Business Advisory Council
Petition For Resolution and Reconsideration

Nevada Is Not In Substantial Compliance
With The Streamlined Sales And Use Tax Agreement

Hearing Requested

Petition For Resolution

Pursuant to Rule 905 of the Streamlined Sales and Use tax Agreement ("SSUTA") and Subsections (B), (C) and (F) of Section 1002 of the SSUTA, petitioner, the Business Advisory Council ("BAC"), formally petitions the Governing Board to invoke the issue resolution process from the Governing Board's action of not finding Nevada out of compliance with the SSUTA and not initiating the sanctions process under Section 809 by proposing a resolution to sanction Nevada. As required by Rule 1001.A.2, the BAC hereby states it is not aware that this matter is pending in any state or local administrative or judicial process and the BAC requests a hearing with regard to this petition.

Issues for Resolution and Reconsideration

Section 805 states: "[a] member state is in compliance with the Agreement if the effect of the state's laws, rules, regulations, and policies is substantially compliant with each of the requirements set forth in the Agreement." Nevada is not in substantial compliance with each provision of the SSUTA and it should have issued a statement of non-compliance when conducting its annual recertification pursuant to section 803.¹ A brief summary of the compliance issues are as follows:

¹ Nevada's recertification statement dated July 31, 2008 is posted on the website of the Streamlined Sales Tax Governing Board.
Nevada recently promulgated an administrative regulation, Nevada Administrative Code ("NAC") 372.038 (effective 4/17/2008), which directly conflicts with the Nevada Revised Statute ("NRS") 372.723 (last amended in 2005). The regulation states Nevada’s sales tax law in NRS Chapter 372 (some provisions not compliant with the SSUTA) takes precedent over the SSUTA provisions in NRS Chapter 360B. This violates multiple sections of the SSUTA, including Section 102, the fundamental purposes section of the SSUTA.

Nevada has several regulations related to leases that directly conflict with SSUTA provisions. This nonconformity violates Sections 310 and 327 of the SSUTA.²

Nevada’s regulations do not comply with the exemption certificate requirements in Section 317 of the SSUTA.

It cannot be confirmed that Nevada allows sellers to remit payments using ACH credit as required by Section 319 of the SSUTA.

**Pertinent Facts**

The pertinent facts are broken down into two areas. First, an overview of the complexity of Nevada’s law is provided. Next, a summary of the annual recertification process used in 2008, focusing on Nevada, is provided.

**Complexity of Understanding Nevada’s Law**

1. Questions over Nevada’s substantial compliance with all provisions of the SSUTA have been a BAC concern from the date Nevada petitioned for membership to the SSUTA. (See Exhibit A.)

2. Nevada’s sales and use tax is more difficult to comprehend than most other states because it has four taxing chapters.
   a. The heart of Nevada’s state sales tax is NRS Chapter 372. Because of the workings of Nevada’s constitution and its sales tax law being enacted via a voter

² Other provisions of the SSUTA may also be violated.
referendum, BAC understands that changes to NRS Chapter 372 are all subject to voter approval.

b. Nevada’s local sales tax is contained in NRS Chapter 374 and a city-county relief tax is imposed in NRS Chapter 377.

c. First enacted into law in 2001, NRS Chapter 360B contains most of the Nevada’s provisions to comply with the SSUTA (which, in contrast to NRS Chapter 372, it does not need voter approval from its residents).

d. Adding to the complexity, excluding NRS Chapter 360B, the NRS chapters have counterpart regulations, NAC Chapter 372, NAC Chapter 374 and NAC Chapter 377.

3. While NRS Chapter 360B appears to comply with the SSUTA, many of Nevada’s regulations in NAC Chapter 372 have not been amended, or harmonized, to comply with NRS Chapter 360B.\(^3\)

4. Making matters worse and giving greater credence those regulations that conflict with the SSUTA trump the provisions in NRS Chapter 360B, NAC 372.038 was recently promulgated in April, 2008 to state NRS Chapter 372 prevails in a conflict over NRS Chapter 360B.

5. This lack of uniformity creates serious doubt on how Nevada will administer its sales and use tax law.\(^4\) More importantly, there is serious doubt as to how the tax will be interpreted in tax disputes before the Nevada Tax Commission and other tribunals.

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\(^3\) BAC received notice on June 23, 2009 that the Nevada Department of Taxation has proposed changes to some regulations that conflict with the SSUTA. (See Exhibit B.)

\(^4\) While the BAC is pleased to hear that the current Executive Director has indicated he is going to comply with the SSUTA provisions, tax administrators can change their position and policy provisions can change with personnel turnover.
6. Sellers could potentially be subject to taxpayer and/or class action suits as a result of this lack of substantial compliance with the SSUTA.

   **Nevada’s Recertification Process**

7. Section 803 requires the member states to recertify that they are compliance with the SSUTA or submit a statement of non-compliance by August 1 each year.

8. Subsequent to August 1, staff members from the Streamlined Sales Tax Governing Board conducted a review of the member states compliance with the SSUTA.

9. In a memo to CRIC from Scott Peterson and Pam Cook dated September 24, 2008 (See Exhibit C), Nevada was noted to have potential issues with allowing payment by ACH debit and credit and they referenced a compliance letter from the Equipment Leasing and Financing Association (ELFA) dated August 10, 2009. (See Exhibit D with Nevada’s response.)

10. Additionally, the BAC conducted a review of the states’ compliance with the SSUTA and submitted a letter to CRIC on November 1, 2008. In that letter, the BAC raised issues with Nevada’s ability to accept payments by ACH credit and raised an issue with Nevada having conflicting provisions with its retail sale and lease transactions. (See Exhibit E.)

11. In late October and through November, 2008, CRIC held several meetings by telephone to determine if the member states were indeed in substantial compliance with the SSUTA. Several CRIC members stated they were confused on the standards they should use in the review and questioned whether the scope of the review was a state’s compliance with the entire SSUTA, or just compliance issues as a result of a new requirement in the SSUTA from the date the state became a member and/or its last recertification.
12. The BAC in its November 1, 2008 letter and BAC members on the teleconference calls questioned CRIC’s review process (or lack of a process). The BAC letter stated the following:

CRIC should review all aspects of each state’s sales and use tax laws to determine if the state is in compliance with the [SSUTA]. CRIC should use the laws, rules, regulations and policies that each state presently has in effect, and not proposed changes to the law. ... Additionally, statements by some state officials “that’s the way we interpret it” or “we don’t (or do) administer that way” must be backed by written policy statements, ideally posted on the revenue department’s website.

13. CRIC ultimately voted to find Nevada in compliance with the SSUTA. In its report to the Governing Board dated May 10, 2009, CRIC noted “The committee noted that there had been no change in circumstances since Nevada had been admitted as a full member.” (See Exhibit F.)

14. On May 12, 2009, after hearing a report from CRIC’s chair, Andy Sabol, the Governing Board voted on the member states compliance with the SSUTA. Purportedly relying on Rule 905(D), the Governing Board restricted its vote of noncompliance during that meeting to only those states CRIC had noncompliance findings.

15. While the Governing Board ultimately took a vote on Nevada’s compliance with the SSUTA, it was based on whether Nevada was “in compliance” with the SSUTA (in contrast to finding it is “not in compliance” to the SSUTA). Four states voted to find Nevada was

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5 That subdivision states “No sooner than 60 days after the solicitation of comment, the statement of noncompliance from the member state and any findings of noncompliance by [CRIC], the issue as to whether the member state is in compliance with the Agreement shall be placed on the agenda of the Governing Board for either a regular meeting or a special meeting. If a member state is found to be out of compliance by the Governing Board, the member state shall be subject to sanctions as authorized under Section 809 of the Agreement. (Emphasis added.)

6 The Governing Board did vote on whether other states were “in compliance” with the SSUTA, but according to Scott Peterson, Executive Director of the Governing Board, such vote had no effect of holding a state was not in substantial compliance with the SSUTA.
not “in compliance” with the SSUTA.\textsuperscript{7} Scott Peterson, Executive Director of the SSUTA, opined the vote was improper because it was not based on Nevada being found “out of compliance” with the SSUTA.

\textbf{Requested Resolution}

1. As required by Section 805, Nevada is clearly not in substantial compliance with each provision of the SSUTA. Nevada has substantial compliance issues with:

   a. Recently promulgated NAC 372.038 (effective 4/17/2008) directly conflicts with the NRS 372.723 (last amended in 2005). That regulation states Nevada’s sales tax law in NRS Chapter 372 (some provisions not compliant with the SSUTA) takes precedent over the SSUTA provisions in NRS Chapter 360B. This violates multiple sections of the SSUTA, including Section 102, the fundamental purposes section of the SSUTA.

   b. Nevada has several regulations related to leases that directly conflict with SSUTA provisions. This nonconformity violates Sections 310 and 327 of the SSUTA.\textsuperscript{8}

   c. Nevada regulations (\textit{e.g.}, NAC 372.730) do not comply with the exemption certificate requirements in Section 317 of the SSUTA.

   d. It cannot be confirmed that Nevada allows sellers to remit payments using ACH credit as required by Section 319 of the SSUTA.

The Governing Board should find Nevada out of substantial compliance with each of the above sections of the SSUTA and other sections, as applicable.

2. In response to the annual recertification process conducted pursuant to Section 803 and Rule 905, the Governing Board should notify Nevada that it should have filed a statement of noncompliance with the SSUTA.

\textsuperscript{7} Arkansas, Kansas, South Dakota and Washington voted against the motion.

\textsuperscript{8} Other provisions of the SSUTA may also be violated.
3. The Governing Board should determine that CRIC and the Board should have found Nevada out of substantial compliance based on the foregoing; including Nevada violating the SSUTA fundamental purpose section, Section 102 of the SSUTA.

4. The Governing Board should find that the review process used by CRIC was fundamentally flawed in that CRIC had no written standards of review. CRIC members should have been required to formulate standards and/or the Governing Board should have provided CRIC with the standards to guide CRIC through the review process. The Governing Board should determine such guidance requires:

   a. A review for substantial compliance with all provisions of the SSUTA, regardless if prior reviews did not note issues with the state having compliance issues;

   b. Questions of compliance (doubt) must be for a finding against substantial compliance to put the state on notice that it needs to correct/clarify the issue; and

   c. Affirmations of compliance must be based on actual legislation, regulations, and written policies with a preference towards legislation.

5. The Governing Board should find the lack of review standards used by CRIC impacted its ability to adequately review the states substantial compliance with the SSUTA; further, the Board should find CRIC’s review of the states waned as it alphabetically reviewed the states compliance with the SSUTA.

6. The Governing Board should initiate the sanctions process under Section 809 by proposing a resolution to sanction Nevada.

7. The Governing Board in not finding Nevada out of compliance with the SSUTA has already taken action adverse to the petitioner on the subject matter of this petition. It is the petitioner’s understanding that pursuant to Article Seven, Section 4 of the SSUTA Bylaws
that the members of the Issue Resolution Committee are selected from states that are members of the SSUTA. Accordingly, to achieve greater independence in its review of this petition, petitioner requests the Governing Board retain a neutral third party or non-binding arbitrator. Such a process contemplated for in Section 1001 of the SSUTA.

8. The Governing Board should take any other action it deems appropriate.

Respectfully submitted,

[Signature]

Stephen P. Kranz
President, Business Advisory Council

Dated: July 13, 2009

Contact Information
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Washington, DC 20004-2415
(202) 383-0267
Stephen.Kranz@sutherland.com

Affirmation

Pursuant to Title 28 U.S.C., Section 1746(2), I, Fred Nicely, declare under penalty of perjury that the foregoing is true and correct.

Executed on July 13, 2009

[Signature]

Fred Nicely
Tax Counsel, Council On State Taxation
Exhibit A

Business Review of Nevada

Dated 11/16/2007
Streamlined Sales & Use Tax Agreement Compliance Checklist

Summary of Noncompliance and Other Areas of Concern

**State:** Nevada  **Date:** November 16, 2007

**Business Reviewer:** Albert Babbitt and Carolynn Iafrate

<table>
<thead>
<tr>
<th>Agreement Section</th>
<th>Topic</th>
<th>Level of Concern/Noncompliance</th>
<th>Discussion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Many</td>
<td>Many</td>
<td>Low</td>
<td>The compliance review was completed on November 14, 2007, and was based on a review of existing law and the assumption that the proposed regulations provided in October, 2007 by Dino DiCianno will be adopted as drafted.</td>
</tr>
<tr>
<td>303</td>
<td>Seller Registration</td>
<td>Low</td>
<td>NRS 372.130 applies a $5 fee for applying for a license. Per the Agreement, no fee may be charged for Streamlined registrants. Note that NRS 372.723 provides that Nevada's statutes are to be administered in accordance with NRS 360B, however NRS 360B does not expressly state that no fee shall be charged.</td>
</tr>
<tr>
<td>305</td>
<td>Local Rate &amp; Boundary Changes</td>
<td>Low</td>
<td>Section 305 provides that a rate change will be effective only on the first day of a calendar quarter after a minimum of 60 days’ notice to sellers. NRS 374.100 provides for a local school support tax at the rate of 2.25%. This rate is fixed by legislation, thus can only be changed by legislation. However, there is no express language regarding the 60 day notice requirement.</td>
</tr>
<tr>
<td>305</td>
<td>Local Rate &amp; Boundary Changes</td>
<td>Low</td>
<td>Section 305(B) provides provisions related to local rate changes as they related to printed catalogs. These provisions are not currently included in Nevada’s rate and boundary notification provisions.</td>
</tr>
<tr>
<td>306</td>
<td>Relief from Certain Liability</td>
<td>High</td>
<td>Section 328 requires that a Member State provide liability relief for sellers and CSP’s resulting from the Seller or CSP relying on information published by the State. However, NRS 360B.250 limits this relief to “registered sellers” and “CSP’s acting on behalf of registered sellers.” NRS 360B.065 defines registered seller as a seller registered under NRS 360B.200. Sellers who register under NRS 360B.200 are those that register under the Central Registration System. This relief was meant to apply to any seller, not solely those registered pursuant to the Central Registration System.</td>
</tr>
<tr>
<td>310</td>
<td>General Sourcing Rules</td>
<td>Low</td>
<td>Section 310 applies to a “product,” which can be tangible personal property, service, or digital goods; excluding leases and rentals. However, NRS 360B.360</td>
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<td>Page</td>
<td>Source/Category</td>
<td>Risk Level</td>
<td>Description</td>
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</tr>
<tr>
<td>311</td>
<td>General Sourcing Definitions</td>
<td>Low</td>
<td>Section 310 defines receive and receipt as the terms relates to services and digital goods. NRS 360B.350 does not include these provisions. Note that Nevada does not currently tax services or digital goods.</td>
</tr>
<tr>
<td>313</td>
<td>Direct Mail Sourcing</td>
<td>Low</td>
<td>Section 313 provides that a purchaser of direct mail can provide a direct mail form or information showing jurisdictions to which direct mail is delivered to recipients. NRS 360B.280 (1)(b) limits what Nevada will accept for in-state sellers, thus excluding the direct mail form. This also impacts whether the seller is relieved of liability or has to collect tax – it should not be limited to whether the seller is in state or out of state.</td>
</tr>
<tr>
<td>317</td>
<td>Administration of Exemptions</td>
<td>High</td>
<td>Section 317 provides that claims for exemption must be on a form prescribed by the Governing Board, whereas NRS 372.165, 372.235, 372.347 provides that claims for exemption must be as prescribed by the Department.</td>
</tr>
<tr>
<td>317</td>
<td>Administration of Exemptions</td>
<td>High</td>
<td>Section 317 relieves sellers from liability for improperly claimed exemptions, unless the seller fraudulently failed to collect the tax or solicited the purchaser to participate in the unlawful claim of an exemption. However, NRS 372.170 states that when there is an unsatisfied use tax liability the seller is liable for sales tax with respect to the sale of the property to the purchaser.</td>
</tr>
<tr>
<td>317</td>
<td>Administration of Exemptions</td>
<td>High</td>
<td>Section 317 relieves sellers from good faith requirement, even on drop ship transactions, yet NRS 372.225 provides a stringent good faith requirement for drop ship transactions.</td>
</tr>
<tr>
<td>317</td>
<td>Administration of Exemptions</td>
<td>High</td>
<td>Section 317 requires that a seller has 120 days subsequent to a request for substantiation to either prove that a transaction is not subject to tax or obtain a fully completed exemption certificate from the purchaser. This language is not contained in Nevada’s provisions.</td>
</tr>
<tr>
<td>317</td>
<td>Administration of Exemptions</td>
<td>High</td>
<td>Section 317(B)(3) allows for blanket exemption certificates. This language is not contained in Nevada’s provisions.</td>
</tr>
<tr>
<td>319</td>
<td>Uniform Rules for Remittances of Funds</td>
<td>High</td>
<td>Section 319 requires that the State allow for ACH Credit and ACH Debit. Nevada does not currently accept ACH credit.</td>
</tr>
<tr>
<td>319</td>
<td>Uniform Rules for Remittance of Funds</td>
<td>High</td>
<td>NRS 360B.200 applies only to Sellers who register under the Central Registration System. However Section 319 applies to all Sellers, regardless of whether they are voluntary registrants or not.</td>
</tr>
<tr>
<td>321</td>
<td>Confidentiality and Privacy Protections Under Model 1</td>
<td>Low</td>
<td>NRS 360B.320 is limited to consumers of tangible personal property (not services and digital goods). Note: Nevada does not tax services or digital goods.</td>
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<tbody>
<tr>
<td>326</td>
<td>Direct Pay Permits</td>
<td>Moderate</td>
<td>Section 326 requires a state to provide for direct pay authority, although it permits the state to set its own requirements. NRS 360B.260 provides for direct pay permits to be used by purchasers only in cases whereby the seller/supplier does not maintain a place of business in Nevada. As a practical matter, therefore, this may severely limit the application of direct pay authority.</td>
</tr>
<tr>
<td>328</td>
<td>Taxability Matrix</td>
<td>High</td>
<td>Section 328 requires that a Member State provide liability relief for sellers and CSP’s resulting from the Seller or CSP relying on information published by the State. However, NRS 360B.250 limits this relief to “registered sellers” and “CSP’s acting on behalf of registered sellers.” NRS 360B.655 defines registered seller as a seller registered under NRS 360B.200. Sellers who register under NRS 360B.200 are those that register under the Central Registration System. This relief was meant to apply to any seller, not solely those registered pursuant to the Central Registration System.</td>
</tr>
<tr>
<td>329</td>
<td>Effective Date for Rate Changes</td>
<td>High</td>
<td>Section 329 provides the effective date for rate changes. While NRS 360B.310 addresses effective dates for rate changes, this provision is limited to rate changes associated with boundary changes only.</td>
</tr>
<tr>
<td>330</td>
<td>Bundled Transactions</td>
<td>Low</td>
<td>Not noted on certificate of compliance.</td>
</tr>
<tr>
<td>331</td>
<td>Relief from Certain Liability for Purchasers</td>
<td>N/A</td>
<td>Nevada’s current provisions do contain Section 331. This section does not have to be enacted until January 1, 2009.</td>
</tr>
<tr>
<td>402</td>
<td>Amnesty for Registration</td>
<td>High</td>
<td>It appears that Nevada enacted Amnesty provisions in SB No. 515 (2005 session). However, the amnesty provisions do not appear to have been codified in the law.</td>
</tr>
<tr>
<td>402</td>
<td>Amnesty for Registration</td>
<td>High</td>
<td>Section 402 provides that amnesty precludes the state from assessment for uncollected and unpaid sales or use tax together with penalty and interest for the period the “seller was not registered in the state.” The Amnesty provisions provided for in SB No. 515 provide for tax, penalty and interest relief otherwise “due in the state at the time the Seller registers.” One might interpret these to be inconsistent.</td>
</tr>
<tr>
<td>402</td>
<td>Amnesty for Registration</td>
<td>High</td>
<td>Nevada’s amnesty provisions provide for relief for sellers provided registration occurs within twelve months of the effective date of the state’s participation in the Agreement. Should Nevada only be admitted as an associate member, this provision would have to be modified to specify that amnesty concludes twelve months after admitted as a Full Member pursuant to Section 705.</td>
</tr>
<tr>
<td>404</td>
<td>Registration by an Agent</td>
<td>Moderate</td>
<td>Section 404 provides that a seller may be registered by an agent and that such appointment must be in writing and submitted to a member state, if requested by such state. It does not appear that Nevada has adopted this provision.</td>
</tr>
<tr>
<td>Library of Bundle Transactions</td>
<td>Low</td>
<td>Proposed Regulations, NAC 372, Section 3 (3)(a)(1), Packaging definition. The</td>
<td></td>
</tr>
<tr>
<td>Library of Definitions</td>
<td>Definitions</td>
<td>Level</td>
<td>Proposed Regulations, NAC 372, Section 3 does not include Subparagraph (C)(2) of the Agreement’s Bundling Definition, which provides for treatment of bundled service transactions. Note Nevada does not tax currently tax services.</td>
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</tr>
<tr>
<td>Library of Definitions</td>
<td>Bundled Transactions</td>
<td>Low</td>
<td>Definition of delivery charges excludes services. Note that Nevada does not currently tax services.</td>
</tr>
<tr>
<td>Library of Definitions</td>
<td>Delivery Charges</td>
<td>Low</td>
<td>Proposed Regulations, NAC 372, Section 29 contradicts the definition under NRS 360B.425.</td>
</tr>
<tr>
<td>Library of Definitions</td>
<td>Delivery Charges</td>
<td>Moderate</td>
<td>Many of the definitions enacted in Chapter 360B of NRS conflict with already existing provisions in both Chapters 372 and 374 of NRS.</td>
</tr>
<tr>
<td>Library of Definitions</td>
<td>Various</td>
<td>High</td>
<td>However, NRS 372.723 provides that, “This chapter must be administered in accordance with the provisions of chapter 360B of NRS.”</td>
</tr>
<tr>
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<td></td>
<td>NRS 360B.170 provides that, “No provision of the Agreement authorized by this chapter invalidates, in whole or part, or amends any provision of the laws of this state. Adoption of the Agreement by this state does not amend or modify any law of this state. Implementation of any condition of the Agreement in this state, whether adopted before, at or after membership of this state in the Agreement, must be by the action of this state.”</td>
</tr>
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<td>It is clear from discussions with the Nevada Executive Director that the intent is that Chapter 360B of NRS will override any inconsistencies in Chapters 372 and 374 of NRS. However, the language of NRS 360B.170 could be viewed as inconsistent with this intent.</td>
</tr>
<tr>
<td>Library of Definitions</td>
<td>Retail Sale / Sale at Retail</td>
<td>High</td>
<td>Definition was properly adopted in Chapter 360B of NRS, but conflicts exist in already existing definitions contained in Chapters 372 and 374 of NRS. See comment above.</td>
</tr>
<tr>
<td>Library of Definitions</td>
<td>Sales Price</td>
<td>High</td>
<td>Doesn’t reference services throughout the definition. Other than that, definition was properly adopted in Chapter 360B of NRS, but conflicts exist in already existing definitions contained in Chapters 372 and 374 of NRS. See comment above.</td>
</tr>
<tr>
<td>Library of Definitions</td>
<td>Tangible Personal Property</td>
<td>High</td>
<td>Both 360B.095 and NRS 360B.485 define and construe tangible personal property. NRS 360B.485 provides that TPP “includes, but is not limited to, electricity, water…” The Agreement does not include this language. Also, the definition was</td>
</tr>
<tr>
<td>Library of Definitions</td>
<td>Prewritten Computer Software</td>
<td>High</td>
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<tr>
<td><strong>Proposed Regulations, NAC 372, Section 33</strong> provides that prewritten computer software is tangible personal property unless it is delivered electronically. The Agreement provides that prewritten computer software is tangible personal property, regardless of delivery method.</td>
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REG STILL CONTRADICTS STATUTE – CAN THEY ENACT THE EXEMPTION VIA REG. IF SO – EPXRESLLY DO IT, DON’T TRY TO CARVE OUT FROM TPP.

<table>
<thead>
<tr>
<th>Library of Definitions / Taxability Matrix</th>
<th>Load and Leave</th>
<th>High</th>
</tr>
</thead>
<tbody>
<tr>
<td>This term is not defined, yet Nevada exempt delivery of prewritten computer software via load and leave per its completed taxability matrix. This term must be defined. Proposed Regulations, NAC 372, Section 33 also contradict this exemption. If the Department can adopt the exemption via regulation, it could do so in this regulation.</td>
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</tbody>
</table>

HAVE DEFINED THE TERM IN REG. §13, YET THE EXEMPTION DOES NOT EXIST IN STATUTES.

<table>
<thead>
<tr>
<th>Library of Definitions</th>
<th>Sales Price / Prewritten Computer Software</th>
<th>High</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Proposed Regulations, NAC 372, Section 35</strong> should be removed as they could be construed as contradictory to the definition of sales price.</td>
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</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Library of Definitions / Taxability Matrix</th>
<th>Prewritten Computer Software / Delivered Electronically</th>
<th>High</th>
</tr>
</thead>
<tbody>
<tr>
<td>In order to maintain the exemption for prewritten computer software delivered electronically, the exemption must be enacted. Proposed Regulation NAC 372 provides an exemption (albeit, it must be reworded, as discussed above). Does the Department have the authority to enact the exemption via regulation?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Library of Definitions</th>
<th>Dietary Supplement</th>
<th>Low</th>
</tr>
</thead>
<tbody>
<tr>
<td>NRS 360B.430 does not contain the language in Subparagraph C of said definition of the Agreement, “identifiable by the “supplemental Facts” box on the label.”</td>
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</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Library of Definitions</th>
<th>Food</th>
<th>Low</th>
</tr>
</thead>
<tbody>
<tr>
<td>The exemption for “Food for Human Consumption” contained in NRS 372.284 / 374.289 does not need to include the carve-out for alcoholic beverages, and vitamins (dietary supplements) as they are already expressly excluded based on the definition adopted for food in NRS 360B.445. Is it necessary to exclude pet food from the exemption for “Food for Human Consumption?”</td>
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</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Library of Definitions</th>
<th>Food</th>
<th>Low</th>
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<tr>
<td>NRS 360B.495 construes tonics and vitamins to include dietary supplements. Tonics are undefined, while vitamins are actually defined as dietary supplements.</td>
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<th>Library of Definitions</th>
<th>Drug</th>
<th>Moderate</th>
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<tr>
<td>The term medicine is defined in both NRS 372.283(2) / NRS 374.287(2) and NRS 360B.455 in such a way that it encompasses the definition of drug. While this, in and of itself, is not an issue, Nevada’s exemption is for the term medicine. The</td>
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<td>Prosthetic Device</td>
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<tr>
<td>Mobility Enhancing Equipment</td>
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<tr>
<td>Should contain the language, “but does not include durable medical equipment.”</td>
<td>Should the taxability of prepared food for immediate consumption on the premises be noted on the taxability matrix?</td>
<td>Can be exempt if furnished by a licensed physician, dentist, podiatric physician and hospital pursuant to NRS 372.283.</td>
</tr>
</tbody>
</table>

Various regulations appear to still be effective that are now contradictory to existing law. For example, NAC 372.080 provides that a lessor remit use tax on its purchase of equipment for “resale.” Leases and rentals are sales at retail, and as such the purchase by a lessor for the purposes of leasing is a sale for resale, thus no use tax should be due.
Exhibit B

Nevada Workshop on Proposed Tax Regulation

Dated 6/23/2009
PUBLIC NOTICE

TO: To All Interested Parties
FROM: Paulina Oliver, Tax Manager
DATE: June 23, 2009
RE: Workshop on Proposed Tax Regulation

We will hold a meeting to receive input on proposed changes to Chapter 372 of the Nevada Administrative Code for the implementation of the Streamlined Sales and Use Tax Agreement, and incorporating uniform definitions into the provisions governing the imposition and administration of the sales and use tax. The workshop will be held at the following locations:

Carson City – Friday, July 10, 2009

Nevada Legislative Building
401 S. Carson Street, Room 2134
Carson City, Nevada

Las Vegas – Via Video Conference

Legislative Counsel Bureau
Grant Sawyer State Office Building
555 E. Washington Ave, Room 4412E
Las Vegas, Nevada

The meeting will start at 2:00 p.m. All interested parties will have the opportunity to present their ideas for suggested language at this meeting. Drafts will be prepared using this input and will be circulated to all parties, prior to submission to the Legislative Counsel Bureau, and prior to the public hearing(s) before the Nevada Tax Commission. All public input will be considered in preparing a proposed regulation to be presented to the Nevada Tax Commission for adoption.

A draft of the proposed regulation will be made available on our web-site for your informational review. Proposed amendments to the administrative code will be discussed at the above scheduled meeting. We encourage you to provide us with your suggestions in writing.

If you require any additional information concerning this matter, please don’t hesitate to contact the Department of Taxation. Thank you.
PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION

LCB File No. ______

May 2009

Explanation – Matter in italics is new; matter in brackets [omitted material] is material to be omitted.

AUTHORITY: NRS 360.090, 360B.110, 360B.400 and 372.723.

A REGULATION relating to the implementation of the Streamlined Sales and Use Tax Agreement, and incorporating uniform definitions into the provisions governing the imposition and administration of the sales and use tax.

Section 1. NAC 372.019 is hereby amended to read as follows:

1. “Drug” has the meaning ascribed to it in NRS 360B.435 and includes, without limitation, injectable dermal fillers prescribed by a physician, saline solutions, medical grade gases, and insulin.

2. For the purposes of carrying out NRS 372.283 the Department will construe medicine exempted from sales and use tax to include any drug that is prescribed by a physician pursuant to NRS 360B.465

Sec. 2. NAC 372.027 is hereby amended to read as follows:

1. “Prosthetic device” has the meaning ascribed to it in NRS 360B.475 and includes, without limitation, breast implants, dialysis and medicine delivery and feeding catheters, insulin pumps, cochlear implants and amalgams, orthodontic devices, ceramics, porcelain and gold, silver and other metal alloys used to fill teeth.
2. For purposes of NRS 372.283 the Department will construe a prosthetic device exempt from sales and use tax if prescribed or applied by a licensed provider of health care who is acting within the scope of his practice.

3. "Prosthetic device" does not include "Durable Medical Equipment" or "Mobility Enhancing Equipment."

Sec. 3. NAC 372.038 is hereby amended to read as follows:

If any of the provisions of:

1. This chapter conflict with any of the provisions of chapter 374 of NAC, the provisions of this chapter shall be deemed to prevail.

2. This chapter or chapter 360B of NRS conflict with any of the provisions of chapter 372 of NRS, the provisions of chapter 372 of NRS shall be deemed to prevail.

Sec. 4. NAC 372.101 is hereby amended to read as follows:

1. Delivery charges included in the sale of tangible personal property are subject to sales and use taxes pursuant to NRS 360B.480

2. "Delivery Charges" has the meaning ascribed to it in NRS 360B.425

2. A delivery charge shall be deemed not to be included in the sale of tangible personal property if the charge:

   — (a) Does not pertain to any preparation, handling, crating or packing services performed by the seller before shipment; and

   — (b) Is stated separately on the invoice given to the purchaser.

3. A delivery charge that is not connected with the sale of tangible personal property is a charge for a service and is not subject to sales and use taxes.
4. If a shipment of tangible personal property which is sold to a purchaser includes both taxable and exempt property, the seller of the property shall comply with the provisions of NRS 360B.255

Sec. 5. NAC 372.080 is amended to read as follows:

1. "Transfer of possession," "lease" and "rental" have the meaning ascribed to it in NRS 360B.450. Such transactions are found to be in lieu of a transfer of title, exchange or barter for the purposes of NRS 372.060(2). A person who purchases tangible personal property outside of this State for lease or rental within this State shall pay the use tax due in this State measured by:

   — (a) The cost of the property to him; or
   — (b) His gross lease or rental charges for the lease or rental of the property within this State.

2. A person who purchases tangible personal property within this State for lease or rental within this State shall:

   — (a) Pay the sales tax to his vendor on the sales price of the property to him; or
   — (b) Give the seller a resale certificate for the property and elect to pay the tax measured by the gross lease or rental charges for the lease or rental of the property within this State.

3. If a person who sells and rents or leases tangible personal property within this State gives a resale certificate to the vendor from whom he purchases property, when the property is:

   — (a) Sold, the tax applies to the sales price.
— (b) Committed to lease or rental transactions in this State, he shall pay the use tax due in this State measured by:

— (1) The cost of the property to him; or

— (2) His gross lease or rental charges.

4. If the purchaser:

— (a) Pays the tax to his vendor on the sales price of the property to him, no further tax is due and tax must not be collected from the customer on the gross lease or rental charges.

— (b) Elects to measure the use tax by his gross lease or rental charges, he may seek reimbursement for the tax from his customers measured by the lease or rental charges.

5. 2. When the property is sold the tax applies to the sales price of the property within this State following its use in rental or lease service, without any deduction or credit for the tax paid on the original cost of the property or the taxes paid on the gross lease or rental charges.

— 6. A person who elects to pay the tax measured by his gross lease or rental charges pursuant to this section is not required to pay the sales tax for the purchase of parts or other equipment for the tangible personal property which is committed to lease or rental use in this State if he gives a resale certificate to the vendor from whom he purchases the property.

— 7. A person who initially elects to pay the tax measured by his gross lease or rental charges and later wishes to pay the use tax may pay that tax measured by the cost of the property to him. The Department shall not grant a refund or credit for any taxes paid or due before he makes such an election.
8. Mandatory charges, whether or not separately stated, for any service, activity or function made in conjunction with the lease or rental of tangible personal property will be considered a part of the gross lease or rental charge and are subject to the tax. The term "mandatory charges" may include for example, without limitation:

(a) A fee or charge for mileage;

(b) A fee or charge for the return of the property, commonly referred to as a "drop-off charge."

(c) A fee or charge for the reinstatement of a lease or rental agreement.

(d) Reimbursement for fixed costs or expenses, including, without limitation, management fees, interest, financing fees and carrying charges, collection call charges, repossession charges and billing charges.

9. Optional charges, separately stated, made in connection with the lease or rental of tangible personal property are not subject to the tax. The term "optional charge" may include for example, without limitation:

(a) Fee or charge for the installation, erection, assembly or disassembly of the property.

(b) Charge for a collision damage waiver or a similar instrument that acts as a waiver of the lessor's right to collect from the lessee for any damage to the property.

(c) Charge for the services of a person to operate or instruct another in the operation of the property.

(d) Charge for fuel used to operate the property.

(e) Fee or charge for the delivery, transportation or other handling of the property.

(f) Fee or charge for maintaining, cleaning or altering the property.
(g) Fee or charge for insurance, such as personal accident, extended protection or coverage for personal property.

10. The Department will determine whether a charge is mandatory or optional according to the terms of the agreement under which the charges are paid.

++ 3. The fee for access to an airport and the charge for reimbursement of property taxes will not be considered part of the gross lease or rental charge if separately stated.

12. 4. A gross lease or rental charge must represent a fair-market value of the leased or rented property. For purposes of Section 1 of this regulation, the “sales price” of a lease shall be the fair market value of the lease stream. “Fair market value” is defined as terms that would be agreed to between unrelated parties at arm’s length.”

13. Any charges assessed for damages for which the lessee is held responsible are exclusive of the original rental or lease contract, including those commonly referred to as a “charge-back fee” or “damage reimbursement.” The Department will treat such charges as a taxable sale of tangible personal property from either the person making the repair for the lessor or from the lessor for the responsible party.

14. 5. A lessor may discontinue charging use tax on the basis of gross lease charges when a lease agreement is terminated. Periodic billing statements for amounts which are past due at the time the agreement is terminated may continue after termination for collection purposes.

15. 6. Evidence that a lease agreement has been terminated includes:

(a) Documentation showing that the leased property has been repossessed or returned to the lessor.
(b) A formal notice of termination that has been personally served upon the lessee or served upon the lessee by certified mail, return receipt requested, or registered mail.

(c) Proof that the property has been wrecked, damaged, stolen or otherwise rendered unusable.

(d) A new agreement to lease the same equipment to the same or another lessee.

(e) Any other evidence or documentation which is acceptable to the Department and shows that a lease agreement has been terminated.

Such evidence must be maintained pursuant to NRS 372.735.

47. 7. Except as otherwise provided in subsection 47-6, if a lease is terminated and the property is returned, any payments, penalties or other charges or fees collected by the lessor as a result of a breach of contract are not subject to taxation as gross lease charges.

47. 8. Any portion of the payments, penalties, fees or other charges described in subsection 47.5 which represents sales or use taxes must be reported and remitted to the Department.

Sec. 6. NAC 372.605 is hereby amended to read as follows:

1. As used in NRS 372.284 and 372.2841 the Department will interpret the term "prepared food intended for immediate consumption" to mean prepared food customarily sold with eating utensils provided by the seller, including including plates, knives, forks, spoons, glasses, cups, napkins or straws. For the purposes of this subsection, “plates” does not include any containers or packaging used to transport food.

   to have the meaning ascribed to “Prepared Food” in NRS 360B.460.

2. “Prepared food” does not include:
(1) Two or more food ingredients mixed or combined by a retailer for sale as a single item, if the retailer's primary classification in the North American Industry Classification System, 2002 edition published by the federal office of management and budget, is manufacturing under subsector 311.

(2) Two or more food ingredients mixed or combined by a retailer for sale as a single item, sold unheated and sold by volume or weight.

(3) Bakery items made by a retailer, including breads, rolls, pastries, buns, biscuits, bagels, croissants, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, and tortillas.

Sec. 7. NAC 372.070, 372.075, 372.085, 372.086 and 372.088 are hereby repealed.
Exhibit C

Report on the 2008 State Recertification

Dated 9/24/2008
Memo

To: Compliance Review and Interpretations Committee

From: Scott Peterson and Pam Cook

Date: September 24, 2008

Re: Report on the 2008 state recertification

The following is a report on a review of each state’s compliance with those changes in the SSUTA that had to be completed by the date when states submitted their recertification documents. Each state’s laws and regulations were compared with the certificates of compliance, recertification letters and taxability matrix submitted by the states. In addition a review was done a couple different items from the certificate of compliance selected at random.

The following is a review of what is in the state’s law and regulation. Every state was contacted after the initial review and given the opportunity to respond. This report also includes a SST staff response if the state’s answer is something other than they acknowledge they have an issue.

Arkansas:

Issues resolved by state.
1. The definition of drug is more restrictive than what is in the SSUTA, but they have responded to a BAC letter on this.

State response:
Arkansas’s Gross Receipts Tax and Compensating Use Tax proposed rule 2008-3, dated July, 2008, reflects the SSUTA definition of “drug” for purposes of administering this exemption. The definition is found in GR-38 of the rules and may be reviewed by accessing the Department’s web site at www.arkansas.gov/dfa. The Department administers the exemption for “prescription drugs” in accordance with this rule. The rule will become effective October 15, 2008.

SST Staff response:
This item will not be an issue when the rule becomes effective.
2. Do not exclude telecommunication from bundling.

State response:
Arkansas’s Gross Receipts Tax and Compensating Use Tax proposed rule 2008-3, dated July, 2008, also reflects the SSUTA provisions for purposes of taxation of bundles that include telecommunications services. The provision is found in GR-7(B) of the rules. The rule will become effective October 15, 2008.

SST Staff Response:
This item will not be an issue when the rule becomes effective.

Indiana:

1. Ancillary services and Internet access inside telecommunication services.

State response:
The term “ancillary services” is defined in IC 6-2.5-1-11.3 as worded in the Agreement, and the term “telecommunication services” is defined in IC 6-2.5-1-27.5 as worded in the Agreement. The definition of telecommunication services excludes ancillary services and Internet access from the definition and IC 6-2.5-4-6 provides that telecommunications services are a retail transaction, which would make ancillary services and Internet access exempt from the sales tax because it is excluded in the definition.

SST Staff response:
This item no longer an issue.

2. Sourcing ancillary services on a call-by-call basis only.

State response:
This provision needs to be added to the Indiana Code as an amendment to IC 6-2.5-12-16. Information Bulletin #51T will be changed to include the provision for sourcing ancillary services based on the customer’s place of primary use.

SST Staff response:
Ancillary services do not need to be sourced because ancillary services are not taxable.

3. Sales price definition is out of date.

State response:
The Indiana definition of gross retail income needs to be updated, but at this time I don’t think that our current definition contained in IC 6-2.5-1-5 would
put us in a situation where Indiana is not substantially compliant. Legislation will be introduced during the 2009 session to update the definition.

SST Staff response:
Indiana’s sales price definition includes the old bundling language and does not include the “third party” information.

4. Do not exclude telecommunication from bundling.

State response:
The language concerning the bundling of telecommunications services is contained in IC 6-2.5-4-6(c) and provides: “Subject to IC 6-2.5-12 (taxing situs of nonmobile telecommunications) and IC 6-8.1-15 (taxing situs of mobile telecommunications), and not withstanding subsections (a) and (b), if charges for telecommunications services, ancillary services, Internet access, audio services, or video services that are not taxable under this article are aggregated with and not separately stated from charges subject to taxation under this article, the charges for nontaxable telecommunication services, ancillary services, Internet access, audio services, or video services, are subject to taxation unless the service provider can reasonably identify the charges not subject to the tax from the service provider’s books and records kept in the regular course of business. Emphasis supplied.

SST Staff response:
This item no longer an issue.

Iowa:

1. No definition or sourcing for ancillary services.

State response:
Iowa Code section 423.20 deals with telecommunication service sourcing. There is no specific definition of “ancillary services” in this Code section, but IDR believes the broad definitions of “mobile telecommunication service” or “private communication service” will cover ancillary services. IDR plans to draft an administrative rule for telecommunication services. Included in the rule will be a description of ancillary services including the fact that ancillary services will be sourced to the same location as the telecommunication service.

SST Staff response:
“Mobile telecommunication service” and “private communications service” are subcategories of “telecommunications service.” The definition of telecommunications service specifically excludes ancillary services. Ancillary services are only sourced to primary place of use whereas telecommunications services can be sourced based on a call-by-call rule or to primary place of use.
Some ancillary services are charged on a call-by-call basis and using the telecommunications sourcing rule could cause incorrect sourcing.

2. Bundling remains in sales price.

State response:
Iowa Code section 423.1(47) contains a general definition of sales price. Iowa Code section 423.2(8) more specifically imposes the tax on bundled transactions. The definition in section 423.1(47) states that a bundled transaction of tangible personal property is taxed. There is also a second provision in the definition allowing for an exemption if the exempt amount is separately contracted for, or separately stated on an invoice or billing. IDR believes there is a valid legal distinction between the two sections (423.1(47) and 423.2(8)) and that there is no conflict between these two sections. IDR feels both sections properly reflect the Department's position on these types of transactions as well as the fact that these provisions have been consistently interpreted and applied. Finally, IDR believes the SSUTA's definition of sales price is not all inclusive. In fact, individual states have the authority to add additional language more clearly reflecting their positions.

3. Third party consideration is not included in sales price.

State response:
Again, Iowa Code section 423.1(47) contains the definition of sales price. This definition does not have the specific language as stated in Part I Administrative Definitions in the SSUTA. The Iowa definition does include trade discounts. IDR believes the definition is correct because sales price means the total amount of consideration, which would include amounts received from third parties. Since there is no exclusion for amounts received from third parties, there is an implied inclusion. IDR also has Rule 701-15.6 which deals with discounts, rebates, and coupons. IDR plans to review and update this rule to determine if third party payments should be added to this rule or included in a separate rule. IDR has been consistent in application of these provisions.

SST staff response:
Not all transactions involving third party consideration meet the requirements for inclusion contained in the definition in the SSUTA.

4. Telecommunication is included within bundling.

State response:
I believe that this item implies that the books and records provision is not included in the Code provision. Again, bundled transactions are contained in Iowa Code section 423.2(8). The old provision allowed the Director to enter into agreements related to bundled transactions of services. In essence, the
taxpayer would show through their books and records that a certain item was not taxable and detail the amounts related to this item. The Director would agree that tax was due only on the taxable portion of the transaction. An agreement was entered into based on the detailed information. IDR continues to follow this concept. As stated above, IDR plans to draft a rule related to telecommunication services. Included within the rule will be information related to the taxpayer’s ability to tax the transaction based on the books and records of the taxpayer. The rule will incorporate all the provisions stated in the SSUTA.

SST staff response:
The books and records provisions of the SSUTA were not intended to allow a state to enter into an agreement with every seller.

Kansas:

No issues.

Kentucky:

1. The exemption for hospital bed exemption was incorporated into statute as a use-based exemption for private noncommercial use. Proposed amendments to provide a broader DME exemption failed to pass the KY General Assembly in 2007 and 2008. Based upon what we now understand is the intent of the current Section 316, we will propose statutory amendment language during the 2009 legislative session.

Michigan:

1. No definition or sourcing for prepaid wireless.

State response:
SSUTA Sec. 314(C)(3), as of 1/1/08, requires the sale of prepaid wireless calling service to be sourced under Section 310. Michigan has not yet changed its definition of “prepaid calling service” to “prepaid wireless calling service; that change is part of pending legislation (HB 5556, Sec. 9(j)) which has been passed by the Michigan House and is pending in the Michigan Senate. Bills may be accessed through www.legislature.mi.gov).
Nevertheless, Michigan statute currently uses the term “prepaid mobile telecommunications service,” and excludes “prepaid mobile telecommunications service” from “mobile telecommunications services,” (see MCL 205.93b(8)(h)), providing for sourcing of “prepaid mobile telecommunications service” under MCL 205.110, which incorporates the sourcing regimen of SSUTA Sec. 310. The definitional change will not alter the tax treatment.
2. No definition or sourcing ancillary services.

State response:
Definition and sourcing of “ancillary services” is addressed in HB 5556 (Sections 3a(5)(a) and 3c), which has been passed by the Michigan House and is pending in the Michigan Senate.

3. Do not exclude prepaid wireless from the definition of post paid.

State response:
The service the SSUTA describes in “prepaid wireless calling service” is currently found in Michigan’s definition of “prepaid mobile telecommunications service.” MCL 205.93b(8)(j), and is taxed under MCL 205.93b. “Post paid calling service” is defined and taxed pursuant to a separate statutory section (MCL 205.93c), effectively excluding “prepaid wireless” from the definition of “post paid.” This exclusion is formally recognized in HB 5556, which has been passed by the Michigan House and is pending in the Michigan Senate. Because Michigan defines both prepaid and post paid wireless calling services these definitions must operate in a mutually exclusive fashion with a result that statutory amendment will represent form over substance.

SST staff response:
The postpaid definition includes the sentence that it includes transactions that would have been prepaid calling but aren’t because other than telecom can be purchased. They have not amended this sentence to exclude prepaid wireless.

4. Drop shipment does not allow for information providing except SST and their form.

State response:
HB 5555 and 5556 (both passed by the Michigan House and pending in the Michigan Senate) will accommodate “any other acceptable information evidencing qualification for a resale exemption.” (HB 5555, Sec. 4k(2); HB 5556, Sec. 4l(2)). Current administrative practice is to accept any other information giving evidence of a proper resale claim of exemption, therefore statutory amendment will have no effect.

5. State does not accept a SER, although the statutes seem to provide for it.

State response:
Michigan’s Department of Treasury has the legal authority to accept an electronic tax return. Severe budget restrictions in recent years have hampered the Department’s ability to update existing software to accommodate electronic sales/use tax returns in the midst of developing a system for an entirely new tax structure replacing the Single Business Tax.
However, approval has recently been granted for expenditure of funds to make the necessary software and system changes required to permit Michigan to accept simplified electronic returns as provided in the SSUTA. It is expected that those changes will be in place by October 31, 2008. It should be noted that the information provided with a payment in the form of an electronic funds transfer provides all the information Michigan requires to process the remittance; the “simplified electronic return” requires the taxpayer to submit more information than Michigan requires and is certainly not a simplification. It should also be noted that current discussions aimed at changing the SER raise the concern that our efforts and expenses may be largely wasted, and that we will have even more difficulty in attracting scarce IT resources for a “retooling” of a modified SER.

6. No books and records provision for Internet access, ancillary services, and audio or video programming services.

State response:
This item relates to a provision in the “Bundled Transactions” section of the SSUTA (Sec. 330(C)). See response to item 7.

7. No bundled transaction provisions.

State response:
With the exception of telecommunications service bundles, the term “bundled transaction” is not, and has never been, used in Michigan statute or general tax administration practice. The definition has no general application in Michigan and its enactment would represent “form over substance.” “Bundled” transactions including telecommunications components are currently treated as provided under the SSUTA’s definition of “bundled transaction.” (see MCL 205.93a(2),(3)). Pending legislation in the form of HB 5556 (passed by the Michigan House and pending in the Michigan Senate) adds to MCL 205.93a a specific definition of “bundled transaction” and a provision addressing treatment of a “bundled transaction” that includes telecommunications service, ancillary service, internet access, or audio or video programming. (HB 5556, Sec. 3a(4), (5)(B))

8. Do not provide liability relief for CSPs, and model 2 sellers.

State response:
HB 5554, Sec. 25(3), passed by the Michigan House and pending in the Michigan Senate, provides a CSP and a Model 2 Seller relief from liability for reliance on the certification of its software program.

9. Do not provide liability relief for CSPs.

State response:
HB 5554, Sec. 25(3), passed by the Michigan House and pending in the Michigan Senate, provides a CSP relief from liability in the same manner as sellers under MCL 205.62 (see HB 5556, Sec. 12(5)-(10)). While not yet specific in Michigan statute, longstanding administrative practice is to hold harmless those who accept exemption claims in good faith whether seller or CSP.

10. Do not provide CSPs and Model 2 sellers 10 days to correct errors.

State response:
This provision would be inconsistent with Sec. 28(1)(e) of Michigan’s Revenue Act, which prohibits the state treasurer or any Department of Treasury employee from compromising or reducing in any manner any tax due Michigan. MCL 205.28(1)(f). Michigan will include this in the pending legislation.

11. No definition for telecommunications nonrecurring charge, however this isn’t necessary if taxable.

State response:
Telecommunications nonrecurring charges are not subject to tax. HB 5556, Sections 3a(1)(a), 3a(1)(c) & (4)(r) (passed by the Michigan House and pending in the Michigan Senate) confirm the nontaxable status of telecommunications nonrecurring charges and provide a definition. However, it seems redundant to exclude installation charges from the definition of “telecommunication services” and to also require specific exclusion from “sales price” those same charges renamed “telecommunications nonrecurring charges”. As Michigan only taxes services when specifically enumerated this statutory amendment will have no substance.

SST staff response:
SLAC determined that telecommunications nonrecurring charges were not installation charges and developed the definition so that states that didn’t tax such charges could keep the nontaxable treatment.

12. No third party consideration language.

State response:
HB 5555 and 5556 (both passed by the Michigan House and pending in the Michigan Senate) revise the definitions of “sales price” and “purchase price” to include provisions addressing third party consideration. HB 5555, Sec. 1(1)(d)(vii); HB 5556, Sec. 2(f)(vii). These definition revisions will simply codify what has been the administrative practice in Michigan for many years.

13. No durable medial equipment change.
State response:
HB 5555 and 5556 (both passed by the Michigan House and pending in the Michigan Senate) include in the definition of “durable medical equipment” all components or attachments used in conjunction with durable medical equipment. HB 5555, Sec. 1a(j); HB 5556, Sec. 2b(j).

14. Missing several telecommunication definitions.

State response:
Those telecommunication definitions contained in Part II of the SSUTA’s Appendix C (Library of Definitions) that are not currently contained in Michigan law are added by HB 5556, Sections 3a(5), 3b(9), and 3c(4) (passed by the Michigan House and pending in the Michigan Senate).

Minnesota:

1. The books and records requirement for in Section 330 seem more restrictive than what is provided in Section 330.

State response:
We have reviewed Section 330 of the Agreement and believe Minnesota is in compliance with the books and records requirement in the telecommunication bundling provision found in that section. Section 330 of the Agreement indicates that the provider must be able to identify by reasonable and verifiable standards from books and records that are kept in the regular course of business the price attributable to the taxable and non-taxable products involved in the transaction. In drafting M. S. 297A.61, Subd. 4(m), Minnesota incorporated wording directly from Rule 330.2.B, which describes how to use the bundled transaction definition for telecommunication service, ancillary service, Internet access and audio video programming service, to further explain the books and records requirement. Item 2 of Rule 330.2.B reiterates that when the taxable portion of a bundled transaction's non-itemized price is subjected to taxation under Section 330(C), a member state shall use only books and records maintained by the seller in the regular course of business. It goes on to explain that books and records are considered to be maintained primarily for tax purposes when the books and records identify taxable and nontaxable portions of the price, but the seller maintains other books and records that identify different prices attributable to the distinct products included in the same bundled transaction."

There was no intent to make the terms of this provision more restrictive, rather we were hoping to make the statutory language more clear and complete by adding wording which otherwise would be adopted by Rule or Revenue Notice since it is part of the Rules and Procedures approved by the Streamlined Sales and Use Tax Agreement. If this is not the language industry would like states to use, an amendment to the Rules is needed.

Having discussed this issue with Doug Hurst from Qwest during the legislative process we are aware that it is common for industry to have
different prices for the same products included in a bundled transaction. The Department has committed to working with industry to clarify what we will require from their books and records in an audit situation. This could take the form of a Revenue Notice, which is binding on the Department of Revenue, or could be done by Rule.

Nebraska:

1. No sourcing for ancillary services.

State response:
See answer to number 2 below

2. Unable to tell if they are taxing ancillary services.

State response:
The statutory reference was changed to “§77-2703.04(1) & (2)” and a description of Nebraska’s taxation of ancillary services was added in the comments section. Nebraska does not tax ancillary services, per se. Nebraska only taxes ancillary services, such as voice mail and call waiting, when such services are part of the “gross receipts” for local telephone communication services. As noted in the taxability matrix for “Ancillary Services”, Regulation 1-065 is the regulatory reference for the taxation of the various ancillary services. I think the confusion comes from the fact that in Nebraska, although we have included the entire definition of telecom in our statutes, we do not tax all telecommunication services. We only tax telephone communications service which we call local exchange and intrastate messaging service and mobile telecommunications service. See section 77-2701.16(2)(a)(i) and (ii). We tax mobile telecommunications as defined in 77-2703.04(3). Sourcing of both of these is pursuant to section 77-2703.04(1) and (2). You are correct that telecommunication services does not include ancillary services. We tax voice mail, call waiting, etc., as part of gross receipts for local exchange and mobile telecom pursuant to section 77-2701.16(2)(a)(i) and(ii) which we are permitted to do pursuant to the “telecommunications” definition in the Agreements library of definitions. We also cite Sales and Use Tax Regulation 1-065.05 as our basis for doing so.

SST staff response:
“Local service” and “mobile telecommunications service” are subcategories of “telecommunications service” which specifically excludes “ancillary services”. Although the Agreement allows member states to define local service, that definition cannot be inconsistent with the definition of telecommunications service. There is no definition of intrastate messaging in the telecommunications definitions. In order to match the current base, the tax should be on intrastate telecommunications service (which automatically includes local service, mobile telecommunications service and intrastate long
distance), voice mail service and vertical services. If private communications, 800 service or any other defined service isn’t tax, an exemption can be provided. Ancillary services should only be sourced to primary place of use. The telecommunications sourcing rules provided different schemes for transactions on a call-by-call basis. Since voice mail and vertical services may be charged on a call-by-call basis, incorrect sourcing could occur using the telecommunications sourcing rules.

3. No sourcing for prepaid wireless.

State response:
The statutory reference was updated to §77-2701.16(8). This section contains the imposition as well as the sourcing language. In our statutes, we use the term prepaid telephone calling arrangements instead of the terms prepaid wireless calling service and prepaid calling service. I have asked our legislative drafters to make this correction for next year to include both. The term prepaid telephone calling arrangements is included in our definition of taxable gross receipts. The definition and sourcing of these are found in section 77-2701.16(8).

Nevada:

1. No ACH debit or credit.

State response:
Nevada can confirm that ACH Debit is available and is functioning. The ability to pay through ACH Debit has been in place for over three years on our electronic Online Tax system, which can be found on our web site.

We have just completed the necessary account balance process for accepting ACH Credit in conjunction with the State’s Treasurer’s Office, with verification through the State’s Controller’s Office. We are now working with our vendor “Accenture” to build the programmatic processing capability “interface” between the State Treasurer’s Office and our unified computer tax system at the Department. That process will be completed in short order in conjunction with the reconciliation process. In the interim, we do afford taxpayers the ability to pay electronically through other types of electronic funds transfers.

2. See compliance letter from business community and response from Nevada.

SST staff response:
Nevada’s rules have not become effective which is the solution stated in the response to the business community.

New Jersey:
1. Did not adopt the telecommunications service definition and tax services which are specifically excluded in the definition under the definition of telecommunications service.

2. Did not adopt a definition for ancillary services and consider such services to be telecommunications service under the state definition.

3. Did not adopt the definition of international telecommunications services and not tax those services under the interstate definition.

4. Did not adopt the definition of and sourcing for prepaid wireless calling service.

5. Did not include thresholds, such as exempting coin-operated calls only for the local calling rate when the SSUTA contains a definition for coin-operated telephone service that includes all such services whether they are local or not.

6. Bundling is still in sales price definition.

7. Missing prepaid wireless sourcing.

State response:
For points 1 through 7, pending legislation has been introduced and is in committee in both houses of the Legislature.

8. Unable to determine if what is found in 54:32B-8.45 is a second state rate or a cap.

State response:
N.J.S.A. 54:32B-8.45 provides for a sales & use tax rate that is 50% of the general state rate. The reduced rate only applies to sales made by a seller from a place of business regularly operates by the vendor for the purpose of making retail sales at which items are regularly exhibited and offered for retail sale and which is not primarily utilized for the purpose of making catalogue or mail order sales, in which county is situated an entrance to an interstate bridge or tunnel connecting New Jersey with a state that does not impose a retail sales and use tax or imposes a retail sales and use tax at a rate at least five percentage points lower than the rate in this State.

The purpose of this statutory provision was to provide an incentive for New Jersey residents to make purchases in New Jersey rather than crossing the bridge to the neighboring state of Delaware, which has no sales tax.

This reduced rate does not burden out of state sellers because it applies to retail sales made from a place of business in Salem County. It also does not burden in-state sellers because sellers located within Salem County are permitted to "opt-out" of collecting the reduced rate and collect the full 7% rate. The Division's position is that since the collection of the reduced rate is essentially at the seller's election, there is no burden imposed by the State.

9. Unable to determine what stage of adoption the regulations providing relief from liability are in.
State response:
N.J.S.A. 54:32B-14(g) states "No person required to collect any tax imposed by this act shall be held liable for having charged and collected the incorrect amount of sales and use tax by reason of reliance on erroneous data provided by the director with respect to tax rates, boundaries or taxing jurisdiction assignments or contained in the taxability matrix."

The wording of this statute seems to be clear on its face that relief from certain liabilities as indicated in the SSUTA at Section 306 exists.

SST Staff response:
This item is no longer an issue.

North Carolina:
No issues.

North Dakota:

1. No definition of prepaid calling service.

State response:
The omission of this definition was an oversight our part when we drafted a rule to adopt all the other telecommunication definitions. The exact definition of prepaid calling services will be adopted the next time North Dakota promulgates sales and use tax rules. Even though North Dakota has not yet adopted this definition by rule, we assert that North Dakota is in substantial compliance with the Streamline Sales and Tax Agreement.

For many years, North Dakota has imposed sales and use tax on "communication" services. North Dakota Administrative Code Section 81-04.1-04-41.1 defines communication service to include telecommunication services, ancillary services, and internet access. North Dakota has taxes prepaid calling services as a communication service since it became a full-member state of the Agreement on October 1, 2005 and has made no law changes since becoming a full-member state that impact the taxability of these services. Although we intend to adopt the definition of prepaid calling services the next time we update rules, the new definition will have no impact on the taxability of any communication service within our state.

Ohio:

Not required to submit recertification documents.

Oklahoma:
No issues.

Rhode Island:

1. No sourcing for ancillary services.

State response:
"Ancillary Services" are defined under RIGL 44-18-7.1(y)(i)(A).
"Ancillary Services" are included in "Sales Defined" RIGL 44-18-7(9)(i) and
sourced under 44-18.1(15).

SST staff response:
The cite given for sourcing is the telecommunications sourcing rule.
Ancillary services are not telecommunications under the Agreement
definitions and sourcing using the telecommunications sourcing rule could
result in incorrect sourcing of ancillary services provided on a call-by-call
basis since all ancillary services are sourced to place of primary use.

South Dakota:

1. Post paid does not exclude prepaid wireless.

State response:
We will add it to the next round of rules.

2. Cannot determine how the statute listed for exemptions is used to determine if
drop shipment rule is in compliance.

State response:
10-45-61 was revised in 2002 and below is the bill from that time. Once this
bill was passed we began allowing out of state exemption certificates for drop
shipments. I highlighted a sentence in Red. It does not ask for a SD license
number, it can be any state's license number. Company A sells to B. B sells
to C. A delivers to C. B can give A an exemption certificate for resale.

10-45-61. Notwithstanding § 10-54-1, a seller, who possesses a resale-an
exemption certificate from a purchaser of tangible personal property or
services which indicates the items or services being purchased are for resale in
the regular course of business exempt, may rely on the resale-exemption
certificate and not charge sales tax to the provider of the resale-exemption
certificate until the provider of the resale-exemption certificate gives notice
that the items or services being purchased are no longer for resale exempt by
filing a new resale-exemption certificate with the seller.
The resale-exemption certificate shall be signed by the purchaser, provide the purchaser's name, address, and valid state sales-tax license number, if applicable, and shall describe the types of tangible personal property and services being purchased for resale-exempt by the purchaser in the regular course of business. However, any person filing an electronic exemption certificate is not required to sign the exemption certificate.

The purchaser claiming the protection of a resale-an exemption certificate is responsible for assuring that the goods and services delivered thereafter are of a type covered by the resale-exemption certificate. If there are items covered under the resale-exemption certificate which are not being purchased for resale-exempt, it is the responsibility of the purchaser when ordering goods from a seller to indicate if any of the items purchased are not for resale exempt, and the appropriate sales tax shall be charged on the portion of the sale that is not for resale exempt. A seller of property or services which are generally described under the resale-exemption certificate is not responsible for the collection of the tax unless otherwise directed by the purchaser or unless the state establishes that the seller did not accept the resale certificate in good faith. Absent knowledge of circumstances by the seller which would put the holder of the resale certificate upon inquiry as to its validity, good faith does not require the seller to investigate the nature of the purchaser's business.

If the purchaser later determines there is any tax due and owing, the purchaser shall remit the tax owed by the purchaser to the state. If the purchaser purchases for resale but later elects not to resell the goods and consumes or uses them makes an exempt purchase and later determines that the goods or services purchased are not exempt, the purchaser shall report the transaction and pay the use tax on the next filing of his the purchaser's return.

Any purchaser who knowingly and intentionally lists on a resale-an exemption certificate personal property or services which the purchaser knows, at the time the resale-exemption certificate is filed with the seller, will not be resold are not exempt, or provides an invalid resale-exemption certificate with the intent to evade payment of the tax, and fails to timely report the same with the department is guilty of a Class 1 misdemeanor. The secretary of revenue may assess a penalty of up to fifty percent of the tax owed, in addition to the tax owed. No interest may be charged on the penalty.

The seller shall retain the exemption certificate for a period of three years from the date it is filed by the purchaser and provide the exemption certificate to the department upon request.

The secretary may promulgate rules pursuant to chapter 1-26 to adopt forms for resale-exemption certificates.

SST Staff response:
This item is no longer an issue.

**Tennessee:**

1. **The tax on digital products is imposed on “retail sales in this state, indicated by the residential street address or the primary business street address of the subscriber or consumer.” Unsure if this is the same result as would arrive using Section 310.**

State response:

Pursuant to Public Chapter 602 Sections 173 and 174 (2007), amendments to Tennessee statutes to adopt Streamlined uniform sourcing pursuant to Sections 309 and 310 of the SSUTA are scheduled to take effect July 1, 2009, and will apply to specified digital products effective July 1, 2009. Tennessee included information in the 2007 certificate of compliance indicating compliance with Sections 309 and 310 of the SSUTA effective July 1, 2009.

SST Staff response:

This item is no longer an issue.

2. **The use of a SER and annual returns if less than $1000 seems to only be available for Model 1 and 2 sellers, with no mention of Model 3 sellers.**

State response:

Pursuant to Public Chapter 602 Section 68 (2007), Tennessee has adopted the definition of a Model 3 Seller. Other provisions in the SSUTA referencing Model 3 Sellers have not been adopted in Tennessee sales and use tax statutes. Legislation conforming to provisions related to Model 3 will be submitted to the Tennessee legislature at such time as the Governing Board creates performance standards for Model 3 Sellers, enters into agreements with sellers establishing the sellers are Model 3 Sellers, and allows sellers to register through the Streamlined Central Registration System as a Model 3 Seller. Changes to conform to provisions of the SSUTA that have no meaning cannot be included in Tennessee statutes.

Pursuant to Tenn. Code Ann. Section 67-6-536(a) effective January 1, 2008, the statute was amended to clarify that only Model 1 and Model 2 sellers that do not have locations in Tennessee may use the SER. Public Chapter 602 Section 161 (2007) provides any Model 1 and 2 Seller may submit their returns in such format as required by the SSUTA effective July 1, 2009. Tennessee included information in the 2007 certificate of compliance indicating compliance with Section 318 effective July 1, 2009.
Pursuant to Tennessee Sales and Use Tax Rules and Regulations 1320-5-1-.74 any taxpayer whose sales and use tax due in the prior 12 months that has averaged less than $200 a month or a new taxpayer who will likely not owe more than $2,400 in a 12-month period may file returns and make remittances on a quarterly, semi-annual, or annual basis. Currently, in Tennessee any seller who owes or expects to owe less than $2,400 in a 12-month period may file an annual return. Streamlined registrants that do not have locations in Tennessee and who are not already registered in Tennessee are placed in a non-filing status for the first 12 months after registration or until such time as the seller files its first return. At the time the seller files its first return, the Department contacts the seller to determine the appropriate filing status needed by the seller.

3. The bundled transactions provisions includes telecommunication services, ancillary services, Internet access and audio or video programming services, but does not have the section about services sold at different rates.

State response:

Tennessee currently has multiple state and local rates that are applicable to telecommunication services, ancillary services, and video programming services. Tennessee statutes do include provisions for determining the tax treatment of such a bundle when the services are sold at different rates. Tenn. Code Ann. Section 67-6-539(b) effective July 1, 2004, states:

(b) Notwithstanding any other law to the contrary, in the case of a bundled transaction of telecommunication services, ancillary services, Internet access services, or audio or video programming services, or direct-to-home satellite television programming services:

(1) If the price is attributable to services that are taxable and services that are nontaxable, the portion of the price attributable to the nontaxable services shall be subject to tax, unless the provider can identify, by reasonable and verifiable standards, such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.
(2) If the price is attributable to services that are subject to tax at different tax rates, the total price shall be treated as attributable to the services subject to tax at the highest tax rate, unless the provider can identify, by reasonable and verifiable standards, the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.

(3) If the taxes that would have otherwise been collected on the distinct and identifiable services would have been designated to different funds or purposes, such designation shall be based on the same allocation utilized in subdivision (b)(1) or (2). However, if the total of the bundled transaction was subjected to tax or subjected to tax at the higher combined state and local rate, a reasonable allocation method approved by the commissioner shall be made for designation of the taxes to the different funds or purposes.

(4) The provisions of this section shall apply unless otherwise provided by federal law.

Public Chapter 602 Sections 146, 147, 148, and 164 (2007) effective July 1, 2009, repeal Tennessee statutes imposing different tax rates on such services in compliance with Section 308 of the SSUTA. After December 31, 2005, member states may not have multiple tax rates on telecommunication services, ancillary services, audio and video programming services, and Internet access. Public Chapter 602 Section 162 (2007) effective July 1, 2009, amends and rewrites Tenn. Code Ann. Section 67-6-539 removing the language related to different tax rates. The statute was amended to comply with Section 330 and to remove language that will have no meaning effective July 1, 2009.

SST Staff response:
This item is no longer an issue.

4. Sales price definition contains a bundling provision.

State response:
Public Chapter 602 Section 64 (2007) effective January 1, 2008, provides the definition of sales price includes the following provision,

(vi) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as single product or piece of merchandise.

Public Chapter 602 Section 133 (2007) provides for adoption of the bundled transaction definition, effective July 1, 2009. Tennessee failed to include a provision in the conforming legislation scheduled to take effect July 1, 2009, for the repeal of the bundling provision from the definition of sales price to coincide with the effective date of adoption of the bundled transaction definition. Legislation to repeal the bundling provision from the definition of sales price at the same time the bundled transaction definition becomes effective will be submitted to the Tennessee legislature for consideration and adoption prior to the July 1, 2009. Tennessee included information regarding the omission in the 2007 compliance review of Tennessee petition for membership under Section 801(C) of the SSUTA.

Utah:

Not required to submit recertification documents.

Vermont:

1. The regulation sourcing telecommunication includes prepaid calling services but not prepaid wireless calling services.

State response:
With regard to the first question, the definition is elsewhere, and we should have added it to the cite for the general sourcing rules. The definition is in Reg. § 1.9771 (5)-1 (A)(6).

SST Staff response:
Reg. 1.907(8)-7C3. only includes sourcing for prepaid calling service. It appears that the words "and prepaid wireless calling service" need to be added in the first sentence.

2. The regulation on postpaid does not contain any of the sentence that says that postpaid includes prepaid calling services, but not prepaid wireless, when transactions other than telecom are included in the service.

State response:
The second question has a similar problem, where the definition is elsewhere in the regs, in this case found in Reg. § 1.9701 (8)-6 (J).

SST Staff response:
This item is no longer an issue.
3. The answer in the two boxes in 310.1 seem inconsistent with Vermont’s status a destination state.

State response:
You are correct, and the answers to both questions should be “no.”

Washington:

1. Cannot determine how they source ancillary services.

State response:
In the compliance certification document, we gave RCW 82.32.730 and 82.32.520 as the statutory authority for saying that ancillary services are sourced to the customer’s place of primary use.
RCW 82.32.730 provides in part:
(7) A retail sale of the providing of telecommunications services or ancillary services, as those terms are defined in RCW 82.04.065, shall be sourced in accordance with RCW 82.32.520.

In turn, RCW 82.32.520 provides in part:
(2) Except for the defined telecommunications services listed in subsection (3) of this section, a sale of telecommunications service as defined in RCW 82.04.065 sold on a basis other than a call-by-call basis, is sourced to the customer’s place of primary use.

To the extent that this is ambiguous regarding the sourcing of ancillary services because there are other means of sourcing other categories of telecommunications services under RCW 82.32.520, we are directed by the legislature to interpret our sales and use tax statutes to be consistent with the SSUTA. RCW 82.02.210 provides in part:
(3) It is the intent of the legislature that the provisions of this title relating to the administration and collection of state and local sales and use taxes be interpreted and applied consistently with the agreement.

We interpret and apply RCW 82.32.730 and 82.32.520 to require that ancillary services be sourced to the customer's place of primary use, just as required by the SSUTA.

SST Staff response:
This item is no longer an issue.

West Virginia:

1. The relief from liability for having charged the incorrect tax due to errors in the taxability matrix appears to only apply to sellers registered under the Agreement.
State response:
We will address this in the 2009 regular legislative session. Even though the statute states that all sellers registered under the agreement will receive the relief of liability, administratively we treat all sellers the same.

2. Could not find a taxability rule for bundled transactions even though they define a bundled transaction.

State response:
Everything is taxable in West Virginia unless there is a specified exemption, therefore we need nothing statutorily to determine taxability.

SST staff response:
While the answer is statutorily correct, we could find nothing telling taxpayers how the state treats bundled transactions.

3. The bundling rule does not include the books and records provision for transactions that include telecommunication, Internet access, and ancillary services or programming.

State response:
We believe this is an administrative rule as well. We responded "yes" in our certificate of compliance, we do not need statutory authority for this requirement.

SST staff response:
While the answer is statutorily correct, we could find nothing telling taxpayers how the state treats books and records in a bundled transaction.

4. The taxability matrix lists only prepaid wireless calling services as taxable and not prepaid calling services. The statute referenced is the services definition and no mention is made of prepaid wireless calling service.

State response:
11-15-2(b)(17) **does** mention prepaid wireless calling service.
(17) "Sale", "sales" or "selling" includes any transfer of the possession or ownership of tangible personal property or custom software for a consideration, including a lease or rental, when the transfer or delivery is made in the ordinary course of the transferor's business and is made to the transferee or his or her agent for consumption or use or any other purpose. "Sale" also includes the furnishing of a service for consideration. Notwithstanding anything to the contrary in this code, effective after the thirtieth day of June, two thousand eight, "sale" also includes the furnishing of prepaid wireless calling service for consideration.
SST Staff response:
This item is no longer an issue.

5. The general rate of 6% does not apply to gasoline or special fuels which are taxed at 5%.

State response:
The variable rate is designated in 11-14c as a component of the motor fuel excise tax, and it is not imposed on the retail customer, but on the distributor, we believe that the rules of the Streamlined Sales and Use Tax Agreement do not apply to the variable component of the Motor Fuel Excise Tax, notwithstanding that it is in West Virginia Code §11-15.

SST Staff response:
This item is no longer an issue.

6. Local taxes do not apply to gasoline or special fuels.

State response:
Again, it is a Motor Fuel Excise Tax and not a consumers sales and service tax and use tax, it is not subject to the Streamlined Sales and Use Tax Agreement and not subject to the local tax rules.

SST Staff response:
This item is no longer an issue.

Wyoming:

No issues.
Exhibit D

ELFA Nevada SST Compliance w/Nevada Response

Dated 8/10/2008 & 8/18/2008
August, 10, 2008

Streamlined Sales Tax Governing Board
c/o Mr. Scott Peterson, SSTGB Executive Director
4205 Hillsboro Pike Suite 305
Nashville, TN 37215

Dear Ms. Wagnon, Mr. Peterson, and Members of the Governing Board,

I am writing on behalf of the Equipment Leasing and Finance Association regarding Nevada’s adoption of the Streamlined Sales and Use Tax Agreement (SSUTA).

The Equipment Leasing and Finance Association (ELFA) is the trade association representing financial services companies and manufacturers in the $600 billion U.S. equipment finance sector. ELFA members are the driving force behind the growth in the commercial equipment finance market and contribute to capital formation in the U.S. and abroad. ELFA has more than 700 members including brokers and packagers, investment banks, service providers, independent leasing and finance companies, captive finance companies, commercial banks as well as diversified financial services companies. These comprise many of the nation’s largest financial services companies and manufacturers as well as regional and community banks and independent medium and small finance companies throughout the country. ELFA membership also includes a number of multinational financial and manufacturing companies operating in the U.S.

ELFA believes that Nevada is out of compliance with regard to its adoption of the term “retail sale”. Specifically, the term “retail sale,” as defined by the SSUTA, and adopted by Nevada as Nevada Revised Statutes §360B.067, includes lease transactions. (This section and all other cited sections of Nevada Revised Statutes are attached.) However, the same lease transaction would not be a “retail sale” under concurrently existing Nevada Revised Statutes §372.050.1.

The Streamlined Sales and Use Tax Agreement- Library of Definitions contains certain common administrative terms, which must be adopted by the state in substantially the same language as the Library definition. (SSUTA §327) These include the terms “retail sale” and “lease”. The SSUTA does not define the term “sale”.

RECEIVED
AUG 1 4 2008
STATE OF NEVADA
DEPARTMENT OF TAXATION
Nevada adopted the SSUTA definition of “lease,” codified in Nevada Revised Statutes §360B.450, as part of the Simplified Sales and Use Tax Administration Act, effective June 15, 2005. The “lease” definition is compliant with that found in the SSUTA. The compliance issue arises from Nevada’s definition of “sale” found in the Nevada Sales Tax Law, Nevada Revised Statutes §372.060. Specifically, NRS §372.060.2 limits “transfer of possession,” “lease,” or “rental” to only those transactions that are found by the Tax Commission to be in lieu of a transfer of title, exchange or barter.

There are currently two definitions of “retail sale” existing concurrently in the Nevada Revised Statutes. The definition of “retail sale” contained in NRS §360B.067 was adopted as part of the Simplified Sales and Use Tax Administration Act to conform to the SSUTA. However, the definition of “retail sale” found in the Nevada Sales Tax Law, NRS§372.050.1 remains in effect. That section, along with its interface to the definition of “sale”, creates both conflict and an issue of non-compliance with SSUTA because a “lease” is excluded from the NRS§372.050.1 definition of “retail sale”.

Section 805 of the SSUTA regarding “Compliance” provides that a state is in compliance with the Agreement if the effect of the state’s laws, rules, regulations, and policies is substantially compliant with each of the requirements set forth in the Agreement. (Emphasis added).

We believe that until this issue is corrected, Nevada is not in substantial compliance with the SSUTA. We also fully expect that this issue will be noted in the upcoming Annual Recertification of Member States completed by Nevada.

We believe that Nevada can move swiftly to correct what appears to be an unintended result. We urge the Governing Board to encourage Nevada to make the necessary changes to bring them back into compliance.

Please feel free to contact me directly if you would like to discuss this matter.

Sincerely,

[Signature]
Dennis Brown
SVP State Government Relations
Equipment Leasing and Finance Association

Cc: Mr. Dino DiCianno, Executive Director, Nevada Department of Taxation
August 18, 2008

Mr. Dennis Brown  
Equipment Leasing & Finance Association  
1825 K Street NW, Suite 900  
Washington, DC 20006

RE: Nevada’s SST Compliance.

Dear Mr. Brown:

Thank you for your inquiry concerning Nevada’s SST recertification application. This is in response to your letter dated August 10, 2008 to the Governing Board concerning your Association’s belief that Nevada is out of compliance with regard to its adoption of the term “retail sale.” As you correctly point out, Section 805 of the SSUTA regarding “Compliance” provides that a state is in compliance with the Agreement if the effect of state’s laws, rules, regulations, and policies is substantially compliant with each of the requirements set forth in the Agreement. I can assure you that Nevada is in substantial compliance with the Agreement with regard to leasing and its administration.

The concern that you have expressed relates to the interplay between Nevada Revised Statute Chapters 360B visa vie 372. As a matter of background Nevada’s Sales and Use Tax Act found in NRS 372 is a referendum chapter subject to the vote of the people and is not subject to legislative amendment or repeal; unless the voters so choose. That is why Nevada’s Legislature enacted NRS 360B during the 2003 Legislative Session in order to be in substantial compliance with SSUTA. More specifically, the Legislature did enact an administrative provision in NRS 372 to provide a policy application link between NRS 360B and 372.

That link can be found in NRS 372.723 and it states, “Application of Chapter 360B of NRS. This chapter (NRS 372) must be administered in accordance with the provisions of Chapter 360B of NRS.” Thus, the concern that you have expressed in your letter has already been resolved by the Nevada Legislature. The State of Nevada has and will continue to administer the provisions of its Sales and Use Tax Act in accordance with the language contained in the Agreement. Please do not hesitate to contact me directly if you would like to discuss this matter further. I can be reached at 775-684-2060.

Sincerely,

Dino DiCianno,  
Executive Director

CC: Mr. Scott Peterson,  
Executive Director – Streamlined Sales Tax Governing Board
Exhibit E

BAC Public Comment on State Compliance Issues

Dated 11/1/2008
November 1, 2008

Compliance Review and Interpretations Committee  {Sent Via E-Mail}
C/O Scott Peterson, Executive Director
4205 Hillsboro Pike, Suite 305
Nashville, TN  37215

Re: Public Comment on State Compliance Issues

Dear Mr. Peterson:

Per your request for written comments by November 1, 2008, I am writing this letter to comment on the states’ compliance with the Streamlined Sales and Use Tax Agreement (Agreement). I do this as a member of the Business Advisory Council’s (BAC) liaison subcommittee over the Compliance Review and Interpretations Committee (CRIC). Please note that the comments addressed below are not all inclusive and other BAC members may have additional or different comments. The ability to raise these comments to CRIC is appreciated. Before addressing the compliance issues with each state, I will first address some procedural concerns with CRIC’s review.

Procedural Concerns

I believe it is important to address some procedural issues before delving into each state’s compliance issues. First, when CRIC conducts its review of each state’s substantial compliance with all provisions of the agreement it should be done pursuant to Section 805 of the Agreement. “A state is in compliance with the Agreement if the effect of the state’s laws, rules, regulations, and policies is substantially compliant with each of the requirements set forth in the Agreement.” That section of the agreement mandates a review of a state’s substantial compliance must be with each provision of the Agreement and not the Agreement as a whole.

The next procedural issue I would like to address is the scope of CRIC’s review of the states’ compliance to the Agreement. State laws, rules, regulations and policies constantly change. CRIC’s review should be comprehensive. By that, I mean that CRIC needs to review each state’s compliance with the Agreement based on the state’s existing laws, rules, regulations and policies. CRIC’s review should not be limited, or primarily focused, on just reviewing those changes to the Agreement occurring after a state was initially found to be in substantial compliance with the Agreement or any subsequent re-certification a state has made under Section 803 of the Agreement. CRIC should review all aspects of each state’s sales and use tax laws to determine if the state is in compliance with the Agreement.

Related to this issue of compliance is what laws, rules, regulations and policies CRIC should use to determine substantial compliance. CRIC should use the laws, rules, regulations and policies that each state presently has in effect, and not proposed changes to the law. This includes pending legislation, regulations or policies that are not effective as of the date CRIC completes its review of a state’s substantial compliance with all provisions the Agreement. That is not to say that CRIC cannot footnote that a state has legislation pending, but it is to say that the determination of whether a state is in
compliance must be made based on the laws, rules, regulations and policies currently in effect. Additionally, statements by some state officials “that’s the way we interpret it” or “we don’t (or do) administer that way” must be backed by written policy statements, ideally posted on the revenue department’s website. At a minimum, this is needed to support the verbal statements and to ensure the public is informed of the policy. Again, when asserting substantial compliance to the Agreement, CRIC should insist that these written (and published) policies are in place prior to certifying that a state is in substantial compliance all the provisions of the Agreement.

State Compliance Issues

The following are some compliance issues with each state (not all inclusive).

Arkansas
- Drug definition is more restrictive than that allowed by the Agreement
- Telecommunications not excluded from bundling

Indiana
- Sales price definition Drug is not in substantial compliance with the Agreement
- Telecommunications not specifically excluded from bundling

Iowa
- Ancillary services is not defined and it has no sourcing provision
- Bundling provision should not be in sales price and definition of “sales price” in the Agreement should be inclusive
- Third party consideration is not part of sales price
- Telecommunications not specifically excluded from bundling

Kansas
(none)

Kentucky
- Not compliant with durable medical equipment definition

Michigan
- Prepaid wireless not defined and it has no sourcing provision
- Ancillary services is not defined and it has no sourcing provision
- Postpaid transactions are not excluded from prepaid calling services
- Compliance with drop shipping
- Compliance with accepting electronic tax returns
- No bundled transaction provision – not an optional provision
- Relief for CSPs and Model 2 sellers not provided
- 10-day period to correct errors not provided to CSPs and Model 2 sellers
- Definition of telecommunications nonrecurring charge is needed along with other telecommunication definitions
- Sales price definition does not have third party consideration language
- Not compliant with durable medical equipment definition

**Minnesota**

- Concern that the books and records requirement is too restrictive as allowed pursuant to Section 330 of the Agreement

**Nebraska**

- Ancillary services and prepaid wireless have no sourcing provisions
- Missing telecommunications definitions

**Nevada**

- No ability to pay using ACH credit
- Issue with "retail sale" and lease transactions – two conflicting statutes

**New Jersey**

- Telecommunications service tax problems, including, but not limited to, ancillary services, international telecommunications, prepaid wireless calls, and thresholds
- Sales price definition contains bundling
- 50% sales tax rate issue for sales in Salem County

**North Carolina**

none

**North Dakota**

- Prepaid calling service not defined

**Ohio**

(Not required to recertify)

**Oklahoma**

none

**Rhode Island**

- Ancillary services has no sourcing provision

**South Dakota**

- Postpaid calling services are not excluded from prepaid wireless

**Tennessee**

- Compliance with Model 3 sellers
- Sales price definition contains bundling

**Utah**
Vermont
- Prepaid wireless sourcing provision

Washington
- Sourcing of ancillary services

West Virginia
- Relief of liability too limited
- No bundled transaction rule
- Books and records provision missing for bundled transactions
- Rate differential on gasoline and special fuels (5% v. 6%)

Wyoming
{none}

Closing
Again, I appreciate the opportunity to provide comments on the states’ compliance with the Agreement. Substantial compliance with all provisions of the Agreement is vital if this endeavor is ever going to be able to move forward with federal legislation to require sellers to collect the member states’ state and local sales and use taxes. Please feel free to contact me if you have any questions.

Sincerely,

Fred Nicely
Tax Council
(202) 484-5213
fnicely@statetax.org
Exhibit F

CRIC Annual Compliance Review

Dated 5/10/2009
To: Delegate John Doyle, President  
Streamlined Sales Tax Governing Board

From: Andy Sabol, Chairman  
Compliance Review and Interpretations Committee

Date: May 10, 2009

Subject: Annual Compliance Review with state actions

Pursuant to the Streamlined Sales Tax Governing Board’s Rule 905, the Compliance Review and Interpretations Committee (CRIC) submits this report of its annual recertification review of member states. CRIC with assistance from Governing Board staff reviewed member states’ compliance with the provisions of the Streamlined Sales and Use Tax Agreement (Agreement) following submission of updated certificates of compliance by the member states. Emphasis was placed on reviewing items states were required to enact since the initial compliance reviews completed subsequent to a state’s membership.

Governing Board staff made an initial review of the certificates of compliance and identified possible areas of noncompliance with the Agreement. Member states were given the opportunity to respond and after reviewing those responses, staff provided the members of CRIC with a memorandum (copy enclosed) setting out remaining potential items of noncompliance after deleting issues that were resolved based on the responses of the member states. A public comment period of thirty days was authorized by CRIC to allow comments on the remaining issues or other items of concern and three written comments were submitted and are attached as part of this report. During a series of teleconference meetings, CRIC discussed the outstanding issues and took a vote for each member state as to whether the state was in compliance with the Agreement pursuant to Section 805 of the Agreement. Representatives from the member state under evaluation and members of the public were given the opportunity to comment.

Set out in this report is a summary of the action taken for each member state. Because of the Associate Member status of Ohio and Utah they were not required to submit a revised certificate of compliance and are not included in the review. The following state-by-state summary includes the potential issue of non-compliance, if CRIC made a finding of noncompliance, a description of resolved issues, and a response from states related to actions taken as a result of this review.

As chair of the committee, I would like to express my appreciation to the work of the committee members and the staff of the Governing Board in this important task. I would also like to thank the representatives of the states that worked with the committee and staff and the members of the public that provided input. This was the initial full review conducted by the committee and I believe that we will be able to bring forth recommendations to improve the process.
Arkansas

Finding: In compliance
Vote: 4-0; Mastin, Sabol, Vosberg, and Wilkie

Issue(s) Raised:
Arkansas confirmed that rules on the definition of drugs and the bundling of telecommunications that conformed to the “Agreement” were effective October 15, 2008. The American Automotive Leasing Association raised an issue regarding the state’s conformity with the definition of lease or rental in the Agreement pursuant to subsection “B” of the definition. Arkansas advised that the current version of their code includes the proper language for lease transactions involving motor vehicles.

Indiana

Finding: Not in compliance
Vote: 3-2; No: Atchley, Mastin, and Sabol, Yes: Vosberg and Wilkie

Issue(s) Raised:
The definition of the term “sales price” includes the provision that was repealed from the “Agreement” for the value of exempt property given to the consumer in a bundled transaction. This provision was required to be removed from the definition of “sales price” by January 1, 2008 in conjunction with the enactment of bundled transaction provisions.

Basis of Finding:
A majority of the committee found that Indiana was not substantially compliant with each requirement of the “Agreement” since the statutory definition of “sales price” did not conform with the definition required in the “Agreement”.

Indiana Response:
Indiana acknowledges that the definition of sales price was inadvertently failed to be amended and that an amendment would be proposed during the 2009 legislative session.

State Action to Resolve the Issue(s):
Conformance legislation was adopted by the Senate (SB 541) but failed to pass the House. The legislation will be taken up in special session prior to June 30, 2009. SB 541 revised the definition of gross retail income to be in compliance with the SSUTA definition of sales price; provided that notification of a sales tax rate change be at least 30 days in advance or the seller would not be liable for failure to collect at the new rate; sourced Internet access and ancillary services to the customer’s place of primary use; sourced floral wire delivery orders to the florist that takes the original order and eliminated the sunset provision in the current statute.
Iowa

Finding: Not in compliance
Vote: 4-1; No: Atchley, Mastin, Sabol, and Vosberg, Yes: Wilkie

Issue(s) Raised:
The definition of “ancillary services” was not adopted nor were provisions for sourcing ancillary services enacted.
The provisions for bundling are included in the state’s definition of “sales price”.
The provisions for third party consideration are not included in the definition of “sales price”.
There are no specific provisions for allocating taxable and exempt telecommunication charges based on a seller’s books and records and their statute requires a seller to enter an agreement with the Department of Revenue to collect tax based on books and records.

Basis of Finding:
A majority of the committee found that Iowa was not substantially compliant with each requirement of the “Agreement” since the definition and sourcing provisions for “ancillary services” and bundled transaction provisions were not in conformity with the Agreement.

Iowa Response:
Iowa is of the opinion that its definitions of “mobile telecommunication services” and “private communication service” address the “ancillary service issue. Iowa is also of the opinion that the bundling provisions set out in their definition of “sales price” conform with the “Agreement” requirements. Iowa advises that does not require sellers to enter agreements to collect tax on applicable bundled transactions based on books and records.

State Action to Resolve the Issue(s):
A package of administrative rules has been drafted and reviewed by those in the telecommunications industry to address the communication issues listed above. The rules will be filed and should become effective in September. The sales price issue will be addressed in their next legislative session.

Kansas

Finding: In compliance
Vote: 5-0; Atchley, Mastin, Sabol, Vosberg, and Wilkie

Issue(s) Raised
No issues identified.

Kentucky

Finding: Not in compliance
Vote: 4-1; No: Atchley, Mastin, Sabol, Vosberg; Yes: Wilkie

Issue(s) Raised:
Kentucky has a specific exemption for hospital beds for private noncommercial use. Section 316C.(4) of the “Agreement” provides that a member state may not enact a use-based exemption for an item which effectively constitutes a product based exemption if Part II of the Library of Definitions has a definition of a product that includes such item. Hospitals beds are durable medical equipment and durable medical equipment is a defined product.

Basis of Finding:
A majority of the committee found that Kentucky was not substantially compliant which each requirement of the “Agreement” since the exemption for hospital beds effectively constituted a product-based exemption and hospital beds are an item included in a defined product.

Kentucky Response:
Kentucky self-reported this issue and advised that is plans to seek an amendment to its laws to resolve the issue.

State Action to Resolve the Issue(s):
The Kentucky Legislature adopted and the Governor signed the SST conforming legislation (HB 347).

Michigan

Finding: Not in compliance
Vote: 5-0; Atchley, Kenly, Mastin, Sabol, and Vosberg

Issue(s) Raised:
Various definitions and sourcing provisions concerning telecommunications were not adopted.
No bundled transaction provisions including the books and records requirement for telecommunications were not adopted.
Michigan could not accept the simplified electronic return.
Liability relief provisions for CSPs, Model 2 sellers were not adopted.
Third party consideration provisions under the definition of “sales price” were not adopted.
Provisions for including components or attachments as part of repair and replacement equipment for durable medical equipment were not adopted.

Basis of Finding:
The committee found that Michigan was not substantially compliant with each requirement of the “Agreement” since it failed to enact required definitions, sourcing provisions, and liability relief provisions.
Michigan Response:
Michigan indicated that it had proposed legislation under consideration in the Michigan Legislature that addressed the issues requiring amendments to its laws. Michigan advised that it was administering its laws in such a manner that adoption of the provisions would not affect the application of tax. Michigan advised that it planned to be able to accept the simplified electronic return by November 30, 2008.

State Action to Resolve the Issue(s):
The Michigan Legislature approved all necessary changes before they adjourned in 2008.

**Minnesota**

Finding: In compliance
Vote: 5-0; Atchley, Kenly, Mastin, Sabol, and Vosberg

Issue(s) Raised:
The books and record requirement adopted for handling bundled transactions that included telecommunications was initially raised due to restrictions included in the Minnesota provisions. Minnesota used language from rules approved by the Governing Board for its provisions.

**Nebraska**

Finding: In compliance
Vote: 4-0; Mastin, Sabol, Vosberg, and Wilkie

Issue(s) Raised:
Based on the structure of the statutes on telecommunications, it was unclear as to how tax was imposed on ancillary services and how these services were taxed. Alternative language used for sourcing prepaid calling services was included in the statutes. Nebraska provided an explanation of its scheme of taxation of ancillary services to the committee. Nebraska indicated that it will request technical changes to its statutes to clarify these items.

State Action to Resolve the Issue(s):
The Nebraska Legislature adopted legislation to address the issue listed above.

**Nevada**

Finding: In compliance
Vote: 4-0; Mastin, Sabol, Vosberg, and Wilkie

Issue(s) Raised:
It was not clear whether Nevada provided ACH debit and credit capabilities. Nevada provided confirmation that both payment methods were available in their state.
Nevada has enacted statutes that provide for conformity with the Agreement provisions, notwithstanding other statutory sales and use tax provisions that were not repealed. Prior to entry as a member state, Nevada adopted permanent regulations clarifying that the conforming provisions were now in effect. The Equipment Leasing and Finance Association submitted comments objecting to the manner in which the statutes were established. The committee noted that there had been no change in circumstances since Nevada had been admitted as a full member.

New Jersey

Finding: No additional noncompliance issues found
Vote: 3-2; Yes: Mastin, Sabol, Wilkie; No: Atchley, Kenly

Issue(s) Raised:
The committee only reviewed issues that were not addressed in Compliance Determinations 2008-01 and 2008-02. New Jersey provides for an optional reduced rate of State tax that sellers in one county can elect to collect. The committee noted that provision was in effect at the time New Jersey was admitted as a full member.

North Carolina

Finding: In compliance
Vote: 3-0: Yes: Kenly, Mastin, Wilkie

Issue(s) Raised:
No issues identified

North Dakota

Finding: In compliance
Vote: 4-1; Atchley, Kenly, Sabol, Wilkie; No: Mastin

Issue(s) Raised:
North Dakota omitted enacting a definition of prepaid calling services. North Dakota confirmed that these services were being administered consistent with the “Agreement” under a different term and the rule on telecommunications services would be amended to include this item.

State Action to Resolve the Issue(s):
The state will promulgate a rule to address this issue.

Oklahoma

Finding: In compliance
Vote: 3-0; Kenly, Sabol, and Wilkie
Issue(s) Raised:
No issues identified

Rhode Island

Finding In compliance
Vote: 4-0; Mastin, Sabol, Vosberg, and Wilkie

Issue(s) Raised:
Provisions for the sourcing of ancillary services could not be identified. Rhode Island confirmed the sourcing of these services was consistent with the “Agreement”.

State Action to Resolve the Issue(s):
The state administers the provision according to the SSUTA, but will introduce legislation in 2010 to make it clear.

South Dakota

Finding: In compliance
Vote: 3-1; Yes: Kenly, Sabol, and Wilkie; No: Atchley

Issue(s) raised:
The provision for the definition of “postpaid calling service” did not exclude prepaid wireless calling services. South Dakota confirmed that transactions involving postpaid calling services were administered consistent with the “Agreement” and the rule addressing this issue would be amended.

State Action to Resolve the Issue(s):
The state adopted a rule in January 2009 to address the issue listed above.

Tennessee

Finding: In compliance
Vote: 4-0; Atchley, Kenley, Sabol, and Wilkie

Issue(s) Raised:
Provisions for the sourcing of digital products was unclear. Tennessee provided information showing that digital products were sourced properly as of 7/1/09.
Provisions for authorizing Model 3 taxpayers that owe less than $1,000 per year to file an annual return. Tennessee authorizes any seller owing less than $2,400 annually to file on an annual basis.
Provisions for applying tax to bundled transactions involving telecommunications services, ancillary services, and video programming services that are taxed at different rates. Tennessee provided information setting out the statutes that address this issue as of 7/1/09.
The definition of “sales price” continues to include the value of exempt property when bundled with taxable property. The provisions for bundled transactions take effect 7/1/09 and this item will need to be amended by that date. Tennessee has indicated such action will be taken.

**Vermont**

Finding: In compliance  
Vote: 4-0; Mastin, Sabol, Vosberg, Wilkie

Issue(s) Raised:  
The regulation issued for sourcing prepaid calling services did not include prepaid wireless calling services. Vermont confirmed that the services were administered consistent with the “Agreement” and the regulation would be revised to address the omission. Vermont indicated that an error was made in completion of their certificate of compliance for section 310.1 and a revision would be made.

State Action to Resolve the Issue(s):  
The state administers the provision according to the SSUTA, but will amend their regulations this year.

**Washington**

Finding: In compliance  
Vote: 4-0; Mastin, Sabol, Vosberg, and Wilkie

Issue(s) Raised:  
None

**West Virginia**

Finding: In compliance  
Vote: 4-0; Mastin, Sabol, Vosberg, and Wilkie

Issue(s) Raised:  
Statutes only provided liability relief for incorrect tax due to errors in the taxability matrix only applied to sellers registered in the “Agreement”. West Virginia indicated that liability relief applied to all sellers and an amendment to the statute would be requested to clarify this issue. West Virginia issued an Administrative Notice dated December 4, 2008 advising that all sellers would receive the applicable liability relief.

Provisions for applying tax to bundled transactions and for using books and records for transactions involving telecommunications services, Internet access, ancillary services, and video programming were not set out. West Virginia indicated that the “Agreement” provisions were followed but published advice had not been issued. West Virginia issued an Administrative Notice dated December 4, 2008 setting out the application of tax for
bundled transactions and the information includes the applicable books and records provisions.

State Action to Resolve the Issue(s):
Legislation was adopted to address these issues.

**Wyoming**

Finding: In compliance
Vote: 4-0; Mastin, Sabol, Vosberg, and Wilkie

Issue(s) Raised:
No issues identified