

A motion by Kansas, Kentucky, North Carolina, South Dakota, and Tennessee to amend the SSUTA relating to software maintenance contracts:

Appendix C

LIBRARY OF DEFINITIONS

Product Definitions

Software Maintenance Contract Definitions:

A “computer software maintenance contract” is a contract that obligates a vendor of computer software to provide a customer with future updates or upgrades to computer software, support services with respect to computer software or both.

A “mandatory computer software maintenance contract” is a computer software maintenance contract that the customer is obligated by contract to purchase as a condition to the retail sale of computer software.

An “optional computer software maintenance contract” is a computer software maintenance contract that the customer is not obligated to purchase as a condition to the retail sale of computer software.

A member state may limit the definition of “computer software maintenance contract” to one or more of the following:

1. Software maintenance contracts with respect to prewritten computer software,
2. Optional computer software maintenance contracts,
3. Mandatory computer software maintenance contracts,
4. Optional computer software maintenance contracts that do not include upgrades and updates delivered electronically, by load and leave, or both.

Section 330: BUNDLED TRANSACTIONS

- A. A member state shall adopt and utilize to determine tax treatment, the core definition for a “bundled transaction” in Appendix C, Part I of the Library of Definitions in the Agreement.
- B. Member states are not restricted in their tax treatment of bundled transactions except as otherwise provided in the Agreement. Member states are not restricted in their ability to treat some bundled transactions differently from other bundled transactions.
- C. In the case of a bundled transaction that includes any of the following: Telecommunications service, ancillary service, internet access, or audio or video programming service:

1. If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards such standards such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.
2. If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.
3. The provisions of this section shall apply unless otherwise provided by federal law.

D. In the case of a transaction that includes an “optional computer software maintenance contract” for prewritten computer software and the state otherwise has not specifically imposed tax on the retail sale of computer software maintenance contracts, the following provisions apply:

1. If an optional computer software maintenance contract only obligates the vendor to provide upgrades and updates, it will be characterized as a retail sale of prewritten computer software.
2. If an optional computer software maintenance contract only obligates the vendor to provide support services, it will be characterized as a retail sale of services and a state may use any of the methods provided under subsection (D)(3) to determine the taxable and nontaxable or exempt portions.
3. If an optional computer software maintenance contract is a bundled transaction in which both taxable and nontaxable or exempt products that are not separately itemized on the invoice or similar billing document, then states shall elect one of the following tax treatments:
 - (a) The contract shall be characterized as all taxable;
 - (b) The contract shall be characterized as all taxable unless the seller can demonstrate, using a reasonable method as of the time of sale, the portion of the contract that is for nontaxable or exempt products;
 - (c) The contract shall be characterized as all nontaxable or exempt; or
 - (d) The contract shall be characterized as twenty (20) [30] [40][50] percent taxable and as eighty (80)[70] [60] [50] percent nontaxable or exempt respectively, as selected by each member state.
5. With respect to states that elect the method described in subparagraph 3(b):
 - (a) Such states may prescribe the use of such reasonable methods as it deems appropriate, and
 - (b) The method selected by the seller shall be binding on the purchaser.