

9-29-10 draft

A motion by Oklahoma to adopt a Rule related to vendor compensation

This Rule establishes standards to be used by the Governing Board pursuant to Section _____ of the Agreement in certifying which Member States are in compliance with the compensation requirements of the Agreement.

A. Each state shall establish 3 percentage rates of compensation. The rates shall be applied to sales and use tax remitted by a seller to the state for a month. Rate 1 shall be applied to the first \$6,250.00 of the sales and use tax remitted by a seller for a month. Rate 2 shall be applied to the amount of sales and use tax remitted for a month which is in excess of \$6,250.00 and not in excess of \$62,500.00. Rate 3 shall be applied to the sales and use tax remitted by a seller for a month which is in excess of \$62,500.00.

B. The amounts in subsection A of this rule to which the compensation rates apply are applicable for sales and use tax collected and remitted by sellers on a monthly basis. For sellers which report and remit annually, Rate 1 shall be applied to the first \$75,000.00 of the sales and use tax remitted by a seller for a year. Rate 2 shall be applied to the amount of sales and use tax remitted for a year which is in excess of \$75,000.00 and not in excess of \$750,000.00. Rate 3 shall be applied to the sales and use tax remitted by a seller for a year which is in excess of \$750,000.00.

For sellers which report and remit every six months, Rate 1 shall be applied to the first \$37,500.00 of the sales and use tax remitted by a seller for a reporting period. Rate 2 shall be applied to the amount of sales and use tax remitted for a reporting period which is in excess of \$37,500.00 and not in excess of \$375,000.00. Rate 3 shall be applied to the sales and use tax remitted by a seller for a reporting period which is in excess of \$375,000.00.

For sellers which report and remit every three months, Rate 1 shall be applied to the first \$18,750.00 of the sales and use tax remitted by a seller for a reporting period. Rate 2 shall be applied to the amount of sales and use tax remitted for a reporting period which is in excess of \$18,750.00 and not in excess of \$187,500.00. Rate 3 shall be applied to the sales and use tax remitted by a seller for a reporting period which is in excess of \$187,500.00.

For sellers which report and remit on some schedule not set out herein, Rates 1, 2 and 3 shall be applied to amounts of the sales and use tax remitted by the seller for the reporting periods which are proportionate to the amounts set out in this rule.

C. Compensation rates shall be established for a calendar year and shall not be changed during such calendar year. Compensation rates must be reviewed, and if necessary, adjusted annually to provide continued compliance with this rule. For any given calendar year, the determination of rates shall utilize data for the twelve month period ending June 30 of the previous calendar year.

The minimum rates a state may pay shall be determined as follows:

A proposed Rate 1 shall be in compliance if utilization of such rate for the twelve month period ending June 30 of the previous calendar year, together with a Rate 2 which is 50% of Rate 1 and a Rate 3 which is 25% of Rate 1 would have resulted in the payment of compensation which is not less than:

- 1) ~~One percent (1%)~~ Seventy-five hundredths of one percent (0.75%) of total sales and use tax revenue collected and remitted for states that require sellers to report tax by local jurisdiction; or
- 2) ~~Nine tenths of One percent (0.9%)~~ Five-tenths of one percent (0.50%) of total sales and use tax revenue collected and remitted for states that do not require sellers to report tax by local jurisdiction.

A state shall be in compliance if it establishes rates in lieu of any or all of the minimum rates prescribed in paragraph C.2. of this rule that are greater than the amounts established by the computation set out in that paragraph. A state which establishes rates higher than either one or two of the rates set out in paragraph C.2. of this rule is not allowed to set the other rate or rates at an amount below the minimum rate prescribed by that paragraph.

D. A member state which has a “second rate” on food or drugs, including a state where the second rate is zero and food or drugs are part of the tax base upon which taxes are levied by local jurisdictions, shall be required to pay a rate of compensation for each tier which is greater than the rates required by subsection C of this rule. This compensation need not be paid in states where food or drugs are exempt from sales tax. This compensation shall be paid to each seller which reports any sales of products eligible for such second rate. The amount of the increase in the rate of compensation shall be 0.2% for tier 1, 0.1% for tier 2, and 0.05% for tier 3. This increased rate of compensation shall only be required to be paid to a seller for reporting periods for which the seller reports any sales of products eligible for the second rate.

E. A member state which has caps or thresholds on clothing shall be required to pay a rate of compensation for each tier which is greater than the rates required by subsection C of this rule to each seller which reports any sales of clothing affected by the cap or threshold. The amount of the increase in the rate of compensation shall be 0.2% for tier 1, 0.1% for tier 2, and 0.05% for tier 3. This increased rate of compensation shall only be required to be paid in reporting periods for which a seller reports any sales of clothing affected by the cap or threshold and shall not be cumulative to any increases in compensation required by Subsection D of this Section.

F. No state shall be required by the Agreement or this rule to pay compensation to a seller in any month on sales and use taxes remitted for such month in excess of

- 1) Seven Hundred Fifty Thousand Dollars (\$750,000.00) for states with sales and use tax collections in the twelve month period ending June 30 of the previous calendar year of not more than One Billion Dollars (\$1,000,000,000.00); or
- 2) One Million Dollars (\$1,000,000.00) for states with sales and use tax collections in the twelve month period ending June 30 of the previous calendar year of more than One Billion Dollars (\$1,000,000,000.00) and not more than Two Billion, Five Hundred Million Dollars (\$2,500,000,000.00); or

- 3) Three Million Dollars (\$3,000,000.00) for states with sales and use tax collections in the twelve month period ending June 30 of the previous calendar year of more than Two Billion, Five Hundred Million Dollars (\$2,500,000,000.00) and not more than Five Billion Dollars (\$5,000,000,000.00); or
- 4) Five Million Dollars (\$5,000,000.00) for states with sales and use tax collections in the twelve month period ending June 30 of the previous calendar year of more than Five Billion Dollars (\$5,000,000,000.00) and not more than Seven Billion, Five Hundred Million Dollars (\$7,500,000,000.00); or
- 5) Seven Million Dollars (\$7,000,000.00) for states with sales and use tax collections in the twelve month period ending June 30 of the previous calendar year of more than Seven Billion, Five Hundred Million Dollars (\$7,500,000,000.00) and not more than Ten Billion Dollars (\$10,000,000,000.00); or
- 6) Ten Million Dollars (\$10,000,000.00) for states with sales and use tax collections in the twelve month period ending June 30 of the previous calendar year of more than Ten Billion Dollars (\$10,000,000,000.00).

For sellers which remit more than once per month but report on a monthly basis, the above caps shall be applied to the amount of sales and use tax collections reflected on the seller's report for an entire month which is remitted as required by subsection G of this rule. Sellers which report on some basis other than monthly shall have the above caps applied to their remittances on a proportionate basis. For example, a seller which reports on a quarterly (three months) basis in a state with sales and use tax collections in the twelve month period ending June 30 of the previous calendar year of not more than One Billion Dollars (\$1,000,000,000.00) may be disallowed compensation on sales and use taxes remitted to such state which are in excess of Two Million, Two Hundred Fifty Thousand Dollars (\$2,250,000.00) in a single quarter.

The Governing Board may adjust the above caps as necessary due to inflation, growth in sales tax revenues or other relevant factors. The Compensation Certification and Review Committee must review any proposed adjustments to these caps and make a recommendation to the Governing Board on such proposed adjustments prior to any vote by the Governing Board on changes to the above caps.

G. A member state is not required to pay compensation on any sales and use tax which is not remitted timely or for which a return is not timely filed. A member state is not required to pay compensation on any person's purchases for their own use.

H. A member state may pay levels of compensation lower than otherwise required by this rule for sales and use tax reported on paper returns.

I. A State shall pay compensation to new remote sellers for a six month period beginning with the first month that such sellers collect a Member State's tax based on the following rates: Rate 1 shall be three percent (3%), Rate 2 shall be one and one-half percent (1.5%) and Rate 3 shall three-fourths of one percent (0.75%). After such six month period, the rates used to calculate compensation for such sellers shall be the rates required by the State's compensation plan established and approved pursuant to subsection C of this rule. A State shall begin paying compensation at the rates required by the State's compensation plan established and approved by subsection C of this rule to all other sellers on the later of:

- a) Fifteen months after the date remote collection authority begins for such state, or
- b) When the amount of monthly collections received from new remote sellers for each of four consecutive months occurring sometime after the date remote seller collection authority began meets or exceeds the amount that would be required to pay the approved average monthly level of compensation for all other sellers, then compensation will be due and owing beginning the first day of the following quarter and thereafter for all sellers. In a state that is already compensating its sellers, only the difference above the currently paid amount and the amount that would be required to pay the approved average monthly level of compensation for all other sellers will be required to accumulate before implementing the approved compensation.

For purposes of this rule:

“Remote seller” is a seller that would not register in a state but for the ability of that state to require such remote seller to collect sales or use tax as authorized by federal legislation under authority granted by Congress.

“New remote seller” is a remote seller who registers with the Streamlined Sales Tax registration system ~~after the passage of federal legislation~~ and was not previously required to collect sales or use taxes. A seller merely reincorporating, changing its name or having a change in ownership or any other similar change in its business structure or operations does not constitute a “new remote seller.”

A Member state may relinquish remote collection authority and will not be subject to any requirement to pay compensation to any sellers beginning fifteen months after the date remote collection authority begins for such state if the state does not receive in sales and use tax collections from new remote sellers, during the first twelve months of remote collection authority, sufficient collections as determined by the state to justify the state’s continued participation. A state which exercises this option shall give not less than 60 days’ notice of its intent to relinquish remote collection authority.

J. The Governing Board may adjust the compensation required by this rule if future amendments to the Agreement or changes in technology result in a change in the cost of administering, collecting and remitting sales and use tax for sellers. The compensation requirement may be adjusted up or down. The Compensation Certification and Review Committee must review any proposed adjustments to required compensation and make a recommendation to the Governing Board on such proposed adjustments prior to any vote by the Governing Board on proposed adjustments to compensation. The Compensation Certification and Review Committee will cause an independent review of the effect of amendments to the Agreement and changes in technology on the cost of administering, collecting and remitting sales and use taxes to be made prior to making any recommendation to the Governing Board.

K. Member states, subject to Governing Board review and restrictions, may restrict sellers from altering the number of returns filed in order to enhance their own compensation or that of another person. For example, a seller with multiple locations who files a single return for all

locations prior to receiving the compensation provided by this rule may be prohibited from filing a separate return for each location after a state begins paying compensation required by this rule.