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September 2011

Which Taxes are to be considered Taxes on Communication Services for Purposes of Section 315.1

## Summary Paper

### Interpretive rule under draft amendment to the Agreement 315.1

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#### Background

On December 8, 2010, the Streamlined Executive Committee considered draft Agreement amendment section 315.1 (EC10022). In particular, this amendment requires certain Agreement simplifications be made mandatory for taxes and fees, other than sales or use taxes, on communications services. This amendment has not yet been adopted by the Governing Board.

The mandatory simplifications are as follows:

- Databases in accordance with the provisions of Sections 305 and 307 of the Agreement containing applicable rates and jurisdictional boundaries;
- Refund procedures consistent with the provisions in Section 325 of the Agreement;
- Liability relief consistent with the provisions set out in Sections 306 and 328 of the Agreement;
- A taxability matrix consistent with Section 328 of the Agreement; and
- In adopting requirements above, a member state shall apply the applicable sourcing rules in Article III of the Agreement.

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#### Issues

Pursuant to amendment 315.1, the Governing Board must promulgate an interpretive rule pursuant to Section 902 of the Agreement. The issues raised by this interpretative are:

- *Primary Issue:* What taxes and fees are considered “taxes on communications services?”
  - *Possible secondary issue:* Is clarification needed on how the mandatory simplifications apply, and in particular the Taxability Matrix simplification?
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- Expected goals** The State and Local Advisory Council (SLAC) should execute on the following:
- Develop an interpretive rule that can be used to determine those taxes and fees considered “taxes on communications services.”
  - Determine if clarification is needed as to how the mandatory simplifications apply. If clarification is recommended, develop suitable language.
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- Progress update** SLAC formed a workgroup to work through these issues. The workgroup met three times in 2011. The workgroup is in the process of completing an interpretive rule for consideration. This rule addresses:
- *What are considered taxes on communications services?* These are “any tax, charge, or fee levied by a taxing jurisdiction as a fixed charge for each connection or line or measured by gross amounts charged for communications services, regardless of whether such tax, charge, or fee is imposed on the seller or purchaser of the service and regardless of the terminology used to describe the tax, charge, or fee.”
  - *What are excluded from taxes on communications services?* The rule lists a number of specifically excluded impositions such as net income taxes, equitably apportioned income taxes, rights of way fees, and generally applicable gross receipts, and modified gross receipts taxes.
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- Additional issue identified** **Telecommunications Tax List.**
- Workgroup participants discussed different methods available to member states for identifying and reporting their individual taxes on communications services. The Workgroup determined the most promising method for accomplishing this goal may be the creation of a Telecommunications Tax List. The list would collectively identify the member states’ taxes on communications services and provide related statutory references.
  - If this list approach is pursued, the states and the business community representatives may want to explore the merits of either modifying or deleting the Taxability Matrix requirement in amendment 315.1. This is because it is unclear whether, and to what extent, the Taxability Matrix requirement would be useful if such list were created.
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