

**Issue Paper on  
Simplified Exemption Administration Process II  
(This paper is in addition to the paper approved April 16,  
2005 on Simplified Exemption Administration Process)**

This paper deals with issues involved in the implementation of the exemption administration process during audit. There are a few areas where the states have not been uniform in administration and the Streamlined Sales Tax Audit Committee has worked with auditors to resolve all of these areas except one where guidance is requested.

**Background**

Section 317 of the SSUTA, Administration of Exemptions, contains provisions for purchasers to claim an exemption from tax and for sellers to support an exemption from tax. These provisions are further defined in rule 317.1, an issue paper on Simplified Exemption Administration Process approved April 16, 2005 and a power point presentation prepared by the Streamlined Sales Tax Audit Committee.

**Areas Where Agreement Has Been Reached:**

- 1) **Start of the 120 Day Time Period:** Based on the wording in Section 317 the SST Audit Committee has determined the 120 day time period begins when the auditor has provided the seller or CSP with a list of specific transactions where additional exemption certificate or exemption certificate data elements are needed before the state will treat the transaction as exempt from sales tax.
- 2) **What Constitutes a Request for Substantiation by a Member State:** The SST Audit Committee has determined that a request for substantiation is a written request from an auditor identifying specific transactions where additional information is needed to support an exemption claimed. A general notification that a state will be conducting an audit of certain periods is not considered a request for substantiation.
- 3) **Can a state require more than the data elements required on the SST Exemption Certificate:** The SST Audit Committee is in agreement that a state can not require more information to support an exempt transaction than the data elements required in the SSUTA. If a seller provides an auditor a state specific exemption certificate which has more fields than are required under the SSUTA the auditor cannot require those fields to be completed to allow the exemption.
- 4) **What rule applies after the 90 days from date of sale but before a request for substantiation is made:** The good faith rule does not apply if a completed certificate or the required information is obtained at the time of sale or within 90 days of the sale. If the required information is not present when the auditor

reviews the information during the audit the auditor can make a request for substantiation allowing the taxpayer 120 days to obtain the information.

The Audit Committee has discussed the application after 90 days and before the 120 days begins and has discussed requiring a date but agrees this would be a problem since certificate information can be updated for numerous reasons and it adds complexity to require a history of date received and updates. There is no simple method to determine if the information is obtained after the 90 days from date of sale and the Audit Committee is not proposing maintaining dates. The Audit Committee generally agrees that the auditor would only be concerned about the status of certificates and data elements present when they begin the audit and any information obtained after this time would be subject to the good faith standard. Application of the good faith standard to exemption certificates received after 90 days from the date of sale is based on state policy, procedure or law.

**Area Where Agreement Has Not Been Reached:**

- 1) Can states include the appeal period as part of the 120 days for a seller or CSP to provide substantiation? The Audit Committee and the business community need resolution of this question to provide uniform application.**

**Situation:**

Section 317 D (1) states – If the seller has not obtained an exemption certificate or all relevant data elements within 90 days subsequent to the date of sale as provided in Section 317, subsection (C), a member state shall provide the seller with 120 days subsequent to a request for substantiation by a member state, to either:

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

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

**Example:**

- State A issues a request to a seller on March 1, 2011 to substantiate certain exempt sales the seller claimed.
- One hundred twenty days from March 1, 2011 is June 28, 2011.

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

**Question:** Does State A have to wait until the 120-day period has expired before issuing the audit assessment (i.e., does State A have to wait until after June 28, 2011) or can the 60-day appeal period be included in the 120 days such that State A can issue the audit assessment at any time after April 28, 2011 since the seller will still have until at least June 28, 2011 (120 days after the request for substantiation was provided to the seller) to provide those exemption certificates?

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