Credit for Taxes Paid to Other States

Questions:

If a sale of a product is properly sourced to a state under the provisions of Section 310 or 310.1 of the SSUTA and a seller collects that state's sales tax from the purchaser based on these provisions, is that tax "legally due" in that state if no taxable event occurred in that state?

Does the answer change if the statute of limitation has expired for one or more of the parties involved?

Example Facts:

- Seller sells a perpetual license to use prewritten computer software to a purchaser for $1,000.
- The software will be downloaded by the purchaser.
- Purchaser uses its credit card to pay for the software.
- The credit card address is in State 1.
- Seller sources the sale to State 1 based on Section 310.A.4 of the SSUTA.
- State 1's sales and use tax rate is 5%.
- Seller charges, collects, and remits the $50 ($1,000 x 5%) in tax from the purchaser on this transaction since it was sourced under Section 310.A.4. of the SSUTA to State 1.
- The prewritten computer software is not downloaded in State 1. Instead, one of the purchaser's employees downloads the software in State 2.
- Since the software was not downloaded in State 1, State 1 does not legally impose its sales tax on this transaction.
- State 2's sales and use tax rate is 7%.
- Both States 1 and 2 are SST member states.
- The statutes of limitation have not yet expired on this transaction for the seller, the purchaser, State 1, or State 2.

Result:

Option 1

State 2 must provide a credit for State 1's 5% tax seller charged purchaser against the 7% tax due in State 2. State 2 will still receive the difference between the 7% tax it imposes and State 1's 5% tax the purchaser paid to the seller.

> *Rationale 1:*
> Although no taxable event occurred in State 1, since the seller properly sourced the transaction to State 1 based on Section 310.A.4. of the SSUTA, the tax the purchaser paid to the seller was legally due and therefore should be allowed as a credit against the 7% use tax due in State 2.

Option 2

State 2 does not have to give credit for the 5% tax the seller charged to the purchaser because that tax was not legally due in State 1. State 1 must issue a refund of its 5% tax to either the seller or purchaser.

> *Rationale 2:*
> Although the transaction may have been "sourced" to State 1, since no taxable event occurred in State 1 (i.e., the software was downloaded by the purchaser at a location in State 2), State 1 cannot impose its tax on that transaction. Therefore, State 1 must issue a refund of its 5% tax to either the seller or purchaser. Just because a transaction is properly sourced to State 1 under the SSUTA, does not mean that State 1 can legally impose its tax on that transaction.