

The Bruce Johnson Presumption

A seller must determine, at the time of sale, which state's tax to collect and what rate is applicable. It must make this determination based on the facts in the seller's possession at the time of the sale. Sections 310 and 310.1 provide that a seller is entitled to rely on that information if it follows the sourcing provisions in good faith.

-It is presumed that the tax a seller charges a purchaser on the sale of a product that is sourced to State 1 in accordance with Section 310 or 310.1 of the SSUTA is correct. Accordingly, any other state in which the product is stored, used, or otherwise consumed should normally provide a credit against its tax for State 1's tax the purchaser paid to the seller.

Section 309 of the Agreement, however, states that "the provisions of Section 310 and Section 310.1 only apply to determine a seller's obligation to pay or collect and remit a sales or use tax. --- These provisions do not affect the obligation of a purchaser or lessee to remit the tax on the use of the product to the taxing jurisdictions of that use." Thus whether a tax is "legally due and payable" depends on the actual facts, not just the facts that are known to the seller at the time of the sale.

Accordingly, although the tax collected by the seller is presumptively correct under Sections 310 and 310.1, State 2 would reserve the right to challenge whether the State 1 tax charged and collected by the seller was legally due in State 1, based on the actual facts of the transaction. If the tax was not legally due, State 2 is not required to give a credit. Similarly, the seller or purchaser may request a refund of the tax from State 1. If the tax is not legally due in State 1, State 1 must refund that tax to either the seller or purchaser, in accordance with State 1's laws, as long as State 1's statute of limitations has not yet run on that transaction.