Article II
Definitions

Rule 201 "Substantially Compliant" Defined

The term "substantially compliant" as used in section 805 shall be:

1. something other than use of the exact terms of the Agreement, which does not impose an increased burden on the seller or the purchaser, as applicable, that is other than de minimis when compared to the exact terms of the Agreement;
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 intended to be set forth in the Certificate of Compliance);
4. achieved only if there is no contrary evidence in a state's laws, rules, regulations or written policy that the requirements of the Agreement are not met.

Example 1:

SSUTA Provision: Section 322 of the Agreement 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.
Conclusion: State Q is not substantially compliant 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: 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 imposed on sellers under Section 318(C)(5) of the Agreement so long as the increase in the burden is not more than *de minimis*. State G is substantially compliant 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.

Example 3:

SSUTA Provision: Section 318 of the Agreement 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 give**s** 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.

Conclusion: State B is substantially compliant with Section 318, as the collective effect of State B's law, regulations and policy meets 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, written policies, or actual practices**.**

Example 4:

SSUTA Provision: Section 319 of the Agreement requires a state to allow for electronic payments by all remitters by both ACH Credit and ACH Debit.

Facts: State H does not have a statute, rule or regulation that addresses electronic payments by persons remitting sales or use tax. State H's current (and web-posted) Certificate of Compliance states that State H allows for electronic payments by all remitters by both ACH Credit and ACH Debit.

However, State H has not yet actually implemented a system that would accommodate electronic payment by ACH Debit. At present, electronic payments can only be remitted to State H by ACH Credit.

Conclusion: The collective effect of a state's laws, rules, regulations and written policies must meet the objective of each requirement of the Agreement. Though State H's written policy, as contained in its web-posted Certificate of Compliance, states that State H allows for electronic payment by ACH Debit, that written policy is not being followed by State H. The "effect" of State H's laws, rules, regulations and written policies does not meet the objective of Section 319 (that all remitters must be able to make electronic payments by ACH Debit) since State H does not actually allow electronic payment by ACH Debit. The mere existence of a state law, rule, regulation or policy does not satisfy the obligation of a state to be substantially compliant with the Agreement; the law, rule, regulation and policy must be applied so that their collective "effect" is substantially compliant with the Agreement. Accordingly, State H is not substantially compliant with the Agreement.

Example 5:

SSUTA Provision: Section 327 of the Agreement 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 Agreement'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 Agreement'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 Agreement. State C is substantially compliant with the Agreement because the collective effect of its law and policy meets the objective of Section 327 of the Agreement.

Example 6:

SSUTA Provision: Section 327 of the Agreement 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 Section**s** 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 Agreement's Library of Definitions. State D does not define "ancillary services" in statute, rule or regulation, but its longstanding written 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 Agreement 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 substantially compliant with Section 327 of the Agreement.

Example 7:

SSUTA Provision: Section 324 of the Agreement 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: State F has no statute that addresses the use of a rounding algorithm or the use of a bracket system. 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 F is not substantially compliant 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 8:

SSUTA Provision: Section 324 of the Agreement 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: Prior to 2007, State P by statute and accompanying administrative rule required a seller to collect tax based on a bracket system. In 2007 State P changed its law pertaining to a bracket system, adopting the rounding algorithm

outlined in Section 324 of the Agreement, and became a member of the Agreement. State P's administrative rule requiring a seller to collect tax based on a bracket system was not repealed or removed. State P's bracket system rule, which remains "on the books," is ignored by State P: State P's actual practice is to follow its current statute which directs use of the rounding algorithm.
Conclusion: State P's bracket system rule has no current effect since its rounding algorithm statute controls. State P's actual practice is to follow its rounding algorithm statute and to ignore the bracket system rule, even though that rule has not been repealed or removed. The collective effect of State P's laws, rules, regulations, and written policies is substantially compliant with the Agreement.

9/27/2010