

## Suggestions for changes to Section 317.D related to good faith

### Cathy Wicks – 9/16/2009

D. If the seller has not obtained an exemption certificate or all relevant data elements as provided in Section 317, subsection C, the seller may, within 120 days subsequent to a request for substantiation by a member state, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchase, taken in good faith. A fully completed exemption certificate will be deemed taken in good faith if the exemption reason type claimed is statutorily available in the taxing jurisdiction where the transaction is sourced on the date of the transaction, is applicable to the item being purchased, and is reasonable for the purchaser's type of business. For purposes of this section, member states may continue to apply their own standards of good faith until such time as a uniform standard for good faith is defined in the Agreement. A seller will be relieved of any liability for the tax on a transaction if the fully completed exemption certificate is obtained in good faith unless it is discovered through the audit process that the seller had knowledge that the information on the exemption certificate is materially false; or fraudulently failed to collect the tax; or participated in an activity to purposely evade the tax that is properly due on the transaction, or solicited the purchaser to participate in the unlawful claim of an exemption.

### Bill Riesenberger – 9/16/2009

D. If the seller has not obtained an exemption certificate or all relevant data elements as provided in Section 317, subsection (C) the seller may, within 120 days subsequent to a request for substantiation by a member state, either: ~~prove that the transaction was not subject to tax by other means or~~

1. obtain a fully completed exemption certificate from the purchaser, taken in good faith. For purposes of this section, member states may continue to apply their own standards of good faith until such time as a uniform standard for good faith is defined in the Agreement that claims an exemption reason type that was statutorily available in the jurisdiction where the transaction is sourced on the date of the transaction, is applicable to the item being purchased, and is reasonable for the purchaser's type of business, or

2. obtain other information to establish that the transaction was not subject to tax.

If the seller obtains the information described in subsections D.1 or D.2 of this section, the seller will be relieved of any liability for the tax on the transaction unless it is discovered through the audit process that the seller has knowledge, or has reason to know, at the time such information is provided, that the information relating to the exemption claimed is materially false or the seller has otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction.

**Fred Nicely – 9/16/2009**

D. If the seller has not obtained an exemption certificate or all relevant data elements as provided in Section 317, subsection C, the seller may, within 120 days subsequent to a request for substantiation by a member state, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchase, taken in good faith. A fully completed exemption certificate will be deemed taken in good faith if the exemption reason type claimed is: (1) statutorily available in the taxing jurisdiction where the transaction is sourced on the date of the transaction, (2) could be is applicable to the item being purchased, and (3) is reasonable based on the seller's knowledge of for the purchaser's type of business. For purposes of this section, member states may continue to apply their own standards of good faith until such time as a uniform standard for good faith is defined in the Agreement. A seller will be relieved of any liability for the tax on a transaction if the fully completed exemption certificate or other documentation to support the exemption is obtained in good faith unless it is discovered through the audit process that the seller had knowledge that the information on the exemption certificate is materially false; or fraudulently failed to collect the tax; or participated in an activity to purposely evade the tax that is properly due on the transaction, or solicited the purchaser to participate in the unlawful claim of an exemption.