or should not be considered while formulating definitions. Some thought was given to defining terms only considering simplification and uniformity without regard to

any impact of the proposed changes. After further discussion, however, the group decided that it would have to consider the concerns of all parties affected by these definitions, weighing all substantive factors in order to create an acceptable proposal. The factors would often include the effects proposed changes would have on individual state tax revenues, both positive and negative; the effects on related industries; the effect on the wholesale and retail distribution chain and consumers. Early consideration of these factors led the group to focus on standard definitions, not standard taxation rules.

One of the major topic areas the group chose to focus on was food and, within that, candy was an item states taxed differently and any tax base selected as a uniform standard for all states to follow would affect many states in different ways. There would be revenue winners and losers where ever the line is drawn. Of course, states could redefine the proposed tax base around their tax rates or other elements in their care or regulation. To the extent states made such modifications, the impact of a uniform tax base would be diluted.

Industry, as represented by groups like the National Confectioners Association, the Grocery Manufactures of America and the Don't Tax the Food Coalition, requested that candy not be singled out as a unique taxable item. Their belief is that separating "candy" from the commonly understood "food" and "food products" group runs directly counter to the goal of simplifying the burden of tax compliance. However, this group recognizes this opportunity to develop standard definitions to ease the compliance burden and accomplish our goal of streamlining this portion of the sales tax process.

The Streamlined Sales and Use Tax Agreement (Agreement) as approved on December 22, 2000 (and amended on January 24, 2001) provides this definition of candy:

"Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration.

Alternatives:

- 1). Provide no definition for candy and allow it to be taxed as part of food or food products.
- 2) Amend the proposed definition with some other variation of ingredients.

Effect on States: (Detail of what will happen in each of the participating states and nonparticipating states when available) See attached Matrix.

Streamlined Sales Tax Project: Candy (MatrixB)

State/Info provided by	Candy definition	Taxability	State law regulating candy taxability	Fiscal notes/projecte d revenue impact for candy
Arkansas Mary Cameron	Candy is not defined in Arkansas	Yes	N/A	N/A
Connecticut Joe Thomas	No definition.	Yes.	Ch. 219, Section 12-412(13) - this section exempts "food products" which includes "...sugar and sugar products other than candy and confectionery;"	N/A
Idaho Jim Husted	The Idaho Sales Tax Act does not provide an exemption for sales of food. For this reason the act does not include a definition of "food" or "candy" or "soft drinks."	Yes, sales of candy are taxable in Idaho.	Sales of tangible personal property are included within the definition of "sale" found in Idaho Code § 63-3612. Tax is imposed on retail sales by Idaho Code § 63-3619. There are no statutes or administrative rules dealing specifically with sales of candy.	Idaho has not developed a fiscal note or revenue impact statement on this issue.
Illinois Terry Charlton	Illinois has no definition for candy	Yes, all food is taxed in Illinois.		
Indiana Steven A. Englert	The Department has issued no specific definition of "candy". The Indiana statute designates the terms "... (1) Candy, confectionery, and chewing gum... ", among a list of others as specifically excluded from the nontaxable category, "food for human consumption".	Yes	IC 6-2.5-5-20. [T]he term "'Food for human consumption' does not include:... (1) Candy, confectionery, and chewing gum;... " Rule 45 IAC 2.2-5-41 and Information Bulletin #29 (7/94). Combinations of exempt food items, e.g., fruit, nuts, popcorn, with taxable food items, e.g., chocolate, sugar, honey, are <u>not</u> exempt unless sold for cooking purposes. The method of packaging and distribution is considered in determining the primary use of the preparations sold. Advisory Letter , Jan. 7, 2000. "The term 'cooking'... (means)... the preparation of food for eating by applying heat." Kwatnez , (Ind. App. 1983). "[C]ookies, potato chips... " are not confectionery items and are therefore exempt from Sales Tax. Letter of Findings 87-0213. "[F]ruit roll-ups and fruit bars... are not intended to be sold as candy products". "Honey-roasted nuts' do not contain... any sufficient amount of honey to consider the nuts... a taxable confectionery item.	None
Michigan Dale Vettel	No definition.	No	N/A	N/A
North Dakota Gary Anderson	Primarily on how the product is marketed and package will most often determine if the product is identified as candy.	Yes, North Dakota currently taxes candy and chewing gum.	NDCC 57-39.2-04.1	North Dakota has not developed a fiscal note or revenue impact statement to address definition.

<p>Ohio Bill Riesenberger</p>	<p>There is no definition of candy in the Ohio sales tax code.</p>	<p>Candy is considered food and is exempt when purchased for consumption off the premises where sold</p>	<p>"Food" is defined in the final paragraph of section 5739.02(B) of the Ohio Revised Code (Attached). Ohio Revised Code, Section 5739.02 As used in this section, except in division (B)(16) of this section, "food" includes cereals and cereal products, milk and milk products including ice cream, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruits, fruit products, and pure fruit juices, condiments, sugar and sugar products, coffee and coffee substitutes, tea, and cocoa and cocoa products. It does not include: spirituous or malt liquors; soft drinks; sodas and beverages that are ordinarily dispensed at bars and soda fountains or in connection therewith, other than coffee, tea, and cocoa; root beer and root beer extracts; malt and malt extracts; mineral oils, cod liver oils, and halibut liver oil; medicines, including tonics, vitamin preparations, and other products sold primarily for their medicinal properties; and water, including mineral, bottled, and carbonated waters, and ice.</p>	<p>No revenue estimate has been done.</p>
<p>South Carolina Rick Handel</p>	<p>No</p>	<p>Yes</p>	<p>N/A</p>	<p>N/A</p>
<p>South Dakota Scott Peterson/ Jane A. Page</p>	<p>SD sales tax statutes do not define food, candy, or soft drinks. Candy and other food items are tangible personal property taxed under SDCL 10-45-2.</p>	<p>Yes, as food.</p>	<p>§ 10-45-14.7. Exemption of authorized purchases made with food stamps. There are hereby specifically exempted from the tax imposed by this chapter the gross receipts resulting from authorized purchases made with food stamps under the provision of the Food Stamp Act of 1977 (PL 95-113). Source: SL 1987, ch 106, § 1. Annotations Federal References. Food Stamp Act of 1977 (PL 95-113), 7 U.S.C., §§ 3292, 3319 (a)-(d). § 10-45-14.8. Exemption of authorized purchases of food. There are hereby specifically exempted from the tax imposed by this chapter the gross receipts resulting from authorized purchases of food made under Section 17(c) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(c)). Source: SL 1987, ch 106, § 3. § 10-52-2.5. Mandatory and optional exemption of certain food sales. The gross receipts from selling food, as defined by the Food Stamp Act of 1977 (P.L. 95-113), codified at 7 U.S.C. § 2012(g), as amended through January 1, 1983, in rules promulgated pursuant thereto, are exempt from the provisions of this chapter and from the tax imposed by it if the tax rate imposed by a municipality through the provisions of § 10-52-2 is in excess of one percent. The provisions of this section do not apply to municipalities qualifying under § 10-52-2.1 unless such municipalities increase their existing non-ad valorem tax and the new rate is in excess of one percent. A municipality may, by local option, exempt food, as defined by the Food Stamp Act of 1977 (P.L. 95-113), codified at 7 U.S.C. § 2012(g), as amended through January 1, 1983, from the tax imposed by § 10-52-2 if the tax rate is one percent or less. A municipality with a tax rate in excess of one percent on January 1, 1983, pursuant to § 10-52-2.1, may, by local option, exempt food, as defined by the Food Stamp Act of 1977 (P.L. 95-113), codified at 7 U.S.C. § 2012(g), as amended through January 1, 1983, from the tax. Source: SL 1983, ch 101, § 3.</p>	<p>The definition has no economic impact in South Dakota.</p>

Tennessee Jack Kopald	Not defined	Tennessee does tax candy.	Tennessee provides no exemption for candy or soft drinks. We do give vending machine sales an option of paying 1.5% of gross receipts rather than collecting and remitting the full state plus local rate.	
Texas Bryant Lomax	Texas defines candy by administrative rule 3.293 (a).. (3) Candy - Confections such as candy bars, chewing gum, or candy kisses, but does not include products used exclusively for cooking, such as chocolate bits.	Texas does impose sales tax on candy	Section 151.009 "Tangible Personal Property" means personal property that can be seen, weighed, measured, felt, or touched or that is perceptible to the senses in any manner, and, for the purposes of this chapter, the term include a computer program and a telephone prepaid calling card.	None for candy specifically.
Utah Craig Sandberg	Utah does not define candy.	Utah taxes all food sales, including candy.	Utah has no special statutes regarding the taxability of candy. Candy is treated as any other sale of tangible personal property under 59-12-103(1)(a).	There would be no revenue impact.
Washington Greg Potegal	Washington does not define candy.	Response: Washington does not tax candy.	Response: RCW 82.08.0293 is the statute, which exempts food products from sales tax. It includes, in subsection (1), within the definition of food products, "sugar and sugar products." Statute in full in the bottom of the document ¹ .	No estimate was made.
Wisconsin Vicki Gibbons	Not defined.	Tax is imposed on candy, chewing gum, and confections.	(sec. 77.54(20)(c)2.d, Wis. Stats. (1999-00)... 2. The gross receipts from sales by any person, organization or establishment of the following items for off-premises consumption are taxable: a. Meals and sandwiches, whether heated or not. b. Heated food or heated beverages. c. Soda fountain items such as sundaes, milk shakes, malts, ice cream cones and sodas. d. Candy, chewing gum, lozenges, popcorn and confections. Also see Tax 11.51, Wis. Adm. Code (October 1999 Register)	None for candy specifically.

1. RCW 82.08.0293 Exemptions--Sales of food products for human consumption. (1) The tax levied by RCW 82.08.020 shall not apply to sales of food products for human consumption.

"Food products" include cereals and cereal products, oleomargarine, meat and meat products including livestock sold for personal consumption, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, coffee and coffee substitutes, tea, cocoa and cocoa products.

"Food products" include milk and milk products, milk shakes, malted milks, and any other similar type beverages which are composed at least in part of milk or a milk product and which require the use of milk or a milk product in their preparation.

"Food products" include all fruit juices, vegetable juices, and other beverages except bottled water, spirituous, malt or vinous liquors or carbonated beverages, whether liquid or frozen.

"Food products" do not include medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts.

(2) The exemption of "food products" provided for in subsection (1) of this section shall not apply: (a) When the food products are ordinarily sold for immediate consumption on or near a location at which parking facilities are provided primarily for the use of patrons in consuming the products purchased at the

location, even though such products are sold on a "takeout" or "to go" order and are actually packaged or wrapped and taken from the premises of the retailer, or (b) when the food products are sold for consumption within a place, the entrance to which is subject to an admission charge, except for national and state parks and monuments, or (c) to a food product, when sold by the retail vendor, which by law must be handled on the vendor's premises by a person with a food and beverage service worker's permit under RCW 69.06.010, including but not be limited to sandwiches prepared or chicken cooked on the premises, deli trays, home-delivered pizzas or meals, and salad bars but excluding:

(i) Raw meat prepared by persons who slaughter animals, including fish and fowl, or dress or wrap slaughtered raw meat such as fishmongers, butchers, or meat wrappers;

(ii) Meat and cheese sliced and/or wrapped, in any quantity determined by the buyer, sold by vendors such as meat markets, delicatessens, and grocery stores;

(iii) Bakeries which only sell baked goods;

(iv) Combination bakery businesses, as prescribed by rule of the department, to the extent that sales of baked goods are separately accounted for and the baked goods claimed for exemption are not sold as part of meals or with beverages in unsealed containers; or

(v) Bulk food products sold from bins or barrels, including but not limited to flour, fruits, vegetables, sugar, salt, candy, chips, and cocoa.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food products" provided in this section shall apply to food products, which are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW 74.38.040(6); or

(b) Which are provided to senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW.

(4) Subsection (1) of this section notwithstanding, the retail sale of food products is subject to sales tax under RCW 82.08.020 if the food products are sold through a vending machine, and in this case the selling price for purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

This subsection does not apply to hot prepared food products, other than food products, which are heated after they have been dispensed from the vending machine.

For tax collected under this subsection, the requirements that the tax be collected from the buyer and that the amount of tax be stated as a separate item are waived. [1988 c 103. 1; 1986 c 182. 1; 1985 c 104. 1; 1982 1st ex.s. c 35. 33.]

NOTES:

Effective date--1988 c 103: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1988." [1988 c 103. 4.]

Severability--Effective dates--1982 1st ex.s. c 35: See notes following RCW 82.08.020

Draft Document For Discussion Purposes Only – Nothing contained herein represents a final position or opinion of the Streamlined Sales Tax Project, any of the participating or observing states, or any member of their staff. Readers should neither rely on any information herein nor make any inferences about final project positions or positions of participating or observing states or their members from the statements contained herein as this is a draft only and may change in response to comments and input from the public or private sector.

STREAMLINED SALES TAX PROJECT

SOFT DRINKS ISSUE PAPER

Issue:

Create a uniform definition of “soft drink.” that is acceptable to both state governments and industry while simplifying compliance with tax laws.

Discussion:

The Tax Base working group of the Streamlined Sales Tax Project (SSTP) has the goal of providing uniform definitions of taxable items for the new sales tax system. The purpose is to ease the burden on those involved in interstate commerce by minimizing the complexities inherent in the current system. The group intends to develop definitions that will allow all states to support and adopt a new system.

To achieve this streamlining, the group proposes to develop uniform definitions without making determinations about the taxability of those items when possible. Uniform definitions would lay the groundwork for further uniformity and simplification while giving each state the flexibility they will need for implementation. This approach should also minimize some of the difficulties anticipated with transition to a new system.

The scope for the working group was to focus on those items for which the states’ definitions lack clarity and consistency, or where a uniform definition was specifically requested. Early group discussions centered on what should or should not be considered while formulating definitions. Some thought was given to defining terms only considering simplification and uniformity without regard to any impact of the proposed changes. After further discussion, however, the

group decided that it would have to consider the concerns of all parties affected by these definitions, weighing all substantive factors in order to create an acceptable proposal. The factors would often include the effects proposed changes would have on individual state tax revenues, both positive and negative; the effects on related industries; the effect on the wholesale and retail distribution chain and consumers. Early consideration of these factors led the group to focus on standard definitions, not standard taxation rules.

One of the major topic areas the group chose to focus on was food and, within that, the subset of beverages. How beverages are defined and taxed across the country serves as one of the better illustrations of the need for uniformity and simplicity. The variations among beverage definitions have led to variations in the way they are taxed, by states and some local entities; this complexity has historically created difficulties for those who participate in interstate commerce. (See Matrix A attached).

The inconsistencies with beverage definitions start with the sub-categories -- juices, water, alcoholic, milk products, and soft drinks, since most states have a different approach to each category. Some of the differences are illustrated in the attached matrix along with the varying treatment for sales in all states. (The matrix does not cover taxation at the local level, which would increase the number of inconsistencies to the state tax.) For definitions of soft drinks, there is virtually no standardization among the states.

Because of the many different approaches to soft drink taxation, any tax base selected as a uniform standard for all states to follow would affect many states in different ways. There would be revenue winners and losers where ever the line is drawn. Of course, states could redefine the proposed tax base around their tax rates or other elements in their care or regulation. To the extent states made such modifications, the impact of a uniform tax base would be diluted.

Industry, as represented by the National Soft Drink Association (NSDA), requested that soft drinks not be singled out as a unique taxable item. Their belief is that separating "soft drinks" from the commonly understood "food" and "food products" group runs directly counter to the goal of simplifying the burden of tax compliance. However, this group recognizes this opportunity to develop standard definitions to ease the compliance burden and accomplish our goal of streamlining this portion of the sales tax process.

The Streamlined Sales and Use Tax Agreement (Agreement) as approved on December 22, 2000 (and amended on January 24, 2001) provides this definition of soft drinks:

"Soft drinks" means non-alcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain:

1. milk or milk products;

2. soy, rice, or similar milk substitutes; or
3. greater than fifty percent of vegetable or fruit juice by volume.

Alternatives:

- 1). Provide no definition for soft drinks and allow them to be taxed as part of food or food products.
- 2) Amend the proposed definition with some other variation of ingredients.

Effect on States: (Detail of what will happen in each of the participating states and nonparticipating states when available) See attached Matrix B.

Streamlined Sales Tax Project: Soft Drinks (Matrix B)

State/Info provided by	State law regulating soft drinks taxability	Fiscal notes/projected rev. impact for soft drinks
Arkansas Mary Cameron	Soft drinks are subject to sales and use tax under the general provisions of Ark. Code Ann. § 26-52-301 (taxed as "tangible personal property"). In addition, Arkansas has a Soft Drink Tax that is levied on distributors, manufacturers, and wholesale dealers. This special tax is located at Ark. Code Ann. § 26-57-901, et seq.	N/A
Connecticut Joe Thomas	Ch. 219, Section 12-412(13) - this section exempts "food products" but states "Food products do not include.....soft drinks, sodas or beverages such as are ordinarily dispensed at bars and soda fountains..."	N/A
Idaho Jim Husted	Sales of tangible personal property are included within the definition of "sale" found in Idaho Code § 63-3612. Tax is imposed on retail sales by Idaho Code § 63-3619. There are no statutes or administrative rules dealing specifically with sales of soft drinks.	Idaho has not developed a fiscal note or revenue impact statement on this issue.
Illinois Terry Charlton	Soft drinks in Illinois are taxable (at the full tax rate 6.25% instead of the reduced rate on food of 1%). (35 ILCS 120/2-10) Sec. 2-10. Rate of tax. Unless otherwise provided in this Section, the tax imposed by this Act is at the rate of 6.25% of gross receipts from sales of tangible personal property made in the course of business. With respect to food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption) and prescription and nonprescription medicines, drugs, medical appliances, modifications to a motor vehicle for the purpose of rendering it usable by a disabled person, and insulin, urine testing materials, syringes, and needles used by diabetics, for human use, the tax is imposed at the rate of 1%. For the purposes of this Section, the term "soft drinks" means any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all other preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container, regardless of size. "Soft drinks" does not include coffee, tea, non-carbonated water, infant formula, milk or milk products as defined in the Grade A Pasteurized Milk and Milk Products Act, or drinks containing 50% or more natural fruit or vegetable juice. Notwithstanding any other provisions of this Act, "food for human consumption that is to be consumed off the premises where it is sold" includes all food sold through a vending machine, except soft drinks and food products that are dispensed hot from a vending machine, regardless of the location of the vending machine. (Source: P.A. 90-605, eff. 6-30-98; 90-606, eff. 6-30-98; 91-51, eff. 6-30-99; 91-872, eff. 7-1-00.)	
Indiana Steven A. Englert	IC 6-2.5-5-20. [T]he term "Food for human consumption" does not include:... (4) Soft drinks, sodas, and other similar beverages;... (11) Food sold through a vending machine.... Rule 45 IAC 2.2-5-42 and Information Bulletin #29 (7/94). All "soft drinks" containing carbonated water are taxable. Non-carbonated drinks are taxable if sold in individual serving bottles or cans. The term "soft drink" does not include any size non-carbonated drink containing any amount of natural fruit or vegetable juice. All beverages sold through a vending machine are taxable.	None
Iowa Carl A. Castelda		
Michigan Dale Vettel	N/A	N/A

State/Info provided by	State law regulating soft drinks taxability	Fiscal notes/projected rev. impact for soft drinks
New Jersey Denise M. Lambert	N.J.S.A. 54:32B-8.2 (subject to tax if "carbonated"). Policy is to exempt if "naturally carbonated", e.g. Perrier, as opposed to artificially carbonated, e.g. soda)	The Division estimates a \$12 M increase in sales tax revenue if the proposed definition of soft drinks is adopted. This increase will be derived from taxing formerly exempt non-carbonated beverages which contain less than 50% fruit or vegetable juice, such as Snapple, Gatorade, and the like.
North Dakota Gary Anderson	NDCC 57-39.2-04.1	North Dakota has not developed a fiscal note or revenue impact statement to address definition.
Ohio Bill Riesenberg	Soft drinks are excluded from the definition of "food" in section 5739.02(B) of the Ohio Revised Code. Sales of soft drinks are subject to Ohio's sales tax regardless of where consumed.	We have not done a revenue estimate specifically related to the Streamlined Project definition of soft drinks.
South Carolina Rick Handel	N/A	N/A
South Dakota Scott Peterson/ Jane A. Page	<p>No specific regulation or statute defines soft drinks. Relevant statutes are same for candy and soft drinks.</p> <p>§ 10-45-14.7. Exemption of authorized purchases made with food stamps. There are hereby specifically exempted from the tax imposed by this chapter the gross receipts resulting from authorized purchases made with food stamps under the provision of the Food Stamp Act of 1977 (PL 95-113). Source: SL 1987, ch 106, § 1. Annotations Federal References. Food Stamp Act of 1977 (PL 95-113), 7 U.S.C., §§ 3292, 3319 (a)-(d).</p> <p>§ 10-45-14.8. Exemption of authorized purchases of food. There are hereby specifically exempted from the tax imposed by this chapter the gross receipts resulting from authorized purchases of food made under Section 17(c) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(c)). Source: SL 1987, ch 106, § 3.</p> <p>§ 10-52-2.5. Mandatory and optional exemption of certain food sales. The gross receipts from selling food, as defined by the Food Stamp Act of 1977 (P.L. 95-113), codified at 7 U.S.C. § 2012(g), as amended through January 1, 1983, in rules promulgated pursuant thereto, are exempt from the provisions of this chapter and from the tax imposed by it if the tax rate imposed by a municipality through the provisions of § 10-52-2 is in excess of one percent. The provisions of this section do not apply to municipalities qualifying under § 10-52-2.1 unless such municipalities increase their existing non-ad valorem tax and the new rate is in excess of one percent. A municipality may, by local option, exempt food, as defined by the Food Stamp Act of 1977 (P.L. 95-113), codified at 7 U.S.C. § 2012(g), as amended through January 1, 1983, from the tax imposed by § 10-52-2 if the tax rate is one percent or less. A municipality with a tax rate in excess of one percent on January 1, 1983, pursuant to § 10-52-2.1, may, by local option, exempt food, as defined by the Food Stamp Act of 1977 (P.L. 95-113), codified at 7 U.S.C. § 2012(g), as amended through January 1, 1983, from the tax. Source: SL 1983, ch 101, § 3.</p>	The definition has no economic impact in South Dakota.
Tennessee	Tennessee provides no exemption for soft drinks. We do give vending machine sales an option of paying	

State/Info provided by	State law regulating soft drinks taxability	Fiscal notes/projected rev. impact for soft drinks
Jack Kopald	1.5% of gross receipts rather than collecting and remitting the full state plus local rate.	
Texas Bryant Lomax	Section 151.009 "Tangible Personal Property" means personal property that can be seen, weighed, measured, felt, or touched or that is perceptible to the senses in any manner, and, for the purposes of this chapter, the term include a computer program and a telephone prepaid calling card.	No specific estimate prepared.
Utah Craig Sandberg	Utah has no special statutes regarding the taxability of soft drinks. Soft drinks are treated as any other sale of tangible personal property under 59-12-103(1)(a).	There would be no revenue impact.
Washington Greg Potegal	RCW 82.08.0293, above, excludes, in subsection (1), "carbonated beverages" from the definition of food products. Statute in full in the bottom of the document ¹ .	If Washington exempted soft drinks, as defined by the Project, the loss would be \$42.34 million to the state and \$12.38 million to local governments for Fiscal Year 2002. If Washington taxed soft drinks, as defined by the Project, the gain would be \$6.03 million to the state and \$1.76 million to local governments for Fiscal Year 2002.
Wisconsin Vicki Gibbons	Food and beverages exempt from tax do not include soda water beverages as defined in s. 97.29 (1) (i) , bases, concentrates and powders intended to be reconstituted by consumers to produce soft drinks, and fruit drinks and ades not defined as fruit juices in s. 97.02 (27), 1967 stats. (sec. 77.54(20)(b), Wis. Stats. (1999-00) http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=77136&infobase=stats.info&j1=77.54%2820%29%28b%29&jump=77.54%2820%29%28b%29&softpage=Browse_Frame_Pg	None for soft drinks specifically.

1. RCW 82.08.0293 Exemptions--Sales of food products for human consumption. (1) The tax levied by RCW 82.08.020 shall not apply to sales of food products for human consumption.

"Food products" include cereals and cereal products, oleomargarine, meat and meat products including livestock sold for personal consumption, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, coffee and coffee substitutes, tea, cocoa and cocoa products.

"Food products" include milk and milk products, milk shakes, malted milks, and any other similar type beverages which are composed at least in part of milk or a milk product and which require the use of milk or a milk product in their preparation.

"Food products" include all fruit juices, vegetable juices, and other beverages except bottled water, spirituous, malt or vinous liquors or carbonated beverages, whether liquid or frozen.

"Food products" do not include medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts.

(2) The exemption of "food products" provided for in subsection (1) of this section shall not apply: (a) When the food products are ordinarily sold for immediate consumption on or near a location at which parking facilities are provided primarily for the use of patrons in consuming the products purchased at the location, even though such products are sold on a "takeout" or "to go" order and are actually packaged or wrapped and taken from the premises of the retailer, or (b) when the food products are sold for consumption within a place, the entrance to which is subject to an admission charge, except for national and state parks and monuments, or (c) to a food product, when sold by the retail vendor, which by law must be handled on the vendor's premises by a person with a food and beverage service worker's permit under RCW 69.06.010, including but not be limited to sandwiches prepared or chicken cooked on the premises, deli trays, home-delivered pizzas or meals, and salad bars but excluding:

(i) Raw meat prepared by persons who slaughter animals, including fish and fowl, or dress or wrap slaughtered raw meat such as fishmongers, butchers, or meat wrappers;

(ii) Meat and cheese sliced and/or wrapped, in any quantity determined by the buyer, sold by vendors such as meat markets, delicatessens, and grocery stores;

(iii) Bakeries which only sell baked goods;

(iv) Combination bakery businesses, as prescribed by rule of the department, to the extent that sales of baked goods are separately accounted for and the baked goods claimed for exemption are not sold as part of meals or with beverages in unsealed containers; or

(v) Bulk food products sold from bins or barrels, including but not limited to flour, fruits, vegetables, sugar, salt, candy, chips, and cocoa.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food products" provided in this section shall apply to food products, which are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW 74.38.040(6); or

(b) Which are provided to senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW.

(4) Subsection (1) of this section notwithstanding, the retail sale of food products is subject to sales tax under RCW 82.08.020 if the food products are sold through a vending machine, and in this case the selling price for purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

This subsection does not apply to hot prepared food products, other than food products, which are heated after they have been dispensed from the vending machine.

For tax collected under this subsection, the requirements that the tax be collected from the buyer and that the amount of tax be stated as a separate item are waived. [1988 c 103 1; 1986 c 182 1; 1985 c 104 1; 1982 1st ex.s. c 35 33.]


NOTES:

Effective date--1988 c 103: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1988." [1988 c 103 4.]

Severability--Effective dates--1982 1st ex.s. c 35: See notes following RCW 82.08.020.

IX. Multiple Points of Use Form

Draft Document For Discussion Purposes Only – Nothing contained herein represents a final position or opinion of the Streamlined Sales Tax Project, any of the participating or observing states, or any member of their staff. Readers should neither rely on any information herein nor make any inferences about final project positions or positions of participating or observing states or their members from the statements contained herein as this is a draft only and may change in response to comments and input from the public or private sector.

		Form UEC-1 SF# XXXX (Revised 5-01)		Multiple Points of Use Exemption Certificate	
Purchaser's Federal ID Number		Purchaser's State Identification Number		State	Date
Purchaser's Legal Name					
Doing Business As (DBA)					
Purchaser's Address (Not P.O. Box Number)				City	State
					Zip
Authorized Signature					Date
Print Name			Title	Telephone Number	
<input type="checkbox"/> Blanket <input type="checkbox"/> Single Purchase					
General description of digital good(s) or service(s) purchased from seller: _____					
 Cut Here					
Information Regarding Multiple Points of Use Exemption Certificates					
Multiple Points of Use authorization may not be used for purchase of utilities, motor vehicles, watercraft, aircraft, telecommunications, or advertising services.					
Multiple Points of Use Exemption Certificates are issued only when the following conditions are established:					
1. The purchased digital good(s) or service(s) will be concurrently available for use in more than one jurisdiction.					
2. The purchaser is not a holder of a state issued direct pay permit.					
3. Adequate records will be maintained by the purchaser showing the ultimate destination and use of the digital good(s) or service(s) purchased under the authorization of the Multiple Points of Use Exemption Certificate.					
4. The purchaser agrees to pay tax to appropriate jurisdiction.					
5. Blanket certificates are valid for a period of one year from the date of signing.					
6. If the purchaser does not issue this certificate to the seller, then the seller is required to collect the tax for the state from where the digital good was first available for transmission by the seller or where the service was performed.					

SSTP Bad Debt Questionnaire 3-2001

State Name	Does your state provide vendors with an allowance for taxes paid on sales that have become bad debts?	Does your state permit third party purchasers of obligations to claim a bad debt allowance? If so, is this by statute, administrative interpretation, or judicial decision?	Does your state allow any other parties (i.e. credit providers) to claim a bad debt allowance? If so, is this by statute, administrative interpretation, or judicial decision?	Does your state define bad debts by reference to the federal definition in Internal Revenue Code section 166? If not, what definition is used?	If your state allows filing of refunds for tax paid on bad debts, does your state pay interest on the refunds?	If a party that has claimed a bad debt subsequently makes a recovery of a portion of the debt, does your state require reimbursement of tax for the bad debt allowance? If so, do you apply amounts recovered to tax first, proportionally to tax and principal first, or proportionally to tax, principal, interest and collection costs?	Does your state require interest be paid on reimbursed tax amounts?
AR	Yes. See Ark. Code Ann. § 26-52-309	No. Pursuant to Ark. Code Ann. § 26-52-309(b)(3), bad debts do not include debts that are sold or assigned to third parties for collection.	No. See Ark. Code Ann. § 26-52-309(b)(3).	Arkansas law does not reference the specific federal statute but it does reference that bad debts are debts that have been legally taken for federal income tax purposes. Pursuant to Ark. Code Ann. § 26-52-309(b), "bad debt" means any portion of a debt for an amount that a taxpayer has reported as taxable which the taxpayer legally claims as a bad debt deduction for federal income tax purposes. It includes worthless checks, worthless credit card payments and uncollectible credit accounts. It does not include financing charges or interest, uncollectible amounts on property that remain in the possession of the taxpayer or vendor until the full purchase price is paid, expenses incurred in attempting to collect any debt, debts sold or assigned to third parties for collection, and repossessed property. In addition, Ark. Code Ann. § 26-52-309(d) states that "bad debts must be deducted within three years of the date of the sale for which the debt was incurred."	No. Pursuant to Ark. Code Ann. § 26-52-309(a), "[a]ny deduction taken or refund paid which is attributed to bad debts shall not include interest."	Yes. Arkansas law states that "if a deduction is taken for a bad debt and the taxpayer subsequently collects the debt in whole or in part, the tax on the amount so collected shall be paid and reported on the next return due after the collection." See Ark. Code Ann. §	No
CT	Yes	No	No	Yes	No	YES, PROPORTIONALLY TO TAX AND PRINCIPAL FIRST	No
GA	Yes, see the attached statute OCGA § 48-8-45 (c).	No	Yes, but it's limited to only assignees of credit card debt (without recourse) who report sales taxes to the State on an accrual basis. See OCGA 48-8-45 ©.	It's not directly referenced to the federal code, however, we look to the federal code to determine whether a debt is worthless. See our State regulation 560-12-1-.06.	We do not allow refunds to be paid on these bad debts, only a deduction to current taxes due.	Yes we require the tax to be re-paid to the state, but we treat it as a new sale so there is no additional interest or collection cost required by the State.	No

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IA	No	No (This issue is under protest with a credit card company.)	No. Only retailers making the sale can claim the bad debt deduction.	Our statute provides that the deduction can be taken only if it is actually charged off for federal income tax purposes. Our statute and rules do not reference IRC 166 but that is the foundation for the deduction.	Yes. We allow the filing of a refund if the adjustment is not timely taken on the return. We pay interest starting the first day of the month following the end of the quarter in which the debt became worthless.	Yes. We do require reimbursement of the tax if the bad debt is recovered. We would indirectly apply the recovery to tax. We would not prorate. The recovery is added back to gross receipts on the return or shown as an adjustment to gross receipts on the return as such there would not be an interest charge.	If the adjustment is taken timely on a return there is no interest. If the adjustment is not taken timely and an amended return is filed or it is discovered in audit interest would be charged.
IN	Yes. The bad debts must have resulted from transactions where sales tax was not collected from the purchaser; the bad debt resulted from transactions where sale tax was previously paid to the Department, and the bad debts were written off as uncollectible for Federal Tax purposes	No (by Administrative Interpretation)	No (by Administrative Interpretation) We are currently in Indiana Tax Court over this issue.	Our code definition is “uncollectible debt for Federal tax purposes”. Various administrative hearings have referred to IRC 166 as support.	Taxpayers may deduct as an adjustment to the sales tax return or file a claim for refund. If we process claim for refund within 90 days of receipt no interest is paid. Interest is paid if we exceed 90 days to process.	Taxpayers may deduct as an adjustment to the sales tax return or file a claim for refund. If we process claim for refund within 90 days of receipt no interest is paid. Interest is paid if we exceed 90 days to process.	If the recovered bad debts are reported in the tax period that they occurred, then there would not be any interest due.
KY	Yes	No	No	No. The retailer may deduct as a bad debt, the amount found worthless and charged off for income tax purposes.	Yes, Interest shall begin to accrue 60 days after the due date of the return or the date the tax was paid, whichever is later, and in no case shall interest be paid in an amount less than \$5.00. KRS 131.183.	Yes. If any such accounts are thereafter collected, in whole or in part, the retailer shall report and pay the tax on the amount so collected in the first return filed after the collection is made. The amount recovered is for the tax only.	No
LA	Yes, vendors can receive refunds of taxes remitted on bad debts through the filing of refund claims with the Louisiana Department of Revenue.	No	No	Yes	Yes. The interest is computed from the date of the filing of the federal income tax return on which the bad debt was deducted.	The entire amount recovered is required to be reported as a new sale on the dealer's sales tax return filed for the period in which the recovery was made.	If the recovered amount is not reported as a new sale on the return for the period when the recovery is made, interest will be computed on the unreported amount from the filing deadline of the return for that period.

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MD	Yes	No	No	Yes	No	Maryland does require reimbursement for recoveries on bad debts written off for sales and use tax purposes. Partial recoveries should be applied proportionately to tax, principal and interest. The Comptroller's regulation on the subject does not address collection costs, but it may be inferred from the requirement to treat the amount "recovered" as sales subject to tax that the out-of-pocket costs of collection may be excluded from the calculation.	No
MI	Yes	NO - BY SPECIFIC STATUTORY EXCLUSION	No	Yes	AFTER 45 DAYS OF RECEIPT OF A CLAIM FOR REFUND	AFTER 45 DAYS OF RECEIPT OF A CLAIM FOR REFUND	No
MN	Yes	No	No	Rule 8130.7400 states, "Uncollectible debts will be recognized as a deduction for sales tax purposes only when given recognition by a direct charge-off for federal income tax purposes, or if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles."	We allow vendors to take credit for bad debts on current returns. In those situations, no interest is paid. However, if the vendor files an amended return, or a claim for refund, interest would be paid.	Yes, Minnesota requires reimbursement. Our rule requires that the amount collected must be included and paid on the first return filed after collection. However, our current law and rule do not provide the taxpayer with guidance on how to apply the partial recovery of the debt after it has been written off between tax, penalty and interest.	No, not if timely filed on the return, as mentioned in 6 above. If the taxpayer files an amended return, or an assessment is made, interest would be assessed.
MO	Yes	No	No	Yes, we follow the federal guidelines.	Yes	Yes, recovered portion of debt would be applied to tax due.	No, if the original payment was received in a timely manner.
NC	Yes	No	No	The term "bad debt" is not defined in the statute. The exemption provides for a deduction of worthless accounts actually charged off for income tax purposes.	Interest is not paid when the deduction is taken for the period in which the worthless account was charged off for income tax purposes. If a taxpayer fails to take a deduction in the period which the charge off occurred, the taxpayer could file an amended return for that period and any applicable interest would be paid based on the reduction in tax for that period.	A taxpayer is required to reimburse the State for amounts recovered for which a deduction was taken. If the taxpayer's records show that the recovery was applied to various charges, the reimbursement to the State would be applied in a similar manner. If the taxpayer's records do not show how the recovery was applied, the reimbursement is applied against the principal.	The reimbursement should be reported for the period in which recovery was made and no additional interest is due. If the taxpayer failed to pay the amount recovered in the proper period, interest would be due based on when it was finally paid.

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ND	Yes	No, except where the vendor fails to remit the appropriate amount of tax in a timely manner (with the first return filed after the collection/recovery of the purchase price or portion thereof).	No, the bad debt must be claimed by the retailer remitting the tax.	Bad Debts is not defined in the sales tax statutes. The provision for bad debts is found in North Dakota Century Code Section 57-39.2-05(1) and states "Taxes paid on gross receipts represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon subsequent payment of the tax herein provided; provided, that if such accounts are hereafter collected by the retailer, a tax must be paid upon the amount so collected."	Generally, a credit is allowed for bad debts on subsequent returns. Therefore, interest does not apply because the current sales tax liability is reduced rather than issuing a refund. However, if a credit cannot be used (for example, the retailer claiming the bad debt goes out of business), a refund would be issued and interest would be paid on the tax refunded.	Yes, North Dakota requires reimbursement of the tax if subsequently recovered. Amounts recovered would be applied proportionally to tax and principal first.	The recovered amounts should be reported for the tax period of collection. If the recovered amount is reported and remitted to the state in the period of collection, no interest is due.
NE	Yes	No	No	Yes	No	Yes. Recovered amounts are applied proportionally to tax and principal.	No
NJ	Yes (See #6)	No	No	No. "...the account receivable has proven to be worthless and uncollectible..." This definition is by regulation.	Interest on refunds becomes payable six months after the application for refund is made (N.J.A.C. 18:2-5.9).	Yes. The first dollar collected is applied to tax. The application of the first dollar to tax also is true in making a determination of the amount that may be claimed as a bad debt.	Only to the extent described in #5
NV	Yes	NO by statute – NRS 372.365	NO by statute – NRS 372.365 (5)	NO by statute – NRS 372.365 (5)	NO	YES, Tax first	NO, unless tax is not paid with the first return filed with the Department after the retailer made the collection.
OH	Yes	No, currently in litigation.	No	Yes	Bad debts are deducted on return bad debts charged off as uncollectable in that return period. Refunds are allowed if not claimed. Interest is paid.	Yes, proportionally to tax and principal.	Not if reported on return for period in which money is recovered. Yes, if assessed.
OK	Yes	No	No	Yes	No	Yes. We have no current policy on how recovered amounts are applied.	No

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PA	<p>Yes, if all of the following apply: 1)The purchaser fails to pay the vendor the total purchase price. 2)The purchase price is written off, either in whole or in part, as a bad debt on the vendor's books or records. 3) The bad debt has been deducted for Federal income tax purposes under section 166 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 .S.C.§166.) A vendor must file a petition for refund of sales tax paid with the Pennsylvania Department of Revenue, Board of Appeals, within the prescribed time limitations under section 3003.1 of Pennsylvania's Tax Reform code of 1971, Act of March 4, 1971, P.L.6, No. 2, as amended. 72 PS §10003.1. No deduction or credit may be taken for the bad debt on any return filed with the Department.</p>	<p>A taxpayer may assign its rights, under Pennsylvania statutory law, provided the assignee is an affiliated entity. 72 P.S. §7247.1. An affiliated entity is defined as a corporation that is part of the same affiliated group as the taxpayer, as defined by section 1504(a)(1) of the Internal Revenue Code.</p>	<p>No. As indicated in the previous response, Pennsylvania statutory law only allows assignments to affiliated entities. Note, a vendor could assign a credit card company its right to petition and receive a bad debt refund attributed to bad debt where the credit card company issuing credit cards to the retailer's customers is unrelated to the retailer (no assignment is allowed in this case). See also, PA Sales and Use Tax Ruling, No. SUT-00-016: Bad Debts (August 23, 2000).</p>	<p>Yes</p>	<p>No</p>	<p>Yes (the vendor must remit the proportional tax). Any recovered amounts (purchase price) must first be applied to the reimbursement of tax in its entirety</p>	<p>No, except where the vendor fails to remit the appropriate amount of tax in a timely manner (with the first return filed after the collection/recovery of the purchase price or portion thereof).</p>

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RI	Yes Only if interest was paid on					No No Yes Yes Proportionally to tax and principal first.	a refund.
SC	Yes	No	No	Yes	Not from the date of payment; only from the date of the sales tax return after the charge off when the deduction should have been taken.	Yes. Our bad debt deduction is relatively new, and the answer to the second question is not clear. It would probably be treated as principal that is now subject	Not from the date the deduction was taken. Only from the date of the sales and use tax return when the amount should have been reported as paid.
SD	Yes	No	No	WE DON'T HAVE A DEFINITION OF BAD DEBT. A BAD DEBT DEDUCTION CANNOT BE TAKEN UNTIL IT HAS BEEN WRITTEN OFF FOR FEDERAL INCOME TAX PURPOSES.	No	Yes. WE REQUIRE THAT RECOVERED AMOUNTS ARE APPLIED PROPORTIONALLY.	No
TN	Yes	No	No	Our statute says "found to be worthless and are actually charged off for federal income tax purposes . . ."	Our statute provides for a credit, not a refund.	Our statute says, if the amounts charged off "are thereafter in whole or in part paid to the dealer, the amounts so paid shall be included in the first return filed after such collection and the tax paid accordingly." When the bad debt is claimed, the taxpayer reduces its gross sales by the amount of the bad debt, but the reduction may not include the tax paid on that amount. When part of the bad debt is later collected, the taxpayer must add this to gross sales and pay tax on that amount.	No
TX	Yes	Yes, by statute. (Tax Code Sec. 151.426)	Yes, certain credit providers that extend credit to purchasers under a retailer's private label credit agreement, and assignees or affiliates of such credit provider.	The term is not defined but the debt must be actually charged off for federal income tax purposes or must be an unpaid amount when a taxable item that was sold under a conditional sales contract is repossessed.	Yes, but interest begins to accrue 60 days after the account is determined to be uncollectible and entered into the books as a bad debt.	The entire amount collected is proportioned between principal and tax.	Collections on amounts previously claimed as bad debts are to be reported in reporting period in which they are collected. If not reported in that period, they are subject to the same penalties and interest as other delinquent taxes.

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UT	Yes. Credit is allowed for sales taxes paid on that portion of an account determined to be worthless and actually charged off for income tax purposes (Utah Code Annotated 59-12-107 (8)).	No	No. Utah State Tax Commission Administrative Rule R865-19S-20 (6) even limits credit for tax on repossessions to the selling dealer or vendor	No. The definition used is similar to that of IRC 166, but as noted in the answer to Question 1, credit is allowed for sales taxes paid on that portion of an account determined to be worthless and actually charged off for income tax purposes. The term “bad debt” is not found in the statutory language, but is encountered in the implementing rule cited in the answer to question 3. Again, in the rule, the same underlying definition is used as in the statutory language, with no reference to IRC Section 166.	Yes, but according to internal policy, only from the date that the debt actually became worthless and was charged off for income tax purposes.	Yes, tax is due on any amounts recovered. Amounts recovered are applied proportionally to the taxable amounts and tax. Costs of collection are	No. Internal policy does not require remittance of interest on the reimbursed tax amounts, as long as the payment of tax due was timely.
VT	Vermont allows a credit or a refund to be taken for actual bad debts.	No	No	The regulation refers to “accounts...actually charged off on [vendor’s] books”. This, at least in theory, would follow financial accounting if it were different from tax accounting. In cases where a charge-off entry is made before the close of a year, we allow the credit at the time of the deduction.	We would not pay interest for the period between the tax payment and the charge-off. We would treat the credit as an adjustment of the return in which the charge-off occurred. The interest rules for refunds apply – interest would be paid beginning 45 days after the due date of the return for the charge-off period.	Yes. Proportional to tax and principal	? NO. (if paid timely)
WA	Yes.	Yes. By virtue of a case, Puget Sound National Bank v. The Department of Revenue, 123 Wn. 2d 284 (1994).	No	Bad debts are those “which are deductible as worthless for federal income tax purposes.” RCW 82.08.037.	No, if done through the regular return process. Yes, if done by a specific refund request.	Yes. The payment is applied to tax first.	Not if done through regular return process. Yes, if done through an
WI	Yes	No, however, the issue is currently being litigated before the Wisconsin Tax Appeals Commission. Treatment is by statute (77.51(4)(b)3 and (c)3, 77.52(6) and 77.53(4), Wis. Stats.) and administrative interpretation (Tax 11.30(2), Wis. Adm. Code)	No. See question 2	The statute states that for the bad debt to be deductible, the account must be found worthless for income or franchise tax purposes, but does not cite a particular section. The rule provides that if the retailer is not required to file income tax returns, the bad debt deduction is as charged off under generally accepted accounting principles.	The deduction is taken on the sales tax return for the period in which the account is found to be worthless. If that is the current return, there is no interest paid. If found worthless in a prior period and an amended return is filed to correctly deduct the bad debt in that period, interest is paid the same as for any other claim for refund.	Yes. Sections 77.52(6) and 77.53(4), Wis. Stats., and sec. Tax 11.30(2)(b), Wis. Adm. Code. There is no statutory or administrative provision that provides how a recovery should be applied.	No, the recovery is reported on the sales and use tax return for the period in which the recovery is made. However, if the taxpayer failed to report the recovery in the proper period and as a result tax is due for that prior period, interest would be imposed on the tax resulting from that recovery the same as any other determination of tax due.

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WY	Yes	No	No	Not specifically defined. Taxes paid on gross receipts represented by accounts found to be worthless may be credited against subsequent liability of the vendor.	No	Yes. Proportionally to tax and principal recovered.	No