

A motion by Kansas to adopt a rule relating to a small seller exception:

Background and Rationale. (not to be printed with final document)

Estimates of the number of remote sellers by dollar volume have varied widely and accurate numbers have been difficult to obtain. Some states are concerned with their ability to process a largely unknown number of new registrations, returns and payments in a short period of time without adequate planning. Some Certified Service Providers (CSP) are also concerned about servicing a largely unknown number of new remote sellers in a short period of time. Therefore, the Governing Board, in this rule, is adopting a process to “phase down” the Small Seller Exception threshold over several years, allowing for an orderly transition to the new collection responsibility for remote sellers, as well as monitoring and evaluating this process.

DRAFT #2: Proposed Rule for implementing Small Seller Exception Oct. 27, 2010

A. Initial Threshold for Exemption

Pursuant to Section 610 of the SSUTA and effective on the date any Member State receives federal authority to collect sales and use taxes, a remote seller with annual gross national remote sales of \$500,000 or less is exempt from the requirement to collect.

B. Process for Determination of Exemption Threshold by Governing Board

The Governing Board shall maintain the initial threshold amount for not less than twelve months and for no more than twenty-four months from the date that federal collection authority begins. At the end of twenty-four months, the Governing Board must take action to change such threshold for the following calendar year. If no action is taken, or no change is made, the threshold remains in place at the current level for the next calendar year.

Thereafter, every two years at a meeting at least 90 days prior to January 1, the Governing Board shall review and set the Small Seller Exception threshold amount and provide notice to sellers as described in E. The change takes effect on January 1 of such year.

Example: Federal collection authority begins on March 1, 2012 for the first Member State. The initial threshold was set by the Governing Board in 2010 at \$500,000. The Governing Board must consider changing the threshold no later than October 1, 2013, and must publish notice of such change. The change will become effective January 1, 2014. Future Governing Boards must consider the threshold by Oct. 1, 2015, Oct. 1, 2017, etc.

Prior to the first biannual review after collection authority is granted, the Governing Board shall contract for an independent study of the cost to small sellers of registering and collecting sales and use taxes and shall analyze the availability of CSPs and their cost of providing services to small sellers, including the cost of implementation. This study should provide information on such issues as the impact of the Agreement on collection costs, the relationship between costs and compensation and the impact of differing state sales tax structures on costs of collection. This information shall be available before the Governing Board adjusts the Small Seller Exception threshold amount.

Within four years from the date federal collection authority begins, this exemption threshold shall be reduced to \$100,000 as the following systems to reduce the costs of collection are developed:

- Development of a centralized location where state rate and boundary data bases can be accessed online by sellers and the general public and can be downloaded electronically by service providers and others requiring this data.
- Development of an enhanced taxability matrix that provides more information than is currently required on items that are exempt and taxable in a particular state and making the same available in a useable electronic form.
- Development of a 'clearinghouse' or other centralized system that would allow a seller or its service providers (CSPs or shopping carts) to file returns and payments for all states with a single entity. This would be the equivalent for returns and payments of the central registration system developed by the Governing Board.
- Procedures that would allow private entities to qualify to certify various types of certified service providers so as to increase the availability of technology providers needed to accommodate the influx of sellers once the federal legislation is passed.

C. Method for Determining Exemption Qualifications for Remote Sellers.

The definitions found in Section 605 of the SSUTA apply to this rule.

Every remote seller with annual gross national remote sales greater than \$100,000 shall register with the Streamlined Sales Tax online registration system.

Remote sellers with annual gross national remote sales greater than the Small Seller Exception threshold shall collect sales and use taxes.

Sellers shall use the following methodology to determine registration and collection responsibilities.

1. All remote sellers shall be required annually to determine if the Small Seller Exception applies to them based on gross national remote sales volume of the individual seller. Such calculation is required in order to determine reporting and collection requirements.
2. To determine whether a remote seller qualifies for the Small Seller Exception, in the third quarter of the calendar year each remote seller shall compute the total gross national remote sales volume for the most recent 12-month period beginning July 1 of the prior calendar year and ending June 30 of the next calendar year.
3. If the total gross national remote sales volume for such 12 month period exceeds \$100,000, then the remote seller shall register by November 1 of the calendar year in which such 12 month period falls with the Streamlined Sales Tax online registration system at <http://www.streamlinedsalestax.org>. There is no requirement to collect

sales and use taxes unless the seller's gross national remote sales exceed the exemption amount.

4. If the total gross national remote sales volume for such 12 month period exceeds the exemption amount in effect for the next calendar year, then the remote seller shall begin collection and remittance of sales and use tax on remote sales on January 1 of that calendar year. During the initial period following the grant of federal authority, the remote seller shall use the initial threshold of \$500,000 of gross national remote sales volume.
5. If the annual gross national remote sales volume for a seller that is currently collecting and remitting sales and use tax on remote sales falls below the small seller exemption threshold amount then in effect, such seller shall continue to collect and remit such taxes until the end of the following calendar quarter.
6. In determining whether a remote seller has exceeded the small seller exemption threshold, the remote sales of such seller should be totaled with the remote sales of any affiliated business owned in whole or substantial part by another remote seller selling the same or substantially similar products and doing business under the same or substantially similar business entity. No remote seller that is part of an affiliated group with a gross national remote sales volume above the small seller exemption threshold is eligible to qualify for the small seller exemption, even if such seller's gross national remote sales volume is below such threshold.
7. Remote sellers claiming the small seller exemption must complete the online exemption certificate with the Streamlined Sales Tax registration system, stating that they qualify for the Small Seller Exception and meet such threshold. The exemption certificate must state the gross national remote sales volume for the most recent 12 month period as described in C.

D. Other Conditions that may Qualify a Seller for a Small Seller Exception

Any remote seller whose annual gross national remote sales is below \$500,000, and who meets any of the following criteria may request exemption from collection requirements. In order to be eligible for any relief described in this section, a request for exemption may be filed with the online registration system at <http://www.streamlinedsalestax.org> stating the gross national remote sales volume for the most recent 12 month period as described in C.2. and the reason for the exemption request:

1. The seller requested a Certified Service Provider (CSP) but the service was not available.

Not available means the remote seller registered with the SST registration system and requested CSP Services. After a period of six months from registration, if no CSP was willing to serve the seller, the collection requirement for that calendar year is voided and the seller will be notified they hold a Small Seller Exception until such time as a CSP will provide service; or

2. The seller attempted but could not register on the SST Registration System.

Reasons given for inability to register will be confirmed by staff and include technical difficulties, lack of ability to transmit data electronically, etc.; or

3. The seller's taxable sales are less than 25% of the seller's total remote national sales.

The definition of taxable sales will be determined by the taxability matrix, or definitions in use in the seller's home or headquarters state. This exclusion is expected to apply to sellers of items such as durable medical goods, pharmaceuticals, etc. which are often tax-exempt in many states; or

4. Seller is a wholesaler or more than three-fourths of its sales are goods for resale.

E. Notification.

The purpose of notification is to ensure that as many retailers as possible are informed about remote seller collection responsibilities.

1. The Governing Board shall notify all retailers registered with the Streamlined Sales Tax Registration System of any change at least 90 days prior to the date on which it becomes effective.
2. The Governing Board shall post on its website the amount of the Small Seller Exception and the rules and procedures for determining how a seller qualifies.
3. The Governing Board shall notify the general news media about all changes, particularly as collection authority begins for all the Member States.
4. The Governing Board shall notify any retailer or business or trade association that has requested to be included on the notification list of changes in remote seller collection responsibilities.
5. Member States shall notify annually their registered sellers of an obligation to collect tax into other Member States if their volume of gross national remote sales exceeds the threshold.

Any seller registered with the Governing Board that fails to receive notice about changes in the Small Seller Exception may request and receive relief from penalty and interest for failure to collect due to that change.