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## **Credit for Sales and Use Taxes Paid to Other State and Local Jurisdictions**

### **Summary Paper**

Background: In early 2008 SLAC began working on sourcing of services rules. In conjunction with that effort the business participants wanted each sourcing rule to include provisions for credit for taxes paid. Since there are no provisions in the SSUTA for requirements of member states regarding credit for tax paid, (except Section 313.A.4.) a separate workgroup was formed in 2008 to address credit for tax paid with an amendment to the SSUTA instead of including language in each sourcing rule. The group discussed the scope of work and developed 2 principles:

- Taxpayers should not be subject to taxation in multiple states on the same transaction
- Tax administration with respect to credits should be as simple as possible

In July 2010 a survey was sent to states to determine what use taxes are imposed in a state and its local jurisdictions, obtain language for each state's statutes and rules regarding credit for tax paid, and what are the state's requirements for receiving credit for taxes paid.

Issues: The purpose of this document is to identify, for the Executive Committee, issues relating to the allowance of credit for the state and/or local sales and/or use tax paid in one member state against the sales and/or use tax due on the subsequent storage, use, or other consumption of that same product in another member state. There are numerous issues that arise when discussing this topic and even more issues when a transaction involves both a member state and a nonmember state, such as the proper sourcing of the transaction.

The following issues have been identified:

- (1) Which taxes are intended to be covered by a proposed amendment (tax on retail sale, subsequent use tax when moved to another state, both, other)?
- (2) Legally due and owing requirement – what does it mean to be legally due and owing?
- (3) Sourcing differences when both member and non-member states are involved
- (4) Sales price differences (i.e., one state includes delivery charges in its definition of “sales price” and another state excludes delivery charges from its definition of “sales price”) – does the state that excludes delivery charges have to allow credit for the tax paid in the other state if that tax includes tax paid on the delivery charge?
- (5) Tax owed but not paid to first state and subsequent state now wants the tax – who gets the tax and under what circumstances?
- (6) Credit for local taxes – Is a state required to give credit for local taxes paid in another state if they themselves do not impose local taxes?
- (7) Allocation of credit between state and local taxes – Is each state allowed to determine how to allocate the credit between its state and local taxes or do all states have to do it the same?

- (8) Installment Sales – Some states impose their tax on installment sales based on when the sale takes place while others imposed their tax on installment sales using the cash basis and tax each payment as it is made – what happens when property purchased in an installment sale is moved from a state that imposed its tax when the sale took place to a state that imposes its tax based on when each installment payment is made and vice-versa?
- (9) Credit for tax paid on purchase by seller against tax charged on sale by seller (real property after installation in one state and tangible personal property in another state) – Some states treat a transaction as the sale and installation of tangible personal property (i.e., the seller may purchase the property without tax because it is for resale and then charge its customer sales tax on the sale and installation of the property), while another state treats the same transaction as a real property improvement (i.e., the seller is required to pay sales or use tax on his/her purchase price of the items used to make the real property improvement and does not charge his/her customer tax on the charge for the real property improvement) – is a state that treats the transaction as a sale and installation of tangible personal property required to give credit against its tax for the tax the seller was required to pay on its purchase of the materials because the other state deemed the seller to be the consumer of those materials?
- (10) Issues specific to leases and rentals:
  - Some states impose tax on all of the lease payments upfront rather than on each periodic payment – what happens when the property is moved from a state that taxed the lease payments upfront to a state that taxes the periodic payments and vice-versa?
  - Some states require that the lessor pay sales or use tax on its acquisition cost of the property it will lease to others rather than on the periodic payments collected from the lessee – what happens when the property is moved from a state that required the lessor to pay the tax on its acquisition cost to a state that imposes tax on the periodic payments and vice-versa?

**Note:** In addition to the issues identified above, various business community members have also indicated they would like to have the following issues addressed in the proposed amendment or interpretive rule:

- An interpleader provision which would be invoked if two or more Member States assert that the tax is due to them on the same transaction.
- Purchasers should be entitled to a credit for the tax they paid, even if it was not legally due to the state in which it was paid.
- A presumption should be made that the tax was paid if the purchaser was audited.
- Credit for tax paid in error if the tax is not refundable by the other state.
- Credit for tax paid by the purchaser directly to the state.
- Provisions which prioritize the purchaser's liability for tax.
- Provisions allowing credits for tax paid to states by direct pay permit holders.

The expected goals of this workgroup are to: (1) recommend an amendment to the SSUTA relating to the allowance of credit against a member state's tax for tax paid to other jurisdictions; and (2) draft an interpretive rule that contains examples of how the proposed amendment would apply in various factual situations to insure consistent application.