

## **A motion by Tennessee and Oklahoma relating to definitions:**

### **Section 322: SALES TAX HOLIDAYS**

- A. If a member state allows for temporary exemption periods, commonly referred to as sales tax holidays, the member state shall:
1. Not apply an exemption after December 31, 2004, unless the items to be exempted are specifically defined in ~~the Agreement~~ Part II or Part III(B) of the Library of Definitions and the exemptions are uniformly applied to state and local sales and use taxes.
  2. Provide notice of the exemption period at least sixty days' prior to the first day of the calendar quarter in which the exemption period will begin.
- B. A member state may establish a sales tax holiday that utilizes price thresholds set by such state and the provisions of the Agreement on the use of thresholds shall not apply to exemptions provided by a state during a sales tax holiday. In order to provide uniformity, a price threshold established by a member state for exempt items shall include only items priced below the threshold. A member state shall not exempt only a portion of the price of an individual item during a sales tax holiday.
- C. The following procedures are to be used by member states in administering a sales tax holiday exemption:
1. Layaway sales - A sale of eligible property under a layaway sale qualifies for exemption if:
    - a. final payment on a layaway order is made by, and the property is given to, the purchaser during the exemption period; or
    - b. the purchaser selects the property and the retailer accepts the order for the item during the exemption period, for immediate delivery upon full payment, even if delivery is made after the exemption period.
  2. Bundled sales - Member states will follow the same procedure during the sales tax holiday as agreed upon for handling a bundled sale at other times.
  3. Coupons and discounts - A discount by the seller reduces the sales price of the property and the discounted sales price determines whether the sales price is within a sales tax holiday price threshold of a member state. A coupon that reduces the sales price is treated as a discount if the seller is not reimbursed for the coupon amount by a third-party. If a discount applies to the total amount paid by a purchaser rather than to the sales price of a particular item and the purchaser has purchased both eligible property and taxable property, the seller should allocate the discount based on the total sales prices of the taxable property compared to the total sales prices of all property sold in that same transaction.
  4. Splitting of items normally sold together - Articles that are normally sold as a single unit must continue to be sold in that manner. Such articles cannot be priced separately and sold as individual items in order to obtain the exemption. For example, a pair of shoes cannot have each shoe sold separately so that the sales price of each shoe is within a sales tax holiday price threshold.
  5. Rain checks - A rain check allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock. Eligible property that customers purchase during the exemption period with use of a rain check will

- qualify for the exemption regardless of when the rain check was issued. Issuance of a rain check during the exemption period will not qualify eligible property for the exemption if the property is actually purchased after the exemption period.
6. Exchanges - The procedure for an exchange in regards to a sales tax holiday is as follows:
    - a. If a customer purchases an item of eligible property during the exemption period, but later exchanges the item for a similar eligible item, even if a different size, different color, or other feature, no additional tax is due even if the exchange is made after the exemption period.
    - b. If a customer purchases an item of eligible property during the exemption period, but after the exemption period has ended, the customer returns the item and receives credit on the purchase of a different item, the appropriate sales tax is due on the sale of the newly purchased item.
    - c. If a customer purchases an item of eligible property before the exemption period, but during the exemption period the customer returns the item and receives credit on the purchase of a different item of eligible property, no sales tax is due on the sale of the new item if the new item is purchased during the exemption period.
  7. Delivery charges - Delivery charges, including shipping, handling and service charges, are part of the sales price of eligible property unless a member state defines "sales price" to exclude such charges. For the purpose of determining a sales tax holiday price threshold, if all the property in a shipment qualifies as eligible property and the sales price for each item in the shipment is within the sales tax holiday price threshold, then the seller does not have to allocate the delivery, handling, or service charge to determine if the price threshold is exceeded. The shipment will be considered a sale of eligible products. If the shipment includes eligible property and taxable property (including an eligible item with a sales price in excess of the price threshold), the seller should allocate the delivery charge by using:
    - a. a percentage based on the total sales prices of the taxable property compared to the total sales prices of all property in the shipment; or
    - b. a percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment.The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the eligible property.
  8. Order date and back orders - For the purpose of a sales tax holiday, eligible property qualifies for exemption if:
    - a. the item is both delivered to and paid for by the customer during the exemption period; or
    - b. the customer orders and pays for the item and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. The seller accepts an order when the seller has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an "in date" stamp on a mail order or assignment of an "order number" to a telephone order. An order is for immediate shipment when the customer does not request delayed shipment. An order is for immediate shipment notwithstanding

- that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the seller.
9. Returns - For a 60-day period immediately after the sales tax holiday exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice that shows tax was paid, or the seller has sufficient documentation to show that tax was paid on the specific item. This 60-day period is set solely for the purpose of designating a time period during which the customer must provide documentation that shows that sales tax was paid on returned merchandise. The 60-day period is not intended to change a seller's policy on the time period during which the seller will accept returns.
  10. Different time zones - The time zone of the seller's location determines the authorized time period for a sales tax holiday when the purchaser is located in one time zone and a seller is located in another.

**Section 328: TAXABILITY MATRIX (Effective January 1, 2008)**

- A. To ensure uniform application of terms defined in Part II and Part III(B) of the Library of Definitions each member state shall complete a taxability matrix adopted by the governing board. The member state's entries in the matrix shall be provided and maintained in a database that is in a downloadable format approved by the governing board. A member state shall provide notice of changes in the taxability of the products or services listed in the taxability matrix as required by the governing board.
- B. A member state shall relieve sellers and CSPs from liability to the member state and its local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or CSP relying on erroneous data provided by the member state in the taxability matrix.
- C. If a state levies sales and use tax on a specified digital product and provides an exemption for an item within the definition of such specified digital product pursuant to Section 332 (H) of this Agreement, such exemption must be noted in the taxability matrix.
- D. Each state that provides for a sales tax holiday pursuant to Section 322 of this Agreement shall, in a format approved by the Governing Board, give notice in the taxability matrix of the products for which a tax exemption is provided.
- ~~E. For purposes of this section, the term "transferred electronically" means obtained by the purchaser by means other than tangible storage media.~~

**Section 327: LIBRARY OF DEFINITIONS**

Each member state shall utilize common definitions as provided in this section. The terms defined are set out in the Library of Definitions, in Appendix C of this Agreement. A member state shall adhere to the following principles:

- A. If a term defined in the Library of Definitions appears in a member state's sales and use tax statutes or administrative rules or regulations, the member state shall enact or adopt the Library definition of the term in its statutes or administrative rules or regulations in substantially the same language as the Library definition.
- B. A member state shall not use a Library definition in its sales or use tax statutes or administrative rules or regulations that is contrary to the meaning of the Library definition.
- C. Except as specifically provided in Sections 316, [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 Provided, the requirements of this subsection shall only apply to Part III(B) definitions to the extent that such definitions are used in the administration of a sales tax holiday.

## **Section 902: INTERPRETATIONS OF AGREEMENT**

Matters involving interpretation of the Agreement, including all definitions in the Library of Definitions, may be brought before the governing board by any member state or by any other person. Interpretations may take the form of interpretive opinions, or interpretive rules. An interpretive opinion is issued when the requester submits specific facts and asks how certain provisions in the Agreement would apply to those facts, similar to a private letter ruling. An interpretive rule is issued to clarify language in the Agreement and applies more generally, similar to rules and regulations issued to clarify statutory language. Both forms of interpretations shall require a three-fourths vote of the entire governing board. The governing board shall publish all interpretations issued under this section. Interpretations shall be considered part of the Agreement and shall have the same effect as the Agreement. The governing board shall act on requests for interpretation of the Agreement within a reasonable period of time and under guidelines and procedures as set forth in the governing board's rules. The governing board may determine that it will not issue an interpretation. The governing board shall provide an opportunity for public comment prior to issuing an interpretation of the Agreement. The governing board shall give notice of a proposed interpretive rule to the member states and

the public as provided in Section 901 of the Agreement, except that notice must be given at least thirty days prior to consideration.

### **Section 903: DEFINITION REQUESTS**

~~Any~~ In addition to the requests for interpretations authorized under Section 902 of this Agreement, any member state or any other person may make requests for additional definitions or for interpretations on how an individual product or service fits within a Part II or Part III(B) definition. Requests shall be submitted in writing as determined by the governing board. Such requests shall be referred to the Advisory Council created in Section 810 or other group under guidelines and procedures as set forth in the governing board's rules. The entity to which the request was referred shall post notice of the request and provide for input from the public and the member states as directed by the governing board. Within one hundred eighty days after receiving the request, they shall report to the governing board one of the following recommendations:

- A. That no action be taken on the request;
- B. That a proposed amendment to the Library be submitted;
- C. That an interpretation request be submitted; or
- D. That additional time is needed to review the request.

If either an amendment or an interpretation is recommended, the entity to which the request was referred shall provide the appropriate language as required by the governing board. The governing board shall take action on the recommendation of the entity to which the request was referred at the next meeting of the governing board pursuant to the notice requirements of Section 806. Action by the governing board to approve a recommendation for no action shall be considered the final disposition of the request. Nothing in this paragraph shall prohibit a state from directly submitting a proposed amendment or an interpretation request to the governing board pursuant to Section 901 or Section 902.

## **Appendix C**

### **LIBRARY OF DEFINITIONS**

**Part I.** Administrative definitions including tangible personal property. Terms included in this Part are core terms that apply in imposing and administering sales and use taxes.

**Part II.** Product definitions. Terms included in this Part are used to impose sales and use taxes, exempt items from sales and use taxes or to impose tax on items by narrowing an exemption that otherwise includes these items.

**Part III.** Sales tax holiday definitions. Terms included in this Part are core terms that apply in imposing and administering sales and use taxes during sales tax holidays.

## **PART III**

### **Sales Tax Holiday Definitions**

The definitions in this Part are only applicable for the purpose of administration of a sales tax holiday, as defined in Section 322 (A).

#### **A. Administrative Definitions**

"**Eligible property**" means an item of a type, such as clothing, that qualifies for a sales tax holiday exemption in a member state.

"**Layaway sale**" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller, when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser.

"**Rain check**" means the seller allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock.

#### **B. Product Definitions**

"**School supply**" is an item commonly used by a student in a course of study. The term is mutually exclusive of the terms "school art supply," "school instructional material," and "school computer supply," and may be taxed differently. The following is an all-inclusive list:

- A. Binders;
- B. Book bags;

- C. Calculators;
- D. Cellophane tape;
- E. Blackboard chalk;
- F. Compasses;
- G. Composition books;
- H. Crayons;
- I. Erasers;
- J. Folders; expandable, pocket, plastic, and manila;
- K. Glue, paste, and paste sticks;
- L. Highlighters;
- M. Index cards;
- N. Index card boxes;
- O. Legal pads;
- P. Lunch boxes;
- Q. Markers;
- R. Notebooks;
- S. Paper; loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper;
- T. Pencil boxes and other school supply boxes;
- U. Pencil sharpeners;
- V. Pencils;
- W. Pens;
- X. Protractors;
- Y. Rulers;
- Z. Scissors; and
- AA. Writing tablets.

“**School art supply**” is an item commonly used by a student in a course of study for artwork. The term is mutually exclusive of the terms “school supply,” “school instructional material,” and “school computer supply,” and may be taxed differently. The following is an all-inclusive list:

- A. Clay and glazes;
- B. Paints; acrylic, tempora, and oil;
- C. Paintbrushes for artwork;
- D. Sketch and drawing pads; and
- E. Watercolors.

**“School instructional material”** is written material commonly used by a student in a course of study as a reference and to learn the subject being taught. The term is mutually exclusive of the terms “school supply,” “school art supply,” and “school computer supply,” and may be taxed differently. The following is an all-inclusive list:

- A. Reference books;
- B. Reference maps and globes;
- C. Textbooks; and
- D. Workbooks.

**“School computer supply”** is an item commonly used by a student in a course of study in which a computer is used. The term is mutually exclusive of the terms “school supply,” “school art supply,” and “school instructional material,” and may be taxed differently. The following is an all-inclusive list:

- A. Computer storage media; diskettes, compact disks;
- B. Handheld electronic schedulers, except devices that are cellular phones;
- C. Personal digital assistants, except devices that are cellular phones;
- D. Computer printers; and
- E. Printer supplies for computers; printer paper, printer ink.