

A motion by Michigan to adopt a rule relating to the definition of substantially compliant:

Article II
Definitions

Rule 201 “Substantially Compliant” Defined ~~and Requirements for Compliance~~

A. The term “substantially compliant” as used in section 805 shall be:

1. something less than ~~absolute~~ **exact** compliance;
2. measured by the collective effect of a state’s laws, rules, regulations and **written** policies in meeting the objective of each requirement of the Agreement;
3. achieved by a determination that each requirement of the Agreement has been met in a form sufficient to carry out the essential purpose for which that requirement was adopted (**all of the requirements of the Agreement are set forth in the Certificate of Compliance**).

Example 1:

SSUTA Provision: Section 322 of the SSUTA prohibits member states from having sales tax holidays for products that have not been defined in **Part II or Part III(B)** of the Library of Definitions.

Facts: State Q provides an exemption from its sales tax for footballs sold on Super Bowl weekend. Footballs are normally subject to sales tax in State Q. Footballs are not defined in **Part II (product definitions) or III(B) (sales tax holiday definitions)** of the Agreement’s Library of Definitions (~~sales tax holiday definitions~~).

Conclusion: State Q is not in substantial compliance with the Agreement because it violates Section 322’s prohibition against sales tax holidays for products (footballs) that have not been defined in **Part II or III(B)** of the Library of Definitions.

Example 2:

SSUTA Provision: Section 318 of the SSUTA requires member states to accept sales and use tax return filings that include all taxing jurisdictions within the state, requires that returns be due no sooner than the 20th day of the following month, requires states to accept simplified electronic returns, prohibits states from requiring returns from sellers who make no sales in the state, and requires states to give at least 30 days notice before assessing tax for a failure to file a return unless the seller has a history of failing to timely file returns.

Facts: Member state B levies state sales and use tax, and many of its local jurisdictions also levy sales and use tax. State B’s sales and use tax statutes provide that sales and use tax returns for a month are due on the 20th day of the following month, and must include all taxing jurisdictions within the state. By adopted regulation, State B accepts simplified electronic returns and does not require sellers that make no sales in State B to file a return. State B’s **current Certificate of Compliance filed with the Streamlined Sales Tax Governing Board (posted on State B’s Department of Revenue website) indicates that State B** ~~is to~~ gives a seller at least 30 days notice before assessing tax for failure to file a return, except where the seller has a history of not timely filing returns. ~~However, while that policy is generally known, accepted and implemented, it is not written.~~

Conclusion: State B is in substantial compliance with Section 318, as the collective effect of State B’s law, regulations and policy ~~meet~~ing the objectives of Section 318. **Assertions in a state’s web-posted Certificate of Compliance are considered written policy. State B’s statement in its web-posted Certificate of Compliance meets the requirement of a written policy, and there are no contradicting laws, rules, regulations, or written policies.**

Example 3:

SSUTA Provision: Section 327 of the SSUTA requires each member state to use the common definitions set out in the Library of Definitions (Appendix C), adhering to the certain principles, including that if a term defined in the Library of Definitions appears in the state’s sales and use tax laws, administrative rules or regulations, the state must use the Library definition of the term in substantially the same language as the Library definition. The SSUTA’s Library of Definitions defines “alcoholic beverages” as beverages *suitable* for human consumption that contain 0.5% or more of alcohol by volume.

Facts: Member state C’s sales tax statute exempts sales of “food and food ingredients” from tax. The statute defines “food and food ingredients” exactly as that term is defined in the SSUTA’s Library of Definitions, including the exclusion of “alcoholic beverages”. State C, by published policy statement, defines “alcoholic beverages” as beverages *intended* for human consumption that contain 0.5% percent or more of alcohol by volume. This results in alcoholic beverages containing 0.5% or more of alcohol by volume being subject to sales tax in State C.

Conclusion: State C’s definition of “alcoholic beverages” meets the objective of Section 327 of the SSUTA. State C is in substantial compliance with the SSUTA because the collective effect of its law and policy meets the objective of Section 327 of the SSUTA.

Example 4:

SSUTA Provision: Section 327 of the SSUTA requires each member state to use the common definitions set out in the Library of Definitions (Appendix C), adhering to certain principles, including that except as specifically provided in Sections 316 and 332 and the Library of Definitions, a member state shall impose a sales or use tax on all products or services included within each Part II or Part III(B) definition or exempt from sales or use tax all products or services within each such definition.

Facts: State D levies tax on the retail sale of tangible personal property in general, and on the sale of specifically identified services. State D’s law imposes tax on the sale of telecommunications service, and uses the same definition of “telecommunications service” as is contained in the SSUTA Library of Definitions. State D does not define “ancillary services” in statute, rule or regulation, but its longstanding ~~and well-accepted~~ (but unwritten) policy and practice has been not to tax services that are associated with or incidental to the provision of telecommunications services

Conclusion: The Library of Definitions definition of “telecommunications service” (and that adopted by State D) specifically states that “telecommunications service” does not include “ancillary services.” The cumulative effect of State D’s statutes and policy/practice is that “telecommunications service” is subject to sales tax while ancillary services are not. The requirement of the SSUTA in defining telecommunications service and ancillary services has been met by State D in a form sufficient to carry the essential purpose for which the definitions were adopted. State D is in substantial compliance with Section 327 of the SSUTA.

Example 5:

SSUTA Provision: Section 328 of the SSUTA requires each member state to complete and maintain a taxability matrix in a format approved by the governing board, and to relieve sellers and CSPs from liability to the member state and its local jurisdictions for having charged and collected an incorrect amount of sales or use tax due to the seller or CSP relying on erroneous data provided by the member state in its taxability matrix.

Facts: While State E does not have a law, rule or regulation that relieves sellers or CSPs from liability to State E for charging or collecting the wrong amount of sales or use tax based on the seller’s or the CSP’s reliance on incorrect information contained in State E’s taxability matrix, State E’s current (and web-posted) Certificate of Compliance indicates that State E provides that liability relief.

Conclusion: State E is substantially compliant with Section 328 of the Agreement because its written policy, as contained in its web-posted Certificate of Compliance, provides liability relief to sellers and CSPs as required by Section 328.

Example 6:

SSUTA Provision: Section 324 of the SSUTA requires a member state to adopt a rounding algorithm, and prohibits a member state from requiring a seller to collect tax based on a bracket system.

Facts: While State F's current (and web-posted) Certificate of Compliance indicates that in State F tax must be rounded to a whole cent by using the rounding algorithm outlined in Section 324 of the SSUTA, State F's

promulgated administrative rules require a seller to collect sales tax based on a bracket system set forth in those rules.

Conclusion: State E is not in substantial compliance with the Agreement because it violates Section 324's prohibition against requiring a seller to collect tax based on a bracket system. A statement in the state's Certificate of Compliance that conflicts with the state's laws, rules, regulations, or other written policies cannot be relied upon to support a finding of substantial compliance.

Example 7:

SSUTA Provision: Under Section 318(C)(5) of the Agreement, a state may require a seller which elects to file an SER to give at least three months notice of the seller's intent to discontinue filing an SER.

Facts: State G, by statute, requires that a seller which elects to file an SER give at least 90 days notice of the seller's intent to discontinue filing an SER.

Conclusion: Depending on the months involved, the number of days in three consecutive months varies, and may be as few as 90 or as many as 92. If State G's requirement that a seller which has elected to file an SER give at least 90 days notice of the seller's intent to discontinue filing an SER imposes any additional burden on sellers, that additional burden is *de minimis*. A state may increase the burden on sellers so long as the increase in the burden is not more than *de minimis*. State G is in substantial compliance with the Agreement, as its "90-day notice" requirement imposes no more than a *de minimis* increase in sellers' burden, and carries out the essential purpose for which the requirement of Section 318(C)(5) was adopted.

~~**B.** The following listing of the provisions of the Agreement identify those specific requirements that must be met for a member state to be "substantially compliant":~~

~~**Article I** states the purpose and principle of the Agreement and does not independently impose compliance requirements on member states.~~

~~Article II~~ defines selected terms for use in the Agreement and does not independently impose compliance requirements on member states.

~~Article III:~~

~~Section 301~~—requires member states to implement state level administration for sales and use tax registration, return filing and remittances, and audits.

~~Section 302~~—requires a common tax base between state and local sales and use taxes, excepting motor vehicles, aircraft, watercraft, modular homes, manufactured homes and mobile homes.

~~Section 303~~—requires member states to participate in the online sales and use tax registration system and to allow registration by agents. It prohibits member states from requiring registration fees and written signatures.

~~Section 304~~—requires member states to relieve sellers of liability for a period of up to 30 days if the member state failed to allow 30 days from enactment of a state sales or use tax rate change and its effective date.

~~Section 305~~—requires member states to make local rate changes only on the first day of a calendar quarter with a minimum of 60 days notice. requires member states to apply local rate changes applicable to purchases from printed catalogs only on the first day of a calendar quarter with a minimum 120 days notice. requires that changes to local jurisdiction boundary changes apply only on the first day of a calendar quarter after a minimum of 60 days notice. requires member states with local jurisdiction sales or use taxes to provide and maintain a jurisdiction rate and boundary database utilizing FIPS that includes a description of the change and the effective date of the change. requires a database that assigns zip codes within a member state to proper local rates and jurisdictions using the lowest combined rate in a zip code. requires that rate and boundary databases must be made available by the first day of the month prior to the first day of a calendar quarter in a format approved by the governing board, and that they be available on the state's website.

~~Section 306~~—requires member states to provide liability relief to sellers when they rely on state jurisdiction databases.

~~Section 307~~—requires member states to make state and local jurisdiction databases available in downloadable format at no cost to the user.

~~Section 308~~—prohibits multiple sales and use tax rates except for limited enumerated exceptions. prohibits more than one local rate per local jurisdiction, and requires local sales and use tax rates to be identical within a local jurisdiction.

~~Section 309~~—requires member states to source sales in accordance with Section 310 with limited enumerated exceptions.

~~Section 310~~—requires member states to source sales in accordance with a prescribed hierarchy with variations for certain transactions and property.

~~Section 310.1~~—provides alternative origin sourcing choices and associated requirements for member states applicable to local jurisdiction sales and use taxes

~~and provides for associate membership status and a transition to full membership status.~~

~~Section 311— provides sourcing related definitions and does not independently impose compliance requirements on member states.~~

~~Section 312— repealed~~

~~Section 313— provides alternative sourcing choices and associated requirements for various forms of direct mail.~~

~~Section 313.1— provides alternative origin sourcing choices and associated requirements for member states for direct mail originating within the member state.~~

~~Section 314— requires member states to source sales of telecommunication services in a prescribed manner.~~

~~Section 315— provides telecommunications sourcing related definitions applicable to Section 314, and does not independently impose compliance requirements on member states.~~

~~Section 316— prohibits exemption of specific items included within a product definition contained in the Library of Definitions unless the specific item is also defined in the Library of Definitions. prohibits enactment of a use based exemption for an item that would effectively constitute a product based exemption of an item included with a product definition contained in the Library of Definitions.~~

~~Section 317— requires member states to accept limited information to substantiate claims of exemption from tax. prohibits states from requiring signatures to claim exemption. requires states to allow third party vendors to claim resale exemption in drop shipment transactions. requires member states to hold sellers harmless who obtain exemption claims that meet the requirements of the section, including exemption claims obtained within 90 days of the sale. requires states to accept exemption claims provided within 120 days of a request for substantiation by the state. requires states to accept blanket exemption certificates without expiration provided the purchaser and seller have a recurring business relationship.~~

~~Section 318— requires member states to accept sales and use tax return filings that include all taxing jurisdictions within the state. requires that returns be due no sooner than the 20th day of the following month. requires states to accept simplified electronic returns. prohibits states from requiring returns from sellers who make no sales in the state. requires states to give at least 30 days notice before assessing tax for a failure to file a return unless the seller has a history of failing to timely file returns.~~

~~Section 319— prohibits member states from requiring more than one remittance per return unless the seller collected more than \$30,000 in the preceding calendar year. requires states to permit additional remittances utilizing a calculation method rather than actual collections and prohibits additional returns filing requirements. requires states to accept EFT remittances by ACH Debit and ACH~~

~~Credit. requires states to provide for making “same day” payments if EFT payments fail. requires states to accept as timely remittances made the next business day after a due date that falls on a legal banking holiday. requires states to utilize uniform tax type and payment type codes approved by the Governing Board. requires states to adopt a standardized bulk payment process within 2 years of its adoption by the Governing Board.~~

~~Section 320—requires member states to provide a bad debt deduction. requires states to utilize the federal definition of “bad debt” in IRC Section 166 with certain exceptions. requires states to allow the deduction for the return period in which the debt is written off or is eligible for write off. requires states to issue refunds if the deduction exceeds the tax liability for the return period. requires states to allow a CSP to claim the sellers bad debt deduction. requires states to permit a deduction on an allocation basis where the sellers books use such an allocation for bad debt purposes.~~

~~Section 321—requires member states to provide public notification to consumers of state practices concerning personally identifiable information. requires state to dispose of personally identifiable information when it is no longer needed. requires states to provide reasonable access to personally identifiable information by the person to whom it belongs.~~

~~Section 322—prohibits states from having sales tax holidays except where the product has been defined in the Library of Definitions and uniformly applied to state and local taxes. requires states to provide notice of the exemption at least 60 days prior to the first day of the calendar quarter in which the exemption will begin. prohibits states from requiring exemption claims for items covered by a sales tax holiday.~~

~~Section 323—prohibits state level sales and use tax caps and thresholds unless there is no burden on sellers. prohibits local level sales and use tax caps.~~

~~Section 324—requires member states to use mathematical rounding rules carried to the third decimal place, rounded to the nearest whole cent. requires states to allow rounding on an item or invoice basis on an aggregated state and local tax basis. prohibits state use of a bracket system.~~

~~Section 325—requires states to adopt provisions prohibiting purchaser refund cause of action suits against a seller unless the purchaser has first notified the seller and allowed a minimum of 60 days for the seller’s response.~~

~~Section 326—requires member states to provide direct pay authority.~~

~~Section 327—requires member states to adopt in statute or rule and regulation definitions contained in the Library of Definitions if the term appears in the states sales and use tax statutes or rules and regulations. prohibits states from using a definition in the Library of Definitions in a manner contrary to the Library of Definitions meaning. requires states to tax or exempt all items included within a definition in the Library of Definitions except as provided in Sections 316 and 332 and with limitation for sales tax holiday exemption definitions.~~

~~Section 328~~—requires member states to complete a taxability matrix, and to provide liability relief to sellers for errors.

~~Section 329~~—requires member states to limit the effective date for sales or use tax rate changes applicable to services to the first billing period starting on or after the effective date for rate increases, and to bills rendered on or after the effective date for rate decreases.

~~Section 330~~—requires member states to adopt and utilize the definition for “bundled transaction”. provides that states are unrestricted in applying tax to “bundled transactions”. provides special rules for bundles that include: telecommunication service; ancillary service; internet access; or audio or video programming service. provides special rules for bundles that include an “optional computer software maintenance contract”.

~~Section 331~~—provides liability relief to purchasers from tax, penalty and interest under certain circumstances.

~~Section 332~~—establishes mutually exclusive relationship for digital products. provides a separation of defined digital products. obviates the need to use digital product definitions for imposition if a state taxes products “transferred electronically”. limits taxation to end user transactions. limits taxation to permanent use unless statute specifically imposes on less than permanent use of digital products; limits taxation where continued payment is not required unless specifically imposed; requires disclosure of above departures in taxability matrix. state restrictions limited to the definition of “specified digital products”. authorizes differing treatment and distinguishes subscription to products. provides the same treatment for “digital code”. authorizes product based exemptions as long as digital and non-digital are treated the same. “transferred electronically” defined.

~~Section 333~~—prohibits including products transferred electronically in definition of tangible personal property; excludes “ancillary services”, “computer software” and “telecommunications services” from definition of products transferred electronically; and defines “transferred electronically”.

~~Section 334~~—prohibits replacement taxes for any product defined in Part II or Part III(B) of the Library of Definitions.

Article IV:

~~Section 401~~—prohibits member states that have withdrawn or been expelled from using central registration or collection information as a factor to determine if a seller has nexus with that state for any tax at any time.

~~Section 402~~—requires member states to provide amnesty, with certain restrictions, for uncollected or unpaid sales or use tax for sellers registering to collect within twelve months of the effective date of the state’s participation in the Agreement.

~~Section 403~~—describes and provides for model 1, 2 and 3 sellers.

~~Section 404~~—authorizes a seller to register by agent.

Article V:

~~Section 501~~—provides for certification of service providers and automated systems by the governing board, but does not independently impose compliance requirements on member states.

~~Section 502~~— A) requires member states to review and certify CAS software. B) requires member states to relieve CSPs and model 2 sellers from liability when relying on state certification. C) requires member states to provide liability relief to CSPs the same as required for sellers pursuant to Section 317. D) specifically excludes item/transaction classification errors from liability relief. E) requires member states to notify CSPs and model 2 sellers of incorrect classification and requires 10 day grace period to correct error.

Article VI:

~~Section 601~~—requires member states to provide monetary allowance to a CSP as provided in the contract with the governing board.

~~Section 602~~—anticipates a structure for monetary allowances to model 2 sellers that member states would be required to give.

~~Section 603~~—anticipates a structure for monetary allowances to model 3 and all other sellers not under model 1, 2 or 3, but does not independently impose compliance requirements on member states.

~~Section 604~~—requires member states that elect origin-based sourcing provisions to provide compensation for establishing and maintaining an origin-based system.

Article VII:

~~Section 701~~—provides for an effective date for the Agreement, but does not independently impose requirements on member states.

~~Section 702~~—provides a process for states seeking originating membership to follow, but does not impose ongoing requirements on member states.

~~Section 703~~—provides for interim management of the Agreement by the Implementing States and succession of that responsibility to the Governing Board, provides that Implementing States become Advisor States, prohibits the Governing Board and member states from sharing seller registration information with Advisor States, provides for participation by Advisor States in closed sessions of the Governing Board.

~~Section 704~~—describes member state admission as well as associate state status, but does not independently impose requirements on member states.

~~Section 705~~—describes the rights, privileges, restrictions and obligations of associate member states, and prohibits the governing board and member states from sharing seller registration information.

Article VIII:

~~Section 801~~— A) provides a process for states to seek entry into the Agreement after it has originally been formed, and prescribes the date of entry for new states.

B) requires petitioning states to provide copies of their petitions and certificates of compliance to each member state and post them to their state web site. C) provides parameters for associate member status. D) provides for forfeiture of associate member status.

Section 802— requires that a state’s certificate of compliance be signed by the chief executive of the tax agency, and that it cite applicable statute, rules, regulations and other authoritative documentation.

Section 803— requires annual recertification of their compliance by member states by August 1st of each year. requires that recertification be signed by the chief executive of the tax agency. requires that member states that cannot recertify compliance submit a statement of non-compliance that identifies non-compliance and steps it will take to return to compliance. requires member states to post recertification documents to their web sites.

Section 804— sets forth requirements for membership approval, but does not independently impose requirements on member states.

Section 805— defines the compliance standard, but does not independently impose requirements on member states.

Section 806— sets forth certain Agreement administration processes for the governing board, but does not independently impose requirements on member states.

Section 807— requires governing board meetings to be open with enumerated exceptions, but does not independently impose requirements on member states.

Section 808— provides for member state withdrawal and expulsion from the Agreement and sets forth notice requirements for member states withdrawing.

Section 809— provides for sanctions to be imposed on member states found out of compliance with the Agreement, and provides specific time frames for member states to comply with amendments to, and judicial interpretations of, the Agreement, but does not independently impose requirements on member states.

Section 810— provides for creation of a state and local advisory council, but does not independently impose requirements on member states.

Section 811— provides for recognition of a business advisory council, but does not independently impose requirements on member states.

Article IX:

Section 901— provides a process for amending the Agreement, but does not independently impose requirements on member states.

Section 902— provides a process for interpreting the Agreement, but does not independently impose requirements on member states.

Section 903— provides a process for requesting additional definitions in the Agreement, but does not independently impose requirements on member states.

Article X:

~~Section 1001~~—requires creation of an issue resolution process, but does not independently impose requirements on member states.

~~Section 1002~~—describes matters for which the issue resolution process may be invoked, but does not independently impose requirements on member states.

~~Section 1003~~—provides that action by the governing board on issue resolution matters will be final and not subject to further review, but does not independently impose requirements on member states.

~~Section 1004~~—clarifies that rights or duties to persons or governmental bodies are not affected by issue resolution process, but does not independently impose requirements on member states.

Article XI:

~~Section 1101~~—explains that member states are cooperating sovereigns, but does not independently impose requirements on member states.

~~Section 1102~~—explains that the laws of member states are unaffected by the Agreement, but does not independently impose requirements on member states.

~~Section 1103~~—provides that the Agreement has limited binding and beneficial effect, but does not independently impose requirements on member states.

~~Section 1104~~—provides that determinations made pursuant to the Agreement are final and not subject to protest, appeal or review, but does not independently impose requirements on member states.

Article XII:

~~Section 1201~~—provides for governing board review of costs and benefits of administration and collection of sales and use taxes, but does not independently impose requirements on member states.