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

~~March 27~~April 19, 2012

Introduction

The purpose of this document is to identify the issues to be addressed by the Credit Workgroup relating to the credit that a state and/or local jurisdiction is required to allow for the state and/or local sales or use tax paid in one state against the sales or use tax due on the subsequent storage, use, or other consumption of that same product in another 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.

In early 2008 SLAC began working on the sourcing of services rules. In conjunction with that effort, the business participants wanted each sourcing rule to include provisions for credit for taxes paid to other jurisdictions. 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 draft an amendment to the SSUTA relating to credit for taxes paid to other jurisdictions, instead of including language in each sourcing rule.

Workgroup's Goals

The workgroup's goals are to make recommendations relating to credit for taxes paid to other state and local jurisdictions that will:

(1) Not subject a taxpayer to multiple taxation without giving credit for tax paid to other jurisdictions on a taxpayer's use of a product in different jurisdictions, including concurrent use in multiple locations;

(2) Make sure the administration of a credit for tax paid to other jurisdictions is as simple as possible; and

(3) Put the recommendations into a proposed amendment and, if needed, an interpretive rule that contains examples of how the proposed amendment applies in various situations.

Background On States Providing Credit for Sales/Use Taxes Paid to Other States

The SSUTA does not directly address when a state can impose its "sales tax" (or its complimentary "use tax") on a "retail sale." It indirectly addresses the imposition of the tax on a "retail sale" by providing a sourcing hierarchy *(e.g.,* see §§ 310 and 310.1 of the SSUTA). Of course, this SSUTA sourcing hierarchy only applies to the full member states. Importantly, it does not apply to non-full member states and to certain products that are not subject to the SSUTA's uniform sourcing provisions (*e.g.,* motor vehicles - *see* § 309.B of the SSUTA). Accordingly, there is no universal rule that applies to every transaction in every state as to when a state will imposes its sales/use tax. For example, a full member state has to look at the destination of a delivery whether by contract or common carrier; however, some nonmember states may impose their sales tax at the origination location if a contract carrier is used to deliver the goods (*e.g., see* AL Reg. 810-6-3.35.02(2)).

The states may also have different priority rules for which they provide credit; some states have based a tax credit on when the tax was paid while others have based it on the priority of liability. See *State v. Sinclair Pipeline Co.*, 605 P.2d 377 (Wyo. 1980) for priority based on payment and *Niederhauser Ornamental & Metal Works Co. v. State Tax Comm'n,* 858 P.2d 1034, (Utah App. 1993) for a tax credit based on priority of liability. Additionally, the SSUTA does not address (*i.e.,* define) what is a "sales tax" versus a "use tax." Complementary to their "sales tax," in general, a "use tax" is imposed by a state to prevent customers from purchasing products outside the taxing state to avoid that state's "sales tax." The type of use that is subject to "use tax" is determined on a state-by-state basis (*see* § 309.A of the SSUTA). Some states limit their use tax solely to transactions where the purchaser at the time of sale intended to use the product in the taxing state; other states merely look at whether a purchaser had any taxable use of a product in the state. The states also differ on whether they are imposing a "sales tax" or "use tax" on an out-of-state retailer that is required to collect and remit the state's tax.

There is substantive case law from the U.S. Supreme Court that requires the apportionment of state taxes that touch interstate commerce (*see Central Greyhound Lines, Inc. v. Mealey*, 334 U.S. 653 (1948) and *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977)). However, the Court is more lenient on requiring apportionment for sales/use tax schemes. In *D.H. Holmes Co., Ltd v. McNamara*, 486 U.S. 24 (1988), the U.S. Supreme Court upheld Louisiana's use tax on catalogs. The use tax survived a "fair apportionment" prong challenge (from *Complete Auto)* because "Louisiana … provides a credit against its use tax for sales taxes that have been paid in other States." *Id.* at 31. Subsequent decisions by the Court have yielded similar results. A year after *D.H. Holmes*, the Court in *Goldb~~u~~erg v. Sweet*, 488 U.S. 252 (1989), noted that "To the extent that other States' telecommunications taxes pose a risk of multiple taxation, the credit provision contained in [Illinois' law] operates to avoid actual multiple taxation." *Id.* at 264. Additionally, in *Oklahoma Tax Com'n v Jefferson Lines, Inc.*, 514 U.S. 175 (1995), citing 2 Hellerstein & Hellerstein, State Taxation, note 63 ¶ 18.01, the Court noted that it felt "reassured to some degree by the provision of a credit in the disputed [sales] tax itself for similar taxes placed upon the taxpayer by other States." *Id.* at 192. Thus, while the U.S. Supreme Court has not explicitly said a state must provide credit for sales, use or similar taxes paid to other states, the Court, by implication, has allowed such taxes to survive constitutional challenges based on the states providing credits for tax paid to other jurisdictions to prevent duplicative taxation. The Credit Workgroup recognizes that the credit a state is required to allow must, at a minimum, also meet the constitutional requirements addressed in United States Supreme Court case law.

Summary of Issues/Questions Addressed

The following issues/questions are addressed in this paper:

1. What types of taxes are subject to this tax credit provision?
2. Should the amendment to the SSUTA relating to credit for taxes paid to other states be limited to the tax paid on the initial "retail sale" or should it cover all potential sales and uses?
3. Should the amendment address ~~tax~~ credits for taxes paid to non-member states?
4. Should the credit allowed for tax paid to another state be allowed to differ based on whether one state treats the transaction as a sale of a service and another state treats the same transaction as a sale of tangible personal property (i.e., both states tax the same measure, but one treats the transaction as a sale of a service and the other treats it as a sale of property)?
5. When is a state required to allow a credit against their sales/use tax due for a tax paid (or owed) to another state on a retail sale (Note: Unique lease/rental issues are addressed separately below in 15 to 19)?
6. Against what types of taxes must this credit be allowed (i.e., can a state deny providing credit for tax paid to another state because the state is imposing its tax on the purchaser as a "sales tax" rather than a "use tax")?
7. What "priority" rules (initial sourcing and subsequent use) should be used to determine which state gets the tax and which state must provide credit for the tax paid to another state(s)?

8. "Sales price" can include delivery charges and other optional items – must a subsequent state that does not imposes its tax on certain charges still give credit for the entire amount of tax paid to other state(s)?
9. If a state into which property is moved does not impose tax on an item such as repair labor, but the state in which the purchase was originally made does impose tax on repair labor, must the state into which the property was moved give credit for the tax paid on the labor?
10. ~~How can~~If a purchaser is audited using statistical sampling, must a subsequent state in which the product is used grant credit for tax the purchaser paid as part of an audit if the purchaser provides adequate evidence~~prove~~ to another state that the purchaser paid sales/use tax on a transaction that was part of the audit population sampled?
11. Can a state with no local jurisdictions deny/limit credit for taxes paid to other states' local tax jurisdictions?
12. For states that give credit for both the state and local taxes paid to another state, should a state with local jurisdictions be required to allocate the state and local portions of the tax credit in a certain manner?
13. Can a state deny credit for tax paid to another state when the advertising and promotional direct mail is sourced pursuant to Section 313.A.4. of the SSUTA?
14. Can a state provide credits that are more generous that what is required by the SSUTA?
15. Can a state deny credit for tax paid to a state (including local tax jurisdictions) if that state does not provide the same (reciprocal) credit?
16. Leases and Rentals – How should a state that imposes its sales/use tax on each lease/rental payment give credit to a purchaser that paid tax to a state that imposes its tax upfront on the sum of all of the lease/rental payments (i.e., accelerated payment)?
17. Leases and Rentals – How should credit be provided to a purchaser paying tax to a non-full member state that requires the lessor/purchaser to continue to pay that state's sales/ use tax on all the periodic payments (even if the property is permanently moved out of the non-full member state)?
18. Leases and Rentals - How should credit be provided to the lessor/lessee in those states that require (and some provide an option, see CA, MI, NV & RI) a lessor to pay the tax on its purchase of a leased item rather than imposing the tax on the stream of payments.
19. 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 a product 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?

20. Some states treat a transaction as a sale to an end user and consumer while other states treat that same transaction as a sale that the state has authorized as a sale for resale. For example, installation of tangible personal property to real property that is treated as a sale to an end user and consumer in one state while another state treats the same transaction as a purchase for resale. Should the Agreement include a requirement to give credit against a state's sales tax on the retail of a product for the tax paid on the purchase of that same product?

Issues Addressed and Alternatives Considered

(1) W*hat types of taxes are subject to this tax credit provision?*

Alternatives to Consider

(**Note:** In addition to any requirements noted in Alternatives A through E below, it is understood that the states must also provide credit for taxes paid to other states that meet the constitutional requirements addressed in United States Supreme Court case law ~~as required by Federal Law~~.)

(A) A state shall provide credits for all taxes imposed on the sales, use or storage of a product that have characteristics of sales and use taxes, including a complementary use tax that is imposed on purchasers.

(B) A state shall provide credits for taxes ~~included~~ indicated by a member or contingent member state as being subject to the SSUTA and similar taxes for non-member states~~;~~.

(C) The types of taxes covered should not be directly addressed, just use "similar tax."

(D) Member states shall be required to allow credit for "sales and use taxes."

(E) Member states shall be required to allow credit just for "sales and use taxes subject to the SSUTA."

(F) Member states shall be required to allow credit for "sales, use and similar taxes."

(G) Member states shall be required to allow credit just for "sales, use and similar taxes subject to the SSUTA."

(H) Member states shall be required to allow credit for "all taxes which have a 'use tax' component to them and which is imposed on a purchaser who did not pay the tax to the seller."

(I) Member states shall be required to allow credit for sales, use and similar taxes that are imposed on the sale or use of a product based on a percentage of the "sales price" or "value of use" and not taxes imposed at a fixed amount per unit sold.

Discussion

The business community would like the types of taxes that member states must allow credit for, at a minimum, to consist of all taxes imposed on the sale or use of a product based on a percentage of the sales price or, if applicable, value of the use of the product in the state. The business community also wants to make sure it covers sales and use taxes of states that are not members of the SSUTA. Some member states believe that the credit requirement ~~need~~ should only reflect the minimum credit that a member state must allow under the SSUTA (i.e., credit for sales and use taxes paid in other member states).

Much discussion centered around the desire of the business community to make the credit language cover all taxes that have the same features as what is customarily considered a sales and use tax. States are concerned with this approach because they may be required to provide credit for a tax paid to another state that they may not have been aware of and do not believe they should have to provide credit for against their states' sales or use tax. (QUESTION – Should an all-inclusive list of taxes that are considered "similar taxes" but not "sales or use taxes" be generated? This might help states get more comfortable with using the phrase "sales, use or similar taxes" in the amendment. Without this, states may be hesitant in using the "similar taxes" phrase.)_

The business community is concerned that if the amendment is drafted too narrowly some states will only adopt the minimum requirements specified in the amendment rather than providing the credits they already allow under their current law. Although it is true that some states may only adopt the minimum requirements specified in the amendment, no state tax administrator indicated that was their state's intention (at this time). It was also pointed out that the SSUTA currently contains no requirement relating to credit for taxes paid to other states and if no amendment to the SSUTA is adopted, states only have to allow the credits required under federal law. It is also understood that any credit provision adopted as part of the SSUTA could not override federal constitutional law requirements and states should be very careful when adopting their credit provisions to make sure they are constitutional.

Alternatives (A) through (I) above were discussed. The states participating in the discussion indicated a preference for Alternatives (E), (F), (G) and (I). Concerns were raised by the business community with Alternatives (E) and (G) in that they would not adequately provide direction for purchasers who may pay tax in a non-member state and then use the property in a member state (i.e., since the non-member state's sales tax paid would not be "subject to the SSUTA," would a member state have to give credit for the tax paid (other than what would be required federally)?). Some states felt that Alternative (F) would be preferred since that would more appropriately cover taxes paid to both member and non-member states alike, but may leave some uncertainty and possible disagreement as to what is or is not considered a "similar tax."

Alternative (I) was preferred by other states to make it clear the tax paid to the other state must be a sales, use, or similar tax that is based on a percentage of the "sales price" or "purchase price." Concerns were raised with Alternative (I) as to whether or not credit would need to be allowed for items such as lodging taxes and communications taxes. Members of the workgroup agreed that this would most likely not be an issue since a person would not move lodging services or communication services from one state to another but felt the concern should be noted.

The BAC State Tax Credit Subcommittee (BAC) recommends the adoption of Alternative (I); however, it indicated it could also ~~can~~ accept alternatives (A), (C) and (F). The BAC Subcommittee prefers Alternative (I) because it provides more clarity/precision on the types of taxes for which a state must provide a credit. "Value of use" is used in Alternative (I) to address a state taxing only a portion of the sale (*e.g.,* X% of computer licenses used in the state) or adjusting the "cost" of a product previously used in another state (*e.g.,* value of the product used in another state two years after the underlying sale).

"Value of use" applies to use tax situations where the sale and initial use took place in another state. For example, if the use in a subsequent state takes place within six months of the sale, by default, some states may use the original "sales price" to impose the tax on the use of a product in the state. A state imposing a use tax on a product used in another state for several years may take into account the depreciated value of the property.

Workgroup Recommendation on (1): The majority of the states in the Credit Workgroup recommend Alternative (E). The BAC recommends Alternative (I).

Reason: Based on the discussions held and the indications by the states on the call on December 6, 2011 and from other states that had e-mailed their preferred option (See Attachment 1 for a summary of the states' preferences), Alternative E was the choice that the most states preferred or indicated they could live with. The BAC believes Alternative E is contrary to all SSUTA states current laws; such laws do not limit the credit to states that are members of the SSUTA. Further, the BAC feels this goes against U.S. Supreme Court precedent that has upheld sales/use taxes that are not apportioned, based on the states providing a credit for tax paid to other states. *See D.H. Holmes*, 486 U.S. 24, 31. The BAC is concerned that if Alternative E is used it unnecessarily creates serious constitutional issues if a state decides to only allow the minimum credit required by the SSUTA (*i.e.,* a race to the bottom).

Note: Three states and the BAC also indicated they could live with Alternative F. Four states indicated they could live with Alternative G.

(2) *Should the amendment to the SSUTA relating to credit for taxes paid to other states be limited to the tax paid on the initial "retail sale" or should it cover all potential sales and uses?*

Alternatives to Consider

(**Note:** In addition to any requirements noted in Alternatives A through E below, it is understood that the states must also provide credit for taxes paid to other states that meet the constitutional requirements addressed in United States Supreme Court case law~~as required by Federal Law~~.)

(A) Require a state to allow a credit for tax paid by a purchaser:

(1) to the seller,
(2) directly to the state because the purchaser issued their direct pay permit,
(3) to the first state the purchaser used the product in, and
(4) to any other states in which the purchaser was required to pay tax on the sale or use of the product.

(B) Require a state to allow a credit <u>only</u> for tax paid by a purchaser to the seller.
A state would <u>not</u> be required to allow credit for tax the purchaser paid:

(1) directly to the state because the purchaser issued their direct pay permit,
(2) to the first state the purchaser used the product in, or
(3) to any other states in which the purchaser was required to pay tax on the sale or use of the product.

(C) Require a state to allow a credit for tax:

(1) paid by a purchaser to the seller and
(2) paid by the purchaser directly to the state because the purchaser issued their direct pay permit to the seller.

A state would <u>not</u> be required to allow credit for tax the purchaser paid:

(1) to the first state the purchaser used the product in or
(2) to any other states in which the purchaser was required to pay tax on the sale or use of the product.

(D) Require a state to allow a credit for tax paid:

(1) by a purchaser to the seller,
(2) to the first state the purchaser used the product in and
(3) to any other states in which the purchaser was required to pay tax on the sale or use of the product.

A state would not be required to allow credit for tax the purchaser paid by the purchaser directly to the state because the purchaser issued their direct pay permit to the seller.

(E)Require a state to allow a credit for tax paid by a purchaser:

(1) to the seller,

(2) directly to the state because the purchaser issued their direct pay permit, and

(3) to the first state the purchaser used the product in.

A state would not be required to allow credit for tax paid to any other states in which the purchaser was required to pay tax on the sale or use of the product, except the first state.

Discussion

In order to provide consistency and uniformity among the member states as well as to provide direction for the business community, purchasers need to know when credit for a sales, use or similar tax that they paid in one state on a retail sale may be used to offset a sales, use or similar tax that is due in a state where the product is subsequently stored, used, or otherwise consumed.

Sales, use, or similar taxes may be paid by the purchaser at various times including being paid:

- by the purchaser to the seller at the time of the sale;
- directly to the state by the purchaser due to the fact that the purchaser provided its direct pay permit to the seller;
- directly to the state by the purchaser because the purchaser purchased the items from a retailer that was not registered to collect the tax in that state.
- directly to the state by the purchaser because the seller did not collect tax on the retail sale.
- directly to a subsequent state by the purchaser because the purchaser moved the property to that subsequent state.

All of the above scenarios may occur with regard to a retail sale of a product. Sellers need to be assured purchasers are not disadvantaged because the seller is collecting the sales, ~~or~~ use or similar tax subject to the requirements of the Agreement. Purchasers need to know what credit for tax paid on the retail sale is available in the member states to comply with their reporting and payment requirements under each of these scenarios in the member states.

In addition to covering credit for tax paid on the retail sale of a product, requests have been made to include in the proposed amendment provisions requiring member states to uniformly provide credit for use tax paid in a state by the purchaser on the storage, use, or other consumption of ~~property and services~~products against a subsequent use tax due in another state because the purchaser moved the product to another state. Some states expressed concern with the SSUTA requiring a member state to allow credit for a "use" tax paid in another state. They believe that this goes beyond the scope of the SSTP and the credit should be limited to only the tax paid by the purchaser on the retail sale, as opposed to being required to allow a credit for tax paid on the retail sale AND any subsequent use taxes paid directly by the purchaser to a state.

Questions were also raised relating to the allowing of credits for tax paid to states by direct pay permit holders and whether those should be treated differently.

From the BAC's perspective, the core purpose of the SSUTA addressing this tax credit issue is to mitigate the issues purchasers and sellers will have with states differing on how they provide credit. For instance, assume an appraisal report of tangible personal property is sent simultaneously to a purchaser using three different e-mail contacts with those contacts each located in a different state. The seller complies with the initial SSUTA sourcing (which may not be one of the three delivery locations - *e.g.,* there may be a different billing location) but the states where the e-mail contacts are located want to impose their use tax. Guidelines are needed to address how the SSUTA states will provide a tax credit in this situation. The BAC Tax Credit Subcommittee also sees no justification for direct pay permit holders to not have equal tax credit treatment. Similar to Question 1, the BAC believes the fair apportionment prong of *Complete Auto*, (430 U.S. 274), requires such a credit on subsequent uses and is not restricted to just a credit ~~on~~for the tax paid to a seller. (See also *Jefferson Lines.*) The BAC also would like the amendment to layout specifically what credit is required under Federal Constitutional law. (NOTE TO MARK/BAC - Please provide language that you believe explains what credit is required under Federal Constitutional law so that it can be added here.)

Workgroup Recommendation on (2): The majority of the states participating in the Credit Workgroup recommend the adoption of Alternative (E). The BAC recommends adoption of an alternative that requires a state to allow credit for all sales and use taxes paid by the purchaser to a seller and/or the state. This alternative is most closely represented by Alternative A.

Reason: Based on the discussions held and the indications by the states on the call on December 20, 2011 and from other states that had e-mailed their preferred option (See Attachment 2 for a summary of the states' preferences), Alternative E was the choice that the most states preferred or indicated they could live with. The states felt that Alternative A was too broad and goes beyond the scope of the SSUTA and Alternatives B through D were too narrow.

Note: The BAC and two states indicated they could live with Alternative A. Four states indicated they could live with Alternative C and three states indicated they could live with Alternative B. No states indicated a preference for Alternative D.

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(3) Should the amendment address ~~tax~~ credits for taxes paid to non-member states?

Alternatives to Consider

(A) Yes, the amendment should address providing tax credit for taxes paid to both member and non-member states.

(B) No, the amendment should only address SSUTA states providing credits for taxes paid to fellow SSUTA states.

(Seven states and the BAC responded to this question. Five states and the BAC supported Alternative A while two states supported Alternative B. See Attachment 3 for the state and BAC responses.)

Discussion

Different states have different rules for determining the location to which a particular transaction is sourced. Member states are required to source transactions in accordance with the SSUTA.

Except as permitted by Section 313.A.4. of the SSUTA, if a sale is properly sourced to the purchaser's business address contained in the seller's books and records, the purchaser's address obtained during the consummation of the transaction, or the location from which the property was shipped because none of the other sourcing rules could be applied, are member states allowing a purchaser credit against their sales or use tax due for the tax paid to the seller? Including language in the proposed amendment to specifically address a member state's requirement that credit for tax paid on a retail sale that is "sourced in accordance with the Agreement" be granted, will provide clarity for member states, sellers, and purchasers.

However, nonmember states are not required to follow the sourcing hierarchy provided in the SSUTA. Therefore, consideration needs to be given to address when a member state is required to allow credit for taxes paid on a transaction that takes place in a nonmember state using that nonmember state's laws, but when sourced in accordance with the SSUTA, the transaction would have been sourced to a member state.

Member states

Credit for the sales or use tax paid by the purchaser on a retail transaction that was properly sourced by the seller in accordance with the SSUTA should be allowed. Sellers should not be disadvantaged as a result of any requirement to collect a member state's tax and the purchasers should be allowed this credit. When a transaction is sourced in accordance with Section 310 of the SSUTA and the tax was "properly and legally imposed" by the jurisdiction to which the retail sale was sourced, then credit for the tax paid should be allowed against a subsequent sales or use tax due in another member state, except as specifically provided in Section 313.A.4. of the SSUTA.

Nonmember states
When a purchaser purchases a product from a seller located in a state that is not a member of the SSTGB should the Agreement include requirements of the member state regarding credit for tax paid to the nonmember state or is that beyond the scope of the Agreement? For example, a nonmember state may subject sales of tangible personal property to tax in its state when title to the property passes in the state, while a member state would source the sale under the SSUTA to the location where the purchaser "receives" the property. These differences between member and nonmember states already existed and were not the result of the adoption of the SSUTA sourcing rules.

If federal constitutional law would require a credit for that tax, all states - member and non-member states alike - would have to allow that credit. Therefore, for purposes of the SSUTA, since member states would be required to allow this credit under federal constitutional law, it makes sense that the SSUTA explicitly provide that this credit be allowed as well. In addition, if states want to go beyond what is required under federal constitutional law and allows broader credits for taxes paid to nonmember states, that is up to each state.

Workgroup Recommendation on (3): The majority of the states participating in the Credit Workgroup and the BAC recommend Alternative A.

Reason: Based on the discussions above, since federal constitutional law would require member (and nonmember) states to allow credits in certain situations, the amendment to the SSUTA should also be drafted to explicitly provide for this credit as well. The BAC supports this as the only reasonable alternative.

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(4) *Should the credit allowed for tax paid to another state be allowed to differ based on whether one state treats the transaction as a sale of a service and another state treats the same transaction as a sale of tangible personal property (i.e., both states tax the same measure, but one treats the transaction as a sale of a service and the other treats it as a sale of property)?*

Alternatives to Consider

(A) Same product/transaction should receive a tax credit regardless of whether the product is taxed as a service, tangible personal property, etc.

(B) A state need only provide credit if both states treat the sale as the sale of a service or both states treat the sale as the sale of tangible personal property.

Discussion

Just like it should not matter if a state is imposing a “sales tax” or a “use tax” to obtain a tax credit, the BAC Tax Credit Subcommittee believes a full credit should be given for the tax paid on a product regardless of how it is labeled for tax purposes. There is currently an issue with some states taxing access of prewritten software as a service (WA) and others taxing it as tangible personal property (MI & VT). Not addressing any potential compliance issues surrounding that, the workgroup does not believe there is any justification to differentiate and deny a tax credit for a tax imposed on the same product based on a state using a different label to impose the tax. The tax imposition on a product, and not the underlying label used to impose the sales or use tax, is what is relevant for tax credit purposes.

The workgroup also discussed how the states treat the "inputs" of a transaction differently depending on whether the state treats the transaction as a sale of tangible personal property or the sale of a service. For example, some states define certain persons as “consumers” under their sales and use tax laws or otherwise prevent a purchaser from claiming resale on his or her purchases of property that is provided in conjunction with certain services (i.e., medical service providers). It is recognized that this may result in one state imposing its tax on the inputs and not imposing tax on the service itself, while another state may impose its tax on the sale of the service and not on the inputs. This recommendation is not intended to address the sales and use tax treatment of the purchases of the inputs by the retailer. The sales and use tax treatment of who is the consumer is determined by each state's laws.

Workgroup Recommendation on (4): The majority of the states participating in the Credit Workgroup and the BAC recommend Alternative A.

Reason: The label used by a state to impose its tax on a transaction (i.e., one state considering a transaction to be the sale of TPP and another state considering the same transaction to be the sale of a service) should not prevent a purchaser from getting credit for the tax the purchaser paid on the purchase and/or use of the same transaction by another state that uses a different label to impose the tax. See Attachment 4 for the responses received from the states.

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(5) *When is a state required to allow a credit against their sales/use tax due for a tax paid (or owed) to another state on a retail sale (Note: Unique lease/rental issues are addressed separately below in 15 to 19)?*

Alternatives to Consider

Credit for tax paid to another state should be allowed:

(A) Based solely on payment or assessment of the tax, irrespective of which state first legally imposed the tax or where the use occurred.

(B) Based solely on whether the purchaser paid the sales/use tax to a seller or the other state (e.g., tax may not have been legally due in another state and/or an exemption was available in the other state, etc.);

(C) Only if the tax is legally due to the other state and including taxes that have not (yet) been fully paid to the other state but which will be paid (e.g., future payments made on stream of lease payments);

(D) Only if the tax was legally due and paid to a seller or a state. If the tax was paid erroneously (no fraud) to the other state and is no longer subject to a refund (or other credit) by the other state, a credit must also be provided;

(E) Only if the tax was legally due and paid to a seller or a state. No credit would be required to be provided for any tax not legally due to the other state such as a tax paid by the purchaser when the purchaser could have claimed an exemption but did not do so within the prescribed time period.

(F) Only if the tax was legally due and paid to a seller or a state, including taxes imposed on future payments. In addition, if the tax was paid erroneously (no fraud) to the other state and is no longer subject to a refund (or other credit), a credit must be provided.

Discussion

SLAC surveyed the states to determine what use taxes are imposed in a state and its local jurisdictions, obtain language from each state's statutes and rules regarding credit for tax paid, and what the state's requirements are for receiving credit for taxes paid. The 23 states responding to the survey all indicated that their states' laws required, for purposes of receiving credit for tax paid to another jurisdiction, that the tax must be legal, legitimate, proper or lawful and all 23 states indicated the tax must have been paid to the other jurisdiction. If the tax was not paid, the state tax administrators indicated their states do not allow a credit.

Are taxes paid to the other jurisdiction required to be "legally due", "legally due and paid", "legally imposed", or some similar phrase in	AR, IA, IL, IN, KS, KY, MA, MI, MN, NC, NJ, NV, RI, SD, TN, UT, VT, WA, WI, WV,WY	23

order to allow credit?		
Legally imposed	AR, IA, MN, TN, UT, WA	6
Properly due and paid	IL	1
Paid	IN	1
Lawfully/legally paid	KY, WI, WV	3
Lawful obligation to pay & paid	RI	1
Imposed under law…due and Paid	MI	1
Subject to a tax	KS	1
Legally due and paid	MA, NC, NE, NJ, VT, WY	6
Legitimately paid	NV	1
Legally levied and paid	OH	1
Previously paid / liability to another state	SD	1

The state tax administrators participating in the workgroup felt no state should be required to grant a credit against their tax for any tax that is not both legally due and paid to another state. The workgroup agreed that the phrase "legally due" means the tax is 1) imposed by the taxing authority on the sale or use at the location and 2) the transaction is correctly sourced to that location (based on sale or use, as applicable).

Addressing the tax payment requirement, some state tax administrators felt that credit should only be given for the portion of the tax actually paid to a state. Thus, if a purchaser owes sales/use tax to another state, but has not paid that tax by the time the purchaser is contacted by a subsequent state, a state should not be required to grant credit until the tax is actually paid to the first state. At the time the purchaser is contacted by the subsequent state, the purchaser would have the option to contact the previous state(s) to which the tax was first legally due (chronological order) and pay that tax to them at that time. If the purchaser cannot provide satisfactory evidence to the subsequent state that they did in fact pay the tax to the previous state(s), no credit should be required to be granted by the subsequent state. The BAC commented that it was concerned with the states being overly rigid on what constitutes "tax paid," especially when certain payment plans allow for a purchase to be paid over time.

If a purchaser first stores, uses, or otherwise consumes property in a particular state and fails to pay that state's sales or use tax and then subsequently (in time) moves the property to a second state and stores, uses, or otherwise consumes the property in that other state, sales or use tax may be due in both states. If the purchaser pays the tax to the "second" state before it pays the tax to the first state, the state tax administrators felt that should not prevent the first state from being able to require the purchaser to pay the sales or use tax that was first due and owing to them. At the same time, the state tax administrators felt that the second state should not be required to refund the tax paid to them by the purchaser if the reporting period for which the tax was paid is closed by that state's statute of limitations. The BAC expressed concern with this issue because, on audit, the state required to give credit for a tax it was paid may not be open for refund. However, they agreed that when the statute of limitations to claim a refund in the "second" state to which the tax was incorrectly paid has not yet tolled, the purchaser should be allowed a refund of that tax from the "second" state if they can show they paid the tax to the "first" state.

The workgroup discussed the following criteria for determining if the tax was legally due:

- For sales by sellers located in member states, the retail sale must be sourced in accordance with the SSUTA.
- For sales by sellers located in nonmember states, the retail sale must have been properly sourced according to the laws of that state and federal law.
- The state and local jurisdiction to which the retail sale is sourced imposes tax on the retail sale of the product or on the storage, use or other consumption of the product.
- The other state and its local jurisdictions' statutes do not provide for an exemption, credit, or refund of tax on the retail sale or storage, use or other consumption of the product.
- The tax must have been paid to the other jurisdiction. No member state provides credit for any tax that was not paid to another state.
- No member state provides credit for tax paid in another jurisdiction if the purchaser recovered or could have recovered the tax.
- No member state indicated credit was available if the tax was paid in error in the other state but was no longer refundable (i.e., expiration of the statute of limitations for receiving a refund).

An additional question included in the survey focused on tax paid to another jurisdiction on a retail sale that was "sourced in accordance with the Agreement." Most of the state tax administrators responding to the survey indicated they would consider "sourced in accordance with Agreement" (Section 310) to mean the tax was legally due in that jurisdiction if they also imposed their tax on that particular product.

Some workgroup members felt that 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. In addition, others such as the BAC felt that credit for tax paid in error should be allowed if the tax is not refundable by the other state.

The workgroup also addressed questions relating to what the term "paid" means. One of the questions addressed was how states would treat a transaction sold on a "90 days same as cash" promotion. Would the states consider the tax "paid" on that type of transaction: (1) at the time the agreement is entered into between the customer and seller or (2) at the time the actual payment was made to the seller? Another common scenario which was inquired about is when a business purchases an item and accrues the use tax due on the product, but the return on which that use tax will be reported is not filed and paid until well after the purchase was made. A third scenario is whether or not the states will consider tax "paid" in situations a purchaser paid the tax to the seller but the seller failed to remit it to the state.

The majority of the workgroup considers the following examples to reflect taxes "paid" for purposes of claiming the credit for taxes paid to other states.

Tax Paid by Purchaser to Seller

- If a purchaser pays a legally imposed tax to a properly registered seller (cash, check, credit card, etc.) at the time the product is transferred to the purchaser, the purchaser has "paid" the tax at that time for purposes of the purchaser taking a credit for taxes paid to other states. (Note: The BAC does not believe the "legally imposed" and "properly registered" criteria should be included in this bullet point.)

    - If a purchaser's payment is subsequently dishonored (i.e., the purchaser writes a bad check), the purchaser has not paid the tax and a state does not have to provide credit for that tax.

- If the purchaser pays a legally imposed tax to a properly registered seller that fails to remit that tax to the state, that does not affect the purchaser's ability to claim a credit for that tax paid. It remains an issue between the seller and that state. (Note: The BAC does not believe the "legally imposed" and "properly registered" criteria should be included in this bullet point.)

- If a purchaser pays the tax to a seller that (1) is not properly registered in a state and (2) the seller does not remit the tax to that state, it is up to each state to determine whether or not credit will be allowed for that tax. If the purchaser believes this tax was remitted to the other state, the purchaser has the burden of proving this to the state in which they are claiming this credit.

- If a purchaser pays a tax to a seller that is properly registered but which is not legally imposed, a state is not required to allow a purchaser credit for these taxes for purposes of the credit for taxes paid to other states. (Note: The BAC does not believe the "legally imposed" and "properly registered" criteria should be included in this bullet point.)

- If the purchaser agrees to pay the balance due, including the applicable legally imposed taxes to a properly registered seller at a future date (90 days same as cash) and follows through with this promise, the purchaser has paid the tax for purposes of the purchaser taking a credit for taxes paid to other states as of the date they entered into the agreement to make the future payment.

- If the purchaser never makes that payment, the purchaser has not paid any tax for purposes of claiming a credit for taxes paid to other states.
- If the purchaser pays the legally imposed tax to a properly registered seller that fails to remit that tax to the state, does not affect the purchaser's to claim the credit for taxes paid to other states.

Tax Paid Directly to State by Purchaser

- If the purchaser did not pay any tax to the seller, but instead recorded a sales or use tax liability on its books and records and paid that tax when that return was due, the purchaser has paid the tax for purposes of getting a credit for taxes paid to other states.

  - If the purchaser recorded the liability in its books and records but did not pay the tax when the return was due, the purchaser has not paid any tax for purposes of getting a credit for taxes paid to other states.
  - If between the time the purchaser records the liability in its books and records and the time the purchaser must pay the tax to that state, the purchaser moves the product to another state, the purchaser will need to make a business decision as to whether or not credit for tax paid to another state should be claimed. If the purchaser knows they are going to pay the tax when the return is due, they can claim the credit because they will be able to show that they did in fact pay this tax. However if the purchaser does not end up paying that tax, the state against whose tax the credit was claimed is not required to allow that credit since the tax was not paid.

  Note: The issue of whether or not a purchaser has "paid" tax to another state will, in most situations, only come up during an audit of a purchaser. Normally, this is after the due date of the return on which the tax was due.

Workgroup Recommendation on (5): The majority of the states participating in the Credit Workgroup recommend Alternative (E). The BAC recommends Alternative (F). (Note: The difference in these two Alternatives is that Alternative F would require the same credit as provided in Alternative E and also require a state to provide credit for tax that has not yet been but will (may) be paid on future payments as they are made and allow a credit for a tax erroneously paid by the purchaser if the purchaser cannot get it back from the jurisdiction to which it was paid in error.)

Reason: The workgroup generally agrees that a state should not be required to provide credit for tax paid to another state unless the tax was "legally due" and "paid" to another state. There was also consensus that states are not required to allow credit for a tax that a purchaser erroneously paid to a seller or a state (i.e., it was not legally due in the other state). However, the state administrators and the BAC differed on whether that should apply to an innocent purchaser that erroneously remitted tax to a state that is no longer eligible for a refund. The state administrators believe that sellers and purchasers alike need to take some responsibility and make sure the tax they are collecting or paying is due and a state that is owed the tax should not be harmed because the purchaser paid the tax erroneously to the incorrect state.

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(6) *Against what types of taxes must this credit be allowed (i.e., can a state deny providing credit for tax paid to another state because the state is imposing its tax on the purchaser as a "sales tax" rather than a "use tax")?*

Alternatives to Consider

(A) No. A state must provide credit for tax paid to another state against **only its sales or use taxes** that it imposes on the purchaser for storing, using, consuming or otherwise receiving benefit of the product in their state.

(B) No. A state must provide credit for tax paid to another state against **all sales, use and similar taxes** that it imposes on the purchaser for storing, using, consuming or otherwise receiving benefit of the product in their state.

(C) No. A state must provide credit for tax paid to another state against **all sales, use and similar taxes covered by the SSUTA** that it imposes on the purchaser for storing, using, consuming or otherwise receiving benefit of the product in their state.

(D) No. A state must provide credit for tax paid to another state against **all taxes that are covered by Recommendation 1** that it imposes on the purchaser for storing, using, consuming or otherwise receiving benefit of the product in their state.

(E) Yes. A state may limit the credit for tax paid to another state so that it may **only be applied against "use tax"** it imposes on the purchaser for storing, using, consuming or otherwise receiving benefit of the product in their state.

What is meant by a "similar tax"? (Fred/Mark/BAC provide initial language to include/discuss.)

Placeholder - Digital products – sourcing – what is result of that workgroup and how might it affect this recommendation?

Discussion

What constitutes a “sales tax” and a “use tax” is not addressed in the SSUTA. Some states impose a “sales tax” on vendors located outside the taxing state while other states impose a “use tax” on such sales. Thus, whether a state considers a tax a “sales tax” or a “use tax” is often just a label. One of the purposes of the credit provision is to allow a purchaser to buy an item in one jurisdiction and pay the required tax due on the retail sale and not require the purchaser to pay that tax again when they move it to a different jurisdiction, regardless of whether the state to which the purchaser moved the product imposes the tax as a "sales tax" or as a "use tax."

The Agreement provides no definition for either “sales tax” or “use tax.” Coming up with a definition upon which all can agree would likely be a daunting task. Instead, the Work Group believes it would be more expedient to describe what those taxes (and similar taxes) include and do not include.

“Sales taxes” come in a variety of forms including taxes imposed on either the buyer or the seller and are computed as a percentage of the sales price paid by the purchaser or the seller’s gross receipts from sale. When the tax is imposed on the buyer, state law requires the seller to collect the tax from the buyer and remit it to the state. When the tax is imposed on the seller, state law allows the seller to pass the tax through to or recoup it from the buyer. In either event, the buyer ultimately bears the burden of the tax and state law generally requires that the tax be separately stated on the buyer’s sales receipt. Nomenclature is not important; thus denomination of the tax as a “sales tax,” and “excise tax” or a “gross receipts tax" makes no difference as to whether the tax comes within the scope of a “sales tax.”

As used in this paper, a tax is “similar” to a “sales tax” when the tax, regardless of nomenclature, is: (1) imposed on the sale of a product or service, (2) imposed either on the buyer or the seller, (3) computed as a percentage of the sales price of the product or service or the seller’s gross receipts from the sale and (4) paid by or collected from the purchaser at the time of sale.

A tax is not a “sales tax” or “similar to a sales tax” if the tax is computed on a per unit-of-sale basis. Thus, taxes set at a flat rate per item of sale or volume of purchase are not included within the scope of “sales taxes.” For example, a tax imposed on the sale of tires at the rate of $5 per tire is not a “sales tax.” Additionally, by way of example, a tax imposed on the sale of gasoline at a rate of 25 cents per gallon likewise would not be a “sales tax.”

“Use taxes” generally are imposed on the storage, use, or other consumption of property and services in a state. “Use taxes” generally are imposed on the purchaser and are based on the value of the property at the time it is brought into the state or the value of the benefit of the service received in the state. If the purchaser of the product or service did not pay or have a sales or similar tax collected at the time of purchase, the base for the use tax generally is the purchase price for the product or service.

Taxes paid under a “direct pay permit.” Some purchasers are allowed to exempt purchases from sales tax collection at the time of sale and are allowed to directly pay the tax to the state. There is no uniformity in characterization by the state of taxes paid under a direct pay permit as a “sales tax” or a “use tax.”

States that are members of the SSUTA have some ability to control those taxes against which they must allow credit because they can exclude certain taxes from coverage by the agreement. For instance, a state such as Washington has a B & O tax, which while it might fit the description of a sales, use or similar tax, would be excluded because Washington is an SSUTA member state and it excludes its B & O tax from taxes covered by the Agreement. Thus, it would not be obligated to provide a credit against its B & O tax for sales, use or similar taxes paid by a purchaser to another state.

The workgroup noted that this also raises concerns with trapping a purchaser in the middle of two (or more) states saying they do not have to provide credit to another state because they are the state imposing a "sales tax." With the SSUTA not defining what is a "sales tax" versus a "use tax," there is no reason to deny a purchaser credit based on such distinction.

Workgroup Recommendation on (6): The states in the Credit Workgroup were split on this issue. Some states felt that Alternative (C) should be recommended while other states felt that Alternative (E) should be recommended and states should only be required to give credit against their use tax. The BAC recommends Alternative (B).

Reason:

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(7) *What "priority" rules (initial sourcing and subsequent use) should be used to determine which state gets the tax and which state must provide credit for the tax paid to another state(s)?*

Alternatives to Consider

(A) The priority rule for the initial imposition of the sales/use tax on the retail sale of a product in a member state is based solely on the sourcing rules provided under the Agreement. Items not covered by the Agreement (e.g., motor vehicles), retail sales made in non-member states, and subsequent uses are up for each state to provide its own rules.

(B) The priority rules for the initial imposition of the sales/use tax collected on or at the time of the retail sale of a product in a member state is based solely on the sourcing rules provided under the Agreement. However, the priority rule for credit for tax paid to another state on (1) the retail sale of products not covered by the Agreement, (2) retail sales made in non-member states, and (3) subsequent uses of a product are based on which state was first (legally) in time to impose its tax on the retail sale of the product and then based on where the subsequent use of the product occurred.

(C) Priority rules are based on which state was first to legally impose its tax on the sale of a product and next on where the use of a product occurred.

(D) The SSUTA should only address credit for the tax that was paid on the retail sale as explained in Recommendation 2 above. Credits against any tax due on a subsequent use by the purchaser should be left to the requirements of federal law. In addition, credit for tax paid on the retail sale of a product that is not covered by the SSUTA and tax paid on a retail sale made in a non-member state would be based on which state was first (legally) in time to impose its tax on the retail sale.

Discussion

The priority for which state has to provide credit for taxes paid by a purchaser for a product covered by the Agreement's sourcing rules in a full member state that subsequently owes tax in another full member state on that retail sale should be based on the Agreement's sourcing rules. If all full member states follow these sourcing rules, there should not be any conflicts in determining which state has priority in imposing their tax, other than for those products that are not covered by the SSUTA's uniform sourcing rules (e.g., motor vehicles and tangible personal property incorporated into real property). For those products not subject to the SSUTA's uniform sourcing rules, the determination of whether a state has to give credit for tax paid to another state should be based on which state was first (legally) in time to impose its tax on the retail sale. Although some state tax administrators disagree, the workgroup also believes this same rule (i.e., which state was first (legally) in time to impose its tax) should apply to the sourcing used by non-member states.

UNRESOLVED ISSUE: An issue was also raised with respect to a transaction involving more than one state when one of the states imposes its sales tax on services using origin sourcing rules and the other state imposes its sales tax using the destination-based sourcing rules.

Example - State A imposes tax on services using origin sourcing rules. State B imposes tax on services using destination-based sourcing rules. Customer X has a repair service performed on a product in State A. After the product is repaired, it is shipped to Customer X in State B. State A imposes its 5% sales tax on the transaction because it is a service performed in State A. State B imposes its 6% sales tax on the service because the property upon which the service was performed is returned to Customer X in State B. The seller collects the tax for State A because that is where the seller is located. No tax is collected by the seller for State B since the seller is not registered to collect the tax in State B. Instead, Customer X is required to remit the tax directly to State B on this transaction. Questions to discuss: Which state is entitled to the tax on this transaction? Does one state have to allow credit for the other state's tax paid? If so, which state must provide credit and why? Thoughts: This can only happen if State B is an SSTP state and State A is **not** an SSTP state. If both states are SSTP states, this should never occur because the seller would be required to use destination-based sourcing rules. In other words if State A tried to impose its tax on this transaction, State A would not be in compliance with the SSTP destination-based sourcing rules. How many states use origin sourcing for this type of transaction? Should this be addressed in the SSUTA or is this an issue that is beyond the scope of the SSUTA?

Example – Cloud computing – Mark N to provide example language.

Workgroup Recommendation on (7): The majority of the states participating in the Credit Workgroup and the BAC recommend Alternative (B).

Reason: The majority of the participants felt that it is appropriate to provide that if a seller properly sources the initial retail sale of a product to a purchaser based on the sourcing rules provided under the SSUTA, that other member states would be required to give the purchaser credit for that tax. If (1) the initial retail sale of the product is not covered by the uniform sourcing rules provided in the SSUTA or (2) the initial retail sale is made in a nonmember state, the state that was first in time to legally impose its sales or use tax on the product would have the priority in imposing its tax. States in which the product was subsequently used (in time) would have to allow credit for that tax previously paid.

Note: The workgroup members recognize that this recommendation does not solve the problem where 2 states claim they have first priority to impose their tax. Scott Peterson indicated that when this project all started, most people felt that the first sentence in B (i.e., The priority rules for the initial imposition of the sales/use tax on the retail sale of a product in a member state is based solely on the sourcing rules provided under the Agreement.) would take care of this issue.

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(8) *"Sales price" can include delivery charges and other optional items – must a state that does not impose its tax on certain charges still give credit for the entire amount of tax paid to other state(s)?*

Alternatives to Consider

(A) A state must allow a credit for the entire amount of tax the purchaser paid on the retail sale. The tax paid on the retail sale is based on how the state that imposed the tax defined sales price or purchase price;

(B) A state only has to allow a credit for the tax paid by the purchaser on the retail sale based on how the state that is giving the credit defines sales price or purchase price. The state giving the credit is not required to allow credit for tax paid on items that are included in the sales price of the retail sale if that state does not include those items in its definition of sales price or purchase price; or

(C) A state has the option of either (A) or (B) as long as it is clearly noted in its taxability matrix.

Discussion

Under the Agreement, member states have the option to exclude from sales price delivery charges, installation charges, trade-in credit, and services necessary to complete the sale. For example, it is not uncommon for a purchaser to purchase a product in a state that includes delivery charges in its definition of "sales price" and "purchase price" and subsequently move that product to another state. The other state may or may not include delivery charges in its "sales price" or "purchase price" definitions. However, each member state is required to follow the uniform definition of "sales price" and "purchase price" contained in the SSUTA and each member state may, at its own option choose to include or exclude certain items from their definitions of "sales price" and "purchase price." Therefore, if a purchaser purchases an item in a state that includes delivery charges in its definition of "sales price" and "purchase price" and subsequently moves the product to a state that does not include delivery charges in its definition of "sales price" or "purchase price," the issue is whether or not the subsequent state to which the property was moved must allow a credit against the sales or use tax liability of the purchaser for the entire amount of tax paid on the "sales price" or "purchase price" of that product, including the tax paid on the delivery charges. Some states felt that the crediting state should have to give credit against the entire "sales price" or "purchase price" upon which the tax was paid or imposed (Alternative A). Other states felt that that crediting state should only have to give credit for the portion of the "sales price" or "purchase price" based on the items the crediting state included in its definition of "sales price" or "purchase price" (Alternative B).

Workgroup Recommendation on (8): The BAC members that were participating in the Credits Workgroup indicated that their preference was Alternative (B) and that they do not like Alternative C. The states participating in the Credit Workgroup were split between Alternatives (A) and (B).Since The BAC indicated that their preference is Alternative (B) and some of the states also indicated their preference was Alternative (B), it is being recommended that Alternative (B) be followed with respect to this issue.

Reason: Alternative (A) would allow a broader credit than Alternative (B). If a state wishes to allow credits that are more generous (i.e., the state gives more credit than they are required to under the SSUTA), that decision should be left up to each state.

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(9) If a state into which property is moved does not impose tax on an item such as repair labor, but the state in which the purchase was originally made does impose tax on repair labor, must the state into which the property was moved give credit for the tax paid on the labor?

Alternatives to Consider

(A) A state must give credit for the tax paid to another state on the labor charge even if the state giving credit does not impose tax on labor.

(B) A state that does not impose tax on repair labor is not required to give credit for tax paid in another state on repair labor.

(C) OTHER ALTERNATIVES TO CONSIDER?

Discussion

Some states impose tax on items such as repair labor, while other states do not. The issue is whether or not a purchaser who purchases a repair service in State A, which imposes its tax on both repair parts and repair labor, is entitled to a credit for the tax paid on the labor in State B, if State B does not also impose tax on repair labor.

Example 1 – Purchaser A has a piece of equipment repaired in State X by Company B. Company B charges Purchaser A the 5% State X sales tax on the $500 for the repair parts and $1,000 for repair labor. A total of $75 in sales tax is paid to State X ($1,500 x 5% = $75). Purchaser A takes the piece of equipment to State Y and uses the equipment in a taxable manner. State Y's sales tax rate is 7 %. However, State Y does not impose sales or use tax on repair labor. What amount of State X's tax that Purchaser A paid to Company B may Purchaser A claim as a credit against the use tax owed in State Y?

Possible answers:

(a) Purchaser A does not owe State Y any additional use tax since the total tax paid on the repair in State X ($75) exceeds the tax due ($500 x 7% = $35) in State Y. The result is that Purchaser A pays a total of $75 in sales and use tax on this transaction.

(b) Purchaser A owes State Y tax on the difference ($10) between the tax due on the repair parts in State Y ($500 x 7% = $35) and the tax paid on the repair parts in State X ($500 x 5% = $25). The result is that Purchaser A pays a total of $85 ($75 to State X and $10 to State Y) in sales and use tax on this transaction.

Example 2 - Purchaser A has a piece of equipment repaired in State Y by Company B. Company B charges Purchaser A the 7% State Y sales tax only on the $500 charge for the repair parts. State Y does not impose tax on the $1,000 for repair labor. A total of $35 in sales tax is paid to State Y ($500 x 7% = $35). Purchaser A takes the piece of equipment to State X and uses the equipment in a taxable manner. State X's sales tax rate is 5%. However, State X imposes its sales or use tax on both the repair parts and the repair labor. What amount of State Y's tax that Purchaser A paid to Company B may Purchaser A claim as a credit against the use tax owed in State X?

Possible answers:

(a) Purchaser A owes State X the 5% use tax on the entire repair labor charge ($1,000 x 5% = $50) since State Y did not impose any tax on the repair labor. The excess tax Purchaser A paid on the repair parts ($35 - $25 = $10) may not be used to offset any of the tax Purchaser A owes on the repair labor. The result is that Purchaser A pays a total of $85 in sales and use tax on this transaction ($35 to State Y and $50 to State X).

(b) Purchaser A owes State X tax on just the difference ($40) between the tax State X imposes on both the repair parts and repair labor ($1,500 x 5% = $75) and the amount of tax Purchaser A paid to State Y on the repair parts and repair labor ($500 x 7% = $35). The result is that Purchaser A pays a total of $75 in sales and use tax on this transaction.

Example 3 - Purchaser A buys a shirt (nontaxable product) for $100 and a box of candy (taxable product) for $50 at Retailer B's location in State Y. Retailer B charges Purchaser A the 7% State Y sales tax of $3.50 on the $50 charge for the box of candy (taxable product). State Y does not impose tax on the sale of shirts so the $100 for the shirt is not taxed. Purchaser A takes the shirt and box of candy to State X and uses them in a taxable manner. State X's sales tax rate is 5%. However, State X imposes its sales or use tax on both the shirt and the box of candy. What amount of State Y's tax that Purchaser A paid to Retailer B may Purchaser A claim as a credit against the use tax owed in State X?

Possible answers:

(a) Purchaser A owes State X the 5% use tax on the entire charge for the shirt ($100 x 5% = $5.00) since State Y did not impose any tax on the sales of the shirt. No tax is due to State X on the use of the box of candy since the tax paid in State Y on the box of candy is equal to or greater than the tax due in State X on the box of candy. The excess tax Purchaser A paid on the box of candy ($3.50 - $2.50 = $1) may not be used to offset any of the tax Purchaser A owes on the shirt in State X.

(b) Purchaser A owes State X the 5% use tax on difference ($4) between the tax due on the combined charge for the shirt and box of candy in State X ($150 x 5% = $7.50) and the tax paid on these same items in State Y ($3.50). The excess tax Purchaser A paid on the box of candy ($3.50 - $2.50 = $1) may be used to offset some of the tax Purchaser A owes on the shirt in State X.

Workgroup Recommendation on (9): The states participating in the Credit Workgroup recommends Alternative (??). The BAC members participating in the Credit Workgroup recommend Alternative (??).

Reason:

~~**(10)**~~ ***(10)*** *If ~~How can~~ a purchaser is audited using statistical sampling, must a subsequent state in which the product is used grant credit for tax the purchaser paid as part of an audit if the purchaser provides adequate evidence to another state that the purchaser paid sales/use tax on a transaction that was part of the audit population sampled?*

Alternatives to Consider

(A) The credit provision in the SSUTA should specify that a state must allow credit when a purchaser provides adequate documentation to the state where it seeks credit that the product was part of the population sampled in the other state and the product was taxable in the other state.

(B) The SSUTA does not need to address this and it is left up to each state's own discretion.

Discussion
More and more states are conducting audits of purchasers using statistical sampling. With statistical sampling it is difficult, if not impossible, to demonstrate sales/use tax was paid on an item not directly sampled, but part of the overall audit population.

Some felt that a presumption should be made that the tax was paid if the purchaser was audited. Others felt that the presumption should be that the tax was not paid unless the purchaser could prove that the specific transaction was included in the transactions sampled.

If states are required to allow credit for sampled transactions, this can lead to a number of sampling related issues that would be beyond the scope of the SSUTA, such as what is the proper method of sampling. The BAC members participating on the call believe, absent a showing that an audit sampling methodology was clearly erroneous, a state should respect another state's method for determining tax was (or was not) paid on a product that is taxable in both states. In other words, the states should give "full faith and credit" for another state's audit practices.

Federal bill – Single audit – Would this affect the recommendation?

Workgroup Recommendation on (10): The states participating in the Credit Workgroup recommends Alternative (B). The BAC members participating in the Credit Workgroup recommend Alternative (A).

Reason: Due to the differences in state sampling principles and methodologies used, the states participating in the Credits Workgroup do not believe it is automatically appropriate to require one state to give credit for tax that may have been paid to another state based on a statistical sample that may have been conducted. The states believe they should look at this on a case by case basis. The BAC believes a state should honor another state's audit sample so long as the purchaser shows the product was taxable in the other state and that the product was part of the audit population.

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(11)– *Can a state with no local jurisdictions deny/limit credit for taxes paid to other states' local tax jurisdictions?*

Alternatives to Consider

(A) Yes. A state with no local jurisdictions can deny/limit the credit to only the state portion of the sales/use tax paid to the other state.

(B) Yes; however a state with no local jurisdictions can only deny/limit the credit for those local taxes paid directly to local jurisdictions.

(C) No. A state with no local jurisdictions is required to provide credit for any state and local sales/use taxes paid to the state or a local tax jurisdiction.

(D) Allow a state to choose any of the options above, but require the state to clearly indicate its requirements on its taxability matrix.

Discussion

In 2008, the Credit Workgroup began by reviewing Article V of the Multistate Tax Compact which has been adopted by 20 states. The Compact provides that:

> Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another State and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the State, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Most states, whether or not they have local jurisdictions that impose sales and use tax, grant credit against their state and local use tax for sales and use tax paid to other states and local jurisdictions in those states. However, three states, Indiana, Kentucky, and West Virginia, do not presently have local jurisdictions and have asserted that they do not grant credit against their state's use tax for sales or use tax paid to local jurisdictions outside of their state. Kentucky indicated that they are feeling "imposed upon" if they are going to be required to give credit for local taxes paid in another state when their state does not impose any local taxes. They also stressed that their state does not collect any sales or use tax as a "state" tax and then turn around and distribute it to the locals.

The issue of how states give credit against their state and or/local sales and use taxes was also discussed. Some states give credit for the combined state and local tax paid in another state against the combined state and/or local sales or use tax due in their state. Other states only give credit for state tax paid in another state against their state tax and local tax paid in the other state against their local tax. Any excess state tax paid cannot be used to offset any local use tax due and any excess local tax paid cannot be used to offset any state use tax due. A correlation was drawn between states being allowed to offset only state tax against state tax and local tax against local tax and states without a local tax being able to deny credit for local taxes paid to other states. In other words, maybe what states with no local taxes are really doing is allowing credit for state tax against state tax and local tax against local tax and since they have no local tax, there is no credit to be given for the local tax paid. Some states felt that if we are not going to allow states with no local taxes to be able to deny credit for local taxes paid to other states, then we also should not allow states to only offset state taxes with other state taxes and local taxes with other local taxes. There was discussion of the possibility of considering a toggle with respect to this issue. Since toggles had been used in other areas of the SSUTA, as long as the state position was clearly indicated in the taxability matrix, some states felt this should be considered as well.

The business community members participating in the Workgroup felt that it was inappropriate to not give credit for both state and local taxes paid by the purchaser, regardless of whether the crediting state imposed local taxes itself.

If the amendment to the SSUTA is drafted to require that member states grant credit against its sales and use tax for state and local sales and use tax paid to other states and local jurisdictions in those states, the three states that do not currently grant credit for tax paid to local jurisdictions could propose an alternative amendment that allows them to maintain their current practice.

Workgroup Recommendation on (11): The states participating in the Credit Workgroup were split on this issue. KY, IN and WV indicated that their preference was Alternative (A). SD, TN, WA and WI indicated that their preference was Alternative (C). Others, such as NE thought a toggle should be considered. The BAC members participating in the Credit Workgroup indicated that their preference was Alternative (C).

Reason: Since the states participating in the workgroup were split on this issue, but the majority of the states and BAC indicated they preferred Alternative (C), that Alternative is being recommended at this time.

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(12) *For states that give credit for both the state and local taxes paid to another state, should a state with local jurisdictions be required to allocate the state and local portions of the tax credit in a certain manner?*

Alternatives to Consider

(A) The allocation should be consistent from state to state and specified in the credit provision (*e.g.,* credit first to state tax then to any local tax).

(B) The credit provision should expressly state that the allocation is based on each individual state's law/regulations.

(C) The method of allocation should to left to the states and does not need to be addressed in the credit provision (silence allows states to address allocation on their own).

Discussion
The Credit Workgroup considered whether there should be a specific requirement for allocation of the credit between state and local tax paid. Article V of the Multistate Tax Compact provides the following, "The credit shall be applied first against the amount of any use tax due the State, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision."

The work group members felt that this was beyond the scope of the Agreement and should be left to each state to decide. Leaving this matter up to the states does not burden sellers or purchasers as long as credit for the full amount of state and local taxes paid by the purchaser, up to that amount of tax due, is given.

The taxability matrix could also be modified so that each state with local jurisdictions that impose a sales or use tax can indicate how the credit should be allocated between the state and local jurisdictions.

Regardless of whichever alternative is chosen, members from the business community have indicated that their primary concern is that an undue burden not be imposed on the person claiming the credit (to specify which part of the tax previously paid was local tax versus state tax). In other words, if two states have state and local taxes, the state giving credit would consider the taxes paid to the other state as a single tax that was paid to the other state. For example, assume State A imposes a 5% state tax and a 2% local tax and State B imposes a 2% state tax and 5% local tax (i.e., the total tax rate is both states is 7%). If the purchaser paid the State A taxes first, no additional tax should be due in State B since the purchaser has paid 7% tax. However, if State B imposed a 3% state tax and 5% local tax for a total tax rate of 8%, the purchaser would owe an additional 1% tax to State B. State B could tell the purchaser how they want the 1% additional tax allocated between State B's state and local taxes. However, what the business community members do not want states to be able to do is to make the purchaser determine how much was already paid in state tax and how much was already paid in local tax and then have to allocate the additional tax due based on that same ratio.

Workgroup Recommendation on (12): The states participating in the Credit Workgroup recommend Alternative (B) to make it clear that this allocation is left up to each state's own laws and regulations. The BAC members participating in the Credit Workgroup recommend Alternative ??

Reason:

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(13) *Can a state deny credit for tax paid to another state when the advertising and promotional direct mail is sourced pursuant to Section 313.A.4. of the SSUTA?*

Alternatives to Consider

(A) A state should be able to refuse credit when Section 313.A.4. of the SSUTA is used to source the sale of advertising and promotional direct mail.

(B) A state is required to provide credit when Section 313.A.4. of the SSUTA is used to source the sale of advertising and promotional direct mail.

Discussion

Section 313.A.4. of the SSUTA specifically provides that if a purchaser of advertising and promotional direct mail does not provide the seller with a direct pay permit, an exemption certificate claiming direct mail or information showing the jurisdictions to which the advertising and promotional direct mail is to be delivered to the recipients, the sale of the advertising and promotional direct mail is sourced to the location from which it was shipped. This section goes on to say that "The state to which the 'advertising and promotional direct mail' is delivered may disallow credit for tax paid on sales sourced under this paragraph." Since this provision in the SSUTA is very specific, the credit provision should not be knowingly drafted in direct conflict with this provision. (Note: If a recommendation is made to require states to allow this credit, then the provision in sec. 313.A.4. of the SSUTA should also be repealed. Otherwise, there will be conflicting provisions in the SSUTA.)

Some workgroup members felt that credit for the sales or use tax paid on a transaction that was properly sourced in accordance with the SSUTA should be allowed, including transactions covered by Section 313.A.4. of the SSUTA. Others felt that if a transaction is properly sourced in accordance with Section 310.A.5. of the SSUTA (i.e., origin) and the appropriate jurisdiction's tax is charged based on this location, then credit for that tax should be allowed against a subsequent sales or use tax due in another state, except as provided in Section 313.A.4. of the SSUTA.

Workgroup Recommendation on (13): The Credit Workgroup recommends Alternative (X).

Reason:

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(14) *Can a state provide credits that are more generous that what is required by the SSUTA?*

Alternatives to Consider

(A) The credit provision should expressly indicate that a state can provide credits that are more generous than what is required by the SSUTA.

(B) The credit provision should expressly indicate that a state cannot provide credits that are more generous than what is required by the SSUTA.

(C) The credit provision does not need to expressly indicate that a state can provide more generous credits (this is understood).

Discussion

Some states may want to allow credit for taxes paid on terms that are more favorable than what is required by the SSUTA, while others may want to only allow what is required by the SSUTA (and federal law).

No states or members of the business community participating in the Credits Workgroup raised any concerns about a state allowing credit for taxes paid to other states on terms that are more favorable than what is required under the SSUTA (and federal law). Some members of the business community are more concerned that states may think they only have to allow what the minimum requirement is under the SSUTA, when this may in fact be less than what is even required under federal law.

Workgroup Recommendation on (14): The states and BAC members participating in the Credit Workgroup recommends Alternative (A).

Reason: By expressly stating in the SSUTA amendment that states may allow credits for taxes paid on terms that are more generous than what is required under the SSUTA, this will help eliminate any possible misunderstanding in this area.

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(15) *Can a state deny credit for sales or use tax paid to a state (including local tax jurisdictions) if that state does not provide the same (reciprocal) credit?*

Alternatives to Consider

(A) The credit provision should expressly indicate that a state may not deny credit for sales and use taxes paid to non-reciprocating states.

(B) The credit provision should expressly indicate that a state may deny credit for sales and use taxes paid to non-reciprocating states.

(C) The credit provision should not address this issue and it should be left up to each state to decide.

Discussion

Some states require reciprocity before they will allow a purchaser to claim credit for tax paid to another state, while other states do not require reciprocity before allowing a credit.

If the goal of the SSTP is to get all states on board with the requirements contained in the SSUTA and if one of those requirements is that states give credit for taxes paid to other state and/or local jurisdictions, then theoretically this question is not needed. However, since there are some states that only give credit for taxes paid if the other state gives credit for their taxes paid and some of these states may not be members of the SSTP, it does not seem appropriate to require SSTP Member states to give credit for taxes paid to a state if that state will not give credit in return. This would put the SSTP Member states in a disadvantageous position.

Workgroup Recommendation on (15): The states participating in the Credit Workgroup recommends Alternative (B). The BAC members participating in the Credit Workgroup recommend Alternative (A).

Reason: In order to be fair to member states, they should not be required to give credit for tax paid to non-member states that do not give credit for their tax in return. This would put the member states in a disadvantageous position simply because they have voluntarily chosen to conform their laws to the requirements of the SSUTA. It should be pointed out that as other states become members of the SSTP and conform their laws to the requirements of the SSUTA and assuming an amendment to the SSUTA is added requiring states to give credit for taxes paid to other state and/or local jurisdictions, this issue will become less and less important. It would go away completely if all states became members of the SSTP.

Other transactions that have "streams" of payments where one state taxes all upfront and other state taxes the individual payments.

(16)*Leases and Rentals – How should a state that imposes its sales/use tax on each lease/rental payment give credit to a purchaser that paid tax to a state that imposes its tax upfront on the sum of all of the lease/rental payments (i.e., accelerated payment)?* (Note: See also Item 18 below relating to Installment Sales - do these need to be addressed together?) What if one state treats transaction as service and other treats it as a lease? Similar to Question 4.

Alternatives to Consider

(A) Such state is required to allow a credit up to the amount of tax the lessee paid to upfront and, therefore, cannot impose its sales/use tax until such time as the amount of sales or use tax due in the state exceeds the total sales or use tax paid upfront by the purchaser;

(B) Such state is not required to allow a credit for the tax paid upfront;

(C) Such state must give credit for a prorata portion of the tax paid upfront and impose its additional tax rate on the periodic payments when the property is first taxable in such state; or

(D) Given the option of following either (A), (B) or (C) above, but such state is required to indicate its requirements on its taxability matrix.

Discussion

The discussion concerning credit for tax paid that is "sourced in accordance with the Agreement" identified separate issues related to the lease or rental of tangible personal property. The workgroup decided to include a separate provision in the amendment to specifically address credit for tax paid with regard to leases or rentals of tangible personal property. The SSUTA contains separate sourcing provisions for retail sales and for leased tangible personal property and the SSUTA does not require member states to impose tax on the lease of tangible personal property in the same manner.

While the Agreement provides for a uniform definition of lease or rental and uniform sourcing rules for leases or rentals of tangible personal property under Section 310.B, states are not required to impose the tax on the lease or rental of tangible personal property at the same time. In general states impose their tax on each periodic payment, on the entire amount of the lease payments (lump sum or accelerated basis), or on the purchase price of the property by the lessor. Leased property moved from one state to another state that impose the tax at different times on the lease payments or on the purchase of tangible personal property for lease may result in the lessor collecting sales tax on the leased personal property in two states.

In March of 2011 the workgroup surveyed the states to determine at what time the state imposes tax on the lease or rental of tangible personal property and what credit for tax paid is provided by the states when the primary property location of the property moves to its state. The survey indicates some states do not allow credit for tax paid:

- on the lease payments where tax was imposed on a lump sum or accelerated basis against periodic payments subject to tax in its state when the property is relocated to its state,
- on the acquisition of the property against the periodic payments subject to tax in its state when the property is relocated to its state.

Workgroup Recommendation on (16): The Credit Workgroup recommends Alternative (X).

Reason:

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(17) *Leases and Rentals – How should credit be provided to a purchaser paying tax to a non-full member state that requires the lessor/purchaser to continue to pay that state's sales/use tax on all the periodic payments (even if the property is permanently moved out of the non-full member state)?*

Alternatives to Consider

(A) Have to allow a credit against the sales or use tax due on the lease or rental payments that are sourced to their state up to the amount of tax the lessor was required to pay on its acquisition of that property;

(B) Only have to allow a credit for the prorata portion of the tax the lessor paid upfront based on the percentage of the lease or rental payments that are properly sourced to their state;

(C) Not have to allow a credit for any of the tax the lessor paid on its acquisition of the leased property; or

(D) Have the option of following (a), (b), or (c) above, but required to indicate their requirements on their taxability matrix?

Discussion

The U.S. Supreme Court determined in Itel Containers International Corporation v. Huddleston (1993, US SCt), 113 SCt 1095, that Tennessee's imposition of sales tax on leases of cargo containers delivered to lessees in the state and used in international commerce satisfied the requirements of Complete Auto Transit and Japan Line and did not violate the Supremacy, Commerce, or Import-Export Clause of the U.S. Constitution.

In a decision of the Missouri Administrative Hearing Commission, John Fabick Tractor Company, et al. v. Director of Revenue, AHC, Dkt. 95-000597RV (1996), leases of equipment to customers who picked up the equipment and transported the equipment for use outside Missouri were not exempt from taxation under Sec. 144.030.1 as interstate transactions, because the leases were deemed to have been consummated at the place of business of the retailer. To the extent that a Department of Revenue regulation, 12 CSR 10-11.140(1), required taxing leased tangible property at the place of "use," the regulation was overridden by Sec. 32.087.12(1), which requires all sales to be deemed consummated at the place of "business" of the retailer. In addition, because Sec. 144.020.1(8) applies sales and use tax exemptions to leases and rentals, Sec. 144.101.1(8), which provides that a sale is not in interstate commerce if transfer of ownership or title occurs in Missouri, meant that the lease transactions were not in interstate commerce because possession of the leased equipment was transferred in Missouri.

Texas Regulations. 34TAC3.294(f)(1)(A) An operating lease executed while the property is within the state is subject to sales tax. Tax will be due on the total lease amount for the entire term of the lease regardless of where the property is used if the lessee takes delivery in the state. Any renewal of the contract, extensions, or options exercised while the tangible personal property is outside the state will not be subject to Texas tax unless the property reenters the state. 34TAC3.294(f)(2) Leases subject to use tax. Property brought or shipped into the state for use under the terms of a financing lease or an operating lease will be presumed to be subject to use tax. See §3.346 of this title (relating to Use Tax). The use tax will be due on the lease price for the entire term of an operating lease regardless of where the initial contract was executed. Credit will be allowed against any sales or use tax legally imposed and paid to another state. See §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers).

Workgroup Recommendation on (17): The Credit Workgroup recommends Alternative (X).

Reason:

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(18) *Leases and Rentals - How should credit be provided to the lessor/lessee in those states that require (and some provide an option, see CA, MI, NV & RI) a lessor to pay the tax on its purchase price of a product rather than imposing the tax on the stream of payments from the lessee?*

Alternatives to Consider

(A) A state has to allow a credit against the sales or use tax paid on the lessor's purchase price for any subsequent tax due on the lease or rental payments (tax imposed on lessor and/or lessee); or

(B) A state has to allow a credit against the sales or use tax paid on the lessor's purchase price for any subsequent tax due for tax imposed only imposed on the lessor; or

(C) A state does not have to allow a credit.

(D) Require states to indicate in their taxability matrix if the state allows credit for tax paid by the lessor on the acquisition of property against sales or use tax due on the lease or rental payments subsequent to the relocation of the property in the state.

Discussion

An additional question regarding credit for tax paid results if a state requires a lessor to pay sales or use tax to their state on the acquisition of tangible personal property that will be leased or rented. When the leased property is taxed at the time of acquisition and the property is subsequently relocated to a state that imposes its tax on each lease payment, the lessor must collect tax on the lease payments in the second state.

Workgroup Recommendation on (18): The Credit Workgroup recommends Alternative (X).

Reason:

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(19) *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 a product 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?*

Alternatives to Consider

(A)

(B)

Discussion

Workgroup Recommendation on (19): The Credit Workgroup recommends Alternative (X).

Reason:

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(20) *Some states treat a transaction as a sale to an end user and consumer while other states treat that same transaction as a sale that the state has authorized as a sale for resale. For example, installation of tangible personal property to real property that is treated as a sale to an end user and consumer in one state while another state treats the same transaction as a purchase for resale. Should the Agreement include a requirement to give credit against* *a state's sales tax on the retail of a product for the tax paid on the purchase of that same product?*

Alternatives to Consider

(A) Credit may be limited by a state to tax paid on the retail sale of a product that is subjected to use tax imposed by the member state on the storage, use or other consumption of such product.

(B) Nothing in this section shall limit any purchaser's right under local, state, federal or constitutional law or a state's obligation thereunder, to receive or provide a credit for sales or use taxes legally due and paid to other jurisdictions.

(C) Nothing in this section prohibits a member state from providing credit on terms and conditions more favorable to a purchaser than the terms required by this section.

Discussion

Generally, the state workgroup members felt this was beyond the scope of the Agreement and opposed including a requirement in the Agreement. They also indicated a transaction that is the purchase of a product and a subsequent transaction that is for the sale of the same product are two separate and distinct transactions.

Workgroup Recommendation on (20): The Credit Workgroup recommends Alternative (X).

Reason:

Other Questions Discussed

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. State Response: The SSTGB should not get involved in deciding which state is entitled to the tax. In addition, the SSUTA and corresponding rules should be drafted clearly so that there is no question as to when a state must allow credit for tax paid to another jurisdiction.

Survey Responses to Question 1

Question posed: What types of taxes are subject to this tax credit provision?

Summary of State Responses

Option	Description	States OK With This Option
A	A state shall provide credits for all taxes imposed on the sales, use or storage of a product that have characteristics of sales and use taxes, including a complementary use tax that is imposed on purchasers.	BAC (Ok as option) NE
B	Taxes included by a member or contingent member state as subject to the SSUTA and similar taxes for non-member states	WA (preferred) MN
C	It should <u>not</u> be directly addressed, just use "similar tax."	BAC (Ok as option)
D	Member states shall be required to allow credit for "sales or use taxes."	NV ND (Ok as option) WA (Ok as option) KS
E	Member states shall be required to allow credit just for "sales or use taxes subject to the SSUTA."	NV ND (Ok as option) WA (Ok as option) WV WI KS MN NE TN (Ok as option) IA
F	Member states shall be required to allow credit for "sales, use or similar taxes."	BAC (Ok as option) TN ND (Ok as option) NE
G	Member states shall be required to allow credit just for "sales, use or similar taxes subject to the SSUTA."	NV ND (Ok as option) MN IA
H	Member states shall be required to allow credit for "all taxes which have a 'use tax' component to them and which is imposed on a purchaser who did not pay the tax to the seller."	ND (preferred) IA
I	Member states shall be required to allow credit for "sales, use or similar taxes that are based on a percentage of the 'sales price' or 'purchase price'."	BAC (preferred)

Question posed: *Should the amendment to the SSUTA relating to credit for taxes paid to other states be limited to the initial "retail sale" or all potential sales and uses?*

Summary of State Responses

Option	Description	States OK With This Option
A	Require a state to allow a credit for tax paid by a purchaser (1) to the seller, (2) directly to the state because they issued their direct pay permit, (3) to the first state they use the product in, and (4) to any other states in which they were required to pay tax on the use of the product.	BAC KY - 1st choice SD
B	Require a state to allow a credit only for tax paid by a purchaser to the seller. A state would not be required to allow credit for tax the purchaser paid (1) directly to the state because they issued their direct pay permit, (2) to the first state they use the product in, or (3) to any other states in which they were required to pay tax on the use of the product.	KS - 2nd choice MN NV - 1st choice
C	Require a state to allow a credit for tax (1) paid by a purchaser to the seller and (2) paid by the purchaser directly to the state because they issued their direct pay permit to the seller. A state would not be required to allow credit for tax the purchaser paid (1) to the first state they use the product in or (2) to any other states in which they were required to pay tax on the use of the product.	IA - 1st choice KS- 1st choice MN NV - 2nd choice
D	Require a state to allow a credit for tax (1) paid by a purchaser to the seller, (2) paid to the first state they use the product in and (3) to any other states in which they were required to pay tax on the use of the product. A state would not be required to allow credit for tax the purchaser paid by the purchaser directly to the state because they issued their direct pay permit to the seller.	
E	Require a state to allow a credit for tax paid by a purchaser (1) to the seller, (2) directly to the state because they issued their direct pay permit, and (3) to the first state they use the product in. A state would not be required to allow credit for tax paid to any other states in which they were required to pay tax on the use of the product, except the first state.	IA - 2nd choice KY - 2nd choice MN NE - 1st choice NV - 3rd choice SD TN WA WI

Question posed: Should the amendment address tax credits for taxes paid to non-member states?

Summary of State Responses

Option	Description	States OK With This Option
A	Yes, the amendment should address providing tax credit for taxes paid to both member and non-member states.	IA KY MN NE WA WI
B	No, the amendment should only address SSUTA states providing credits for taxes paid to fellow SSUTA states.	KS NV SD

Attachment 4

Question posed: *Should the credit allowed for tax paid to another state be allowed to differ based on whether one state treats the transaction as a sale of a service and another state treats the same transaction as a sale of tangible personal property (i.e., both states tax the same measure, but one treats it as a sale of a service and the other treats it as a sale of property)?*

Summary of State Responses

Option	Description	States OK With This Option
A	Same product/transaction should receive a tax credit regardless of the treatment of the transaction as the sale of a service, tangible personal property, etc.	BAC IA KY MN NE WI
B	A state need only provide credit if both states treat the sale as the sale of a service or both states treat the sale as the sale of tangible personal property.	KS NV