

## Definition of “Volunteer Seller” Contained in CSP Contract

The issue relates to the definition of “volunteer seller” contained in Section D.2.(b)(2) the CSP contract. A change to that definition is being suggested to address a scenario that many may have not thought about previously.

Under the current CSP contract, a seller that meets the criteria contained in Section D.2.(b)(2)a. through e. of the existing CSP contract (i.e., in the 12-month period immediately preceding the date of registration, the seller (a) had no fixed place of business in the state for more than 30 days, (b) had less than \$50,000 of property in the state, (c) had less than \$50,000 of payroll in the state, (d) had less than 25% of its total property or total payroll in the state, and (e) was not collecting tax in the state as a condition to qualify as a supplier of goods or services to the state itself) is a “volunteer seller” in that state. As a “volunteer seller,” the state is required to pay the CSP the compensation provided under the CSP contract for sales by these sellers in the state.

The specific question that has come up is whether or not a seller that meets all of the criteria listed above, but is required by some other statute in that state to agree to collect the sales tax on the sales it ships into that state, is a “volunteer seller.”

Some people believe these sellers fall within the definition of “volunteer seller” while others did not. In an effort to eliminate this issue from coming up in the future, a proposed change to the definition of “volunteer seller” being used in the CSP contract has been prepared to specifically exclude these types of sellers from the definition of “volunteer seller” that would be effective January 1, 2015. The definition of “volunteer seller” contained in Section D.2.(b) of the CSP contract is being proposed to be changed to read as follows (all changes highlighted in yellow):

“(b) Volunteer Seller in a Member State, Contingent Member State or Associate Member State means a Seller that has registered pursuant to Article IV of SSUTA through the Central Registration System and:

(1) For Sellers who registered with the Member State, Contingent Member State or Associate Member State on or before November 12, 2002, that did not have a legal requirement to register and in fact did not have a requirement to register in the Member State, Contingent Member State or Associate Member State at the time of registration, regardless of any previous registration the Seller may have made in the Member State, Contingent Member State or Associate Member State; or

(2) The Seller meets all of the following criteria during the twelve (12) month period immediately preceding the date of registration with the Member State, Contingent Member State or Associate Member State:

- a. no fixed place of business for more than thirty (30) days in the Member State, Contingent Member State or Associate Member State;
- b. less than \$50,000 of Property, as defined below, in the Member State, Contingent Member State or Associate Member State;
- c. less than \$50,000 of Payroll, as defined below, in the Member State, Contingent Member State or Associate Member State;

- d. less than twenty-five percent (25%) of its total Property or total Payroll, as defined below, in the Member State, Contingent Member State or Associate Member State; **and**
- e. was not collecting sales or use tax in the Member State, Contingent Member State or Associate Member State as a condition for the seller or an affiliate of the seller to qualify as a supplier of goods or services to the Member State, Contingent Member State or Associate Member State; **and**
- f. **was not required to register and pay or collect sales or use tax in the Member State, Contingent Member State or Associate Member State as a statutory requirement for the seller or an affiliate of the seller to be able to sell, ship or deliver a particular type of product into the Member State, Contingent Member State or Associate Member State.**

Notwithstanding subsection D.2.(b)(2) above, any Seller that registered in a Member State, Contingent Member State or Associate Member State in the three years prior to the effective date of such State's membership, is not considered a Volunteer Seller for that Member State, Contingent Member State or Associate Member State, if the Seller had a legal requirement to register as a result of an administrative or judicial action in the state occurring prior to the date of the Seller's registration that was specific to that Seller. A Member State, Contingent Member State or Associate Member State that questions whether or not a seller is a volunteer shall provide written notice of such question to the Contractor. The Contractor shall have thirty (30) days after receiving such notice to respond in writing to the State. If the State and Contractor do not agree whether the seller is a volunteer within sixty (60) days of the State's notice either the State or the Contractor may submit a written request for a determination by the Executive Committee to the Executive Director. The Executive Committee's determination is final and binding upon the State and Contractor; or

(3) Any seller who meets the criteria of subsection D.2.(b)(2) and who becomes legally obligated to register in a Member State, Contingent Member State or Associate Member State solely because of the enactment of federal legislation."