

A motion by Oklahoma and Tennessee to adopt a rule relating to replacement taxes:

Interpretive Rule related to proposed amendment AM08014A01

Rule _____ Prohibition of Replacement Taxes - Draft 3-31-09

The taxes described in this rule are replacement taxes prohibited by Section _____ of the Agreement. No other taxes have been determined by the Governing Board to be replacement taxes prohibited by the Agreement.

The Governing Board's determination of whether a tax enacted by a member state is a prohibited replacement tax shall be based on an examination of all the facts and circumstances. In determining whether a tax is a replacement tax, the Governing Board may consider other factors in addition to those used previously.

1. A tax imposed by a member state on the sale of an article of clothing at a different rate of taxation than the general sales and use tax rate, when such clothing was previously subject to the general sales and use taxes of such state.

The following factors were relevant in determining the above tax to be a replacement tax:

- a. At the time of the adoption of the tax, the tax was imposed on or with respect to a product defined in Part II or Part III B of the Library of Definitions, or products subsumed within such product definition, except alcoholic beverages or tobacco;
- b. A tax was previously imposed upon such product by statutes which are subject to the requirements of the Agreement;
- c. The tax contains both a sales tax and a use tax component;
- d. The tax imposes an undue administrative burden on sellers of the product which would not be imposed if such tax were subject to all of the requirements of the Agreement with regard to sales and use taxes; and
- e. The tax was adopted after the state became a member.