

Streamlined Sales Tax Governing Board, Inc.
Compliance Review and Interpretations Committee

INTERPRETATION/DEFINITION REQUEST

Complete each section

1. Name(s) of Requestor(s): Mark C. Haskins – Virginia
Christie Comanita - Arizona
Rebecca Abbo - New Mexico
William Riesenberger – Ohio
Sherry Harrell – Tennessee
Robin Corrigan – Texas
Wayne Harper – Utah
Bruce Johnson - Utah
Mike Edwards – Virginia Association of Counties

2. Contact Person: **Name** Mark C. Haskins
Address 600 East Main Street
Richmond, VA 23232
Telephone (804) 371-2296
Email mark.haskins@tax.virginia.gov

3. Agreement Section(s) involved: Section 310.1: Election for Origin-Based Sourcing

4. Statement of Background Facts (be succinct): As adopted November 12, 2002, the Streamlined Sales and Use Tax Agreement (SSUTA) under Section 310 set forth a destination-based decision tree for determining the jurisdiction to which sales must be sourced. At the urging of a number of states that desired to maintain “Origin” sourcing for intrastate sales of tangible personal property, the Governing Board at its December 11-12, 2007 meeting in Dallas, Texas, adopted amendment AM07038A04, which added Section 310.1: Election for Origin-Based Sourcing to the SSUTA. In division (D) of that section, there are two references to January 1, 2010 that are used in determining when states adopting origin sourcing under Section 310.1 can become full member states [subsection (D)(2)] and when Section 310.1 is “fully effective” [subsection (D)(3)].

5. Issue: Should the January 1, 2010 date found in subsections (D)(2) and (D)(3) of Section 310.1 be interpreted as:

1. “Sunset” dates that would provide a deadline by which five states must elect to use “Origin” sourcing for intrastate sales of tangible personal property, or
2. “Trigger” dates that would provide the earliest possible date that states that have made the election to use “Origin” sourcing for intrastate sales of tangible personal property may become full member states.

6. Proposed Interpretation: The January 1, 2010 date prescribed in subsections (D)(2) and (D)(3) of Section 310.1 is a “trigger” date and represents the earliest possible date that states that have made the election to use “Origin” sourcing for intrastate sales of tangible personal property may become full member states. This interpretation is supported by the clear and unambiguous language contained in the SSUTA.

Subsections A, B, and C of Section 310.1 set forth various rules applicable to the “Origin” sourcing of intrastate sales of tangible personal property. Subsection D of Section 310.1 then sets forth the rules applicable to a state’s eligibility for membership in the SSUTA. Subsection (D)(1) provides that a state that is in substantial compliance with the terms of the SSUTA, except for the sourcing provisions of Section 310 and elects to source pursuant to Section 310.1, shall become an associate member state. Subsection (D)(2) provides that:

On or after January 1, 2010, a state which becomes an associate member state pursuant to this subsection shall automatically become a full member state, provided that at least five (5) states which are not full member states on December 31, 2007, have been found to be in substantial compliance with each of the provisions of the Agreement other than sourcing sales of tangible personal property and digital goods pursuant to Section 310 of the Agreement and have notified the governing board of an election pursuant to paragraph 8 of subsection C of this section to source sales pursuant to this section and have been found to be in substantial compliance with the provisions of this section. (Emphasis added.)

Clearly with the use of the wording “On or after January 1, 2010”, the Governing Board intended for this subsection to be operative after January 1, 2010, otherwise it would have been written to say “On or before January 1, 2010.” Subsection (D)(3) provides:

The provisions of this section shall be fully effective for all purposes **on or after January 1, 2010**, provided that at least five (5) states which are not full member states on December 31, 2007, have been found to be in substantial compliance with each of the provisions of the Agreement other than sourcing sales of tangible personal property and digital goods pursuant to Section 310 of the Agreement and have notified the governing board of an election pursuant to paragraph 8 of subsection C of this section to source sales pursuant to this section and have been found to be in substantial compliance with the provisions of this section. States electing to source sales under this section after that time may become full member states if all other requirements for membership are satisfied. (Emphasis added.)

Again, the use of the wording “on or after January 1, 2010” evidences the Governing Board’s intent that Section 310.1 could be triggered by the actions of at least five states occurring at some point in time beyond January 1, 2010. Otherwise, it would have been written to say “on or before January 1, 2010.”

Had it been the intent of the Governing Board for the ability of states to elect to source sales under Section 310.1 to expire on January 1, 2010, this would have been reflected in the language of the amendment and in the Compiler’s Notes. Nothing contained in the SSUTA, the minutes of the December 11-12, 2007 Governing Board meeting, or the Compiler’s Notes supports the position that at least five states must comply with the provisions of Section 310.1 on or before January 1, 2010 for this section to become effective January 1, 2010.

Absent any evidence of that the intent of the Governing Board is to the contrary, the Compliance Review and Interpretations Committee is hereby requested to recommend to the Governing Board that the January 1, 2010 date prescribed in subsection (D)(2) of Section 310.1 is a “trigger” date and represent the earliest possible date that states that have made the election to use “Origin” sourcing for intrastate sales of tangible personal

property may become full member states. Furthermore, the Compliance Review and Interpretations Committee is hereby requested to recommend to the Governing Board that the January 1, 2010 date found in subsection (D)(3) of Section 310.1 represents the earliest date that section 310.1 can become fully effective and not a “sunset” provision that would effectively repeal section 310.1 on January 1, 2010 if the five state threshold has not been met. This interpretation is supported by the clear and unambiguous language contained in the SSUTA.

7. Is expedited consideration requested? ___No X Yes **If yes, please explain why expedited review is requested.**

Because the September 2009 Governing Board meeting will be the last scheduled meeting prior to the date in question, it is imperative that this matter be resolved by the Compliance Review and Interpretations Committee in time to make a recommendation to the Governing Board for consideration at the September meeting.

A request for interpretation/definition normally requires a minimum 60-day comment period. The comment period may be shortened to 10 days if the Committee grants a request for expedited consideration. See Governing Board Rule 902(D) and (H).

8. Date this Request is submitted: July 27, 2009

Submit to: Scott Peterson, Executive Director
Streamlined Sales Tax Governing Board
4205 Hillsboro Pike, Ste 305
Nashville, TN 37215
615-460-9332
scott.peterson@SSTGB.org