Proposed Technical Amendment to AM009903A08 (July 26, 2010 revision)
To be presented at the Governing Board Meeting October 5-7, 2010 in Indianapolis.

The intent of this amendment is to provide standards for and a method for determining compensation to all sellers in anticipation of action by Congress that would grant states the authority to require remote sellers to collect sales and use tax.

**I. Definitions for purposes of this section**

A. "Remote sales" are sales into a state in which the seller would not legally be required to collect sales or use tax, but for the ability of that state to require such "remote seller" to collect sales or use tax under ~~federal~~ authority granted by Congress.

B. "Remote seller" is a seller that would not register in a state but for the ability of that state to require such "remote seller" to collect sales or use tax under ~~federal~~ authority granted by Congress.

C. "In-state seller" is any seller that is not a "remote seller" in a state and is legally required to collect sales or use tax in that state.

D. "New remote seller" is a "remote seller" who registers with the Streamlined Sales Tax registration system and was not previously required to collect sales or use taxes. A seller merely reincorporating, changing its name or having a change in ownership or any other similar change in its business structure or operations does not constitute a "new remote seller."

**II. Compensation Requirement**

A. Requirement for Collection Authority

1. A member state may require "remote sellers" to collect state and local sales and use tax on "remote sales" provided such member state authorizes compensation to all sellers~~, in-state and remote,~~ in accordance with the requirements of this section.

2. A member state shall not be required to comply with the requirements for compensation in this section, but if such member state does not comply with the requirements for compensation, it shall not exercise collection authority over "remote sellers".

B. Petition for Collection Authority and Compensation Compliance Determination.

1. Upon a petition by the member state, the Governing Board shall certify which member states are in compliance with the compensation requirements of the Agreement and shall reevaluate such certification on an annual basis. The process for certification is as follows:

a. A member state shall petition the Governing Board for certification that it meets all the compensation requirements of this section. The petition must include the most recent Certificate of Compliance showing such Member state to be in full compliance with the minimum simplification requirements of the Agreement, other than compensation.

b. A petition for collection authority may be submitted to the Governing Board at any time but the Governing Board shall not grant state specific authorization to begin remote seller

collections until at least 6 months after the general remote seller collection authority has been granted by ~~federal authority~~ Congress.

c. Upon certification by the Governing Board, the Member state will be authorized to require collection by remote sellers. This authority will commence for such state on the first day of the next calendar quarter at least 60 days after the date the Governing Board makes its compensation determination. Such collection authority will continue as long as the Member state provides the minimum compensation to all sellers as required or permitted under the Agreement and consistent with II.C.3 of this section and maintains its certification and compliance with the Agreement.

2. The Governing Board shall establish within its Bylaws a Compensation Certification and Review Committee comprised of no less than 11 members. Membership shall be drawn from the Business Advisory Council, the State and Local Advisory Council and delegates to the Governing Board. The Chair of the Compliance Review and Interpretations Committee shall be ex officio.

The purpose of this committee is to:
(a) Review each Member state's petition pursuant to II. B.1;
(b) Perform annual reviews of state compensation plans; and
(c) Provide timely recommendations to the Governing Board for action on Member states' petitions made pursuant to Section I.B.1.a.

3. At any time after the Governing Board has made the determinations required by the Agreement to grant remote seller collection authority to a member state, any person affected by the Agreement may petition the Governing Board for a determination of a member state's compliance with the Agreement. Such request shall be deemed a petition for matters of compliance under Section 1002 of the Agreement and shall comply with the rules and procedures for issue resolution in Section 1001 of the Agreement.

4. Upon final determination by the Governing Board that a member state's compensation is not in compliance with the compensation requirements of the Agreement, a member state's authority to require collection by remote sellers shall automatically terminate 30 days following the date of such final determination.

5. Upon final determination by the Governing Board that a member state is not in compliance with the minimum simplification parts of the Agreement, other than compensation, that Member state shall lose its remote seller collection authority on the earlier of:
(a) The date specified by the Governing Board, or
(b) The later of the first day of January at least 2 years after the Governing Board finally determined the member state was not in compliance or the first day of a calendar quarter following the end of one full session of the member state's legislature beginning after the Governing Board finally determined the state was not in compliance.

6. Any Member state that loses its collection authority must file a petition with the Governing Board to have its remote seller collection authority restored. The petition, which may be submitted at any time, should identify how the issues which caused loss of certification have been addressed and why certification should be restored. Restoration of collection authority,

if granted, will commence for such state on the first day of the next calendar quarter at least 60 days after the Governing Board makes its compensation determination.

C. Standards for Compensation

1. The Member state shall provide ~~reasonable~~ at least the minimum compensation to all sellers for expenses incurred in administering, collecting, and remitting sales and use taxes (other than taxes paid on goods and services purchased for consumption by the seller) to that Member state that is reasonably related to actual costs incurred in collecting and remitting sales and use taxes.

The Governing Board may allow compensation to:
(a) Vary from state to state;
(b) Vary according to collection costs of sellers of different sizes;
(c) Vary according to the complexity of a state's laws, including having a single state rate versus many local jurisdictions, clothing caps or thresholds, intra-state origin sourcing;
(d) Exceed the minimum standard;
(e) Be reasonably capped;
(f) Be adjusted in relationship to changes in the size of the small business exemption adopted by the Governing Board;
(g) Be decreased as additional simplifications and improvements in technology reduce collection costs;
(h) Be increased if provisions of the Agreement are adopted that increase collection costs;
~~(i) Be decreased as more states come into compliance and begin paying compensation.~~

2. Compensation will be paid as a percentage applied to tax remitted on a return. The Governing Board shall promulgate rules to provide appropriate adjustments to accommodate differing filing periods of member states.

3. Each member state shall establish three rates of compensation which shall be a percentage of a portion of sales and use taxes remitted by a seller in the reported month. Rate 1 shall be paid on the first $6,250.00 of the sales and use tax remitted by a seller in the reported month. Rate 2, which shall not be less than fifty percent (50%) of a Rate 1, shall be paid on the amount of sales and use tax remitted in the reported month exceeding $6,250.00 and less than or equal to $62,500.00. Rate 3, which shall not be less than twenty-five percent (25%) of Rate 1, shall be paid on the sales and use tax remitted by a seller in the reported month exceeding $62,500.00.

Each member state shall establish Rates 1, 2, 3 to provide total compensation not less than:
1) ~~One percent (1%)~~ Three-fourths of one percent (0.75%)of state and local sales and use tax collections for states that require sellers to report tax by local jurisdiction; or
2) ~~Nine-tenths of One percent~~ (0.9%) One-half of one percent (0.5%) of sales and use tax collections for states that do not require sellers to report tax by local jurisdiction.

Calculation of the compensation rate for the next succeeding calendar year shall be based on remittances for the previous 12 months ending June 30 of the immediately prior calendar year and the methodology prescribed in the rules to be promulgated by the Governing Board.

No member state shall be required by the Agreement to pay compensation to a seller in any month on sales and use taxes remitted for such month in excess of:
(a) Seven hundred fifty thousand dollars ($750,000.00) for member states with sales and use tax collections in the twelve month period ending June 30 of the previous calendar year of not more than one billion dollars ($1,000,000,000.00); or
(b) One million dollars ($1,000,000.00) for states with sales and use tax collections in the twelve month period ending June 30 of the previous calendar year of more than one billion dollars ($1,000,000,000.00) and not more than two billion five hundred million dollars ($2,500,000,000.00); or
(c) Three million dollars ($3,000,000.00) for states with sales and use tax collections in the twelve month period ending June 30 of the previous calendar year of more than two billion five hundred million dollars ($2,500,000,000.00) and not more than five billion dollars ($5,000,000,000.00); or
(d) Five million dollars ($5,000,000.00) for states with sales and use tax collections in the twelve month period ending June 30 of the previous calendar year of more than five billion dollars ($5,000,000,000.00) and not more than seven billion five hundred million dollars ($7,500,000,000.00); or
(e) Seven million dollars ($7,000,000.00) for states with sales and use tax collections in the twelve month period ending June 30 of the previous calendar year of more than seven billion five hundred million dollars ($7,500,000,000.00) and not more than ten billion dollars ($10,000,000,000.00); or
(f) Ten million dollars ($10,000,000.00) for member states with sales and use tax collections in the twelve month period ending June 30 of the previous calendar year of not more than ten billion dollars ($10,000,000,000.00).

The Governing Board may adjust the above caps as necessary due to inflation, growth in sales tax revenues or other relevant factors. The compensation certification and review committee must review any proposed adjustments to these caps and make a recommendation to the Governing Board on such proposed adjustments prior to any vote by the Governing Board on changes to the above caps.

4. Member states that have a second state rate on groceries or drugs or clothing thresholds will be required to pay additional compensation ~~on the tax collected at a lower rate or threshold~~ as provided by rule adopted by the governing board.

5. Rules setting forth calculations of minimum compensation amounts and procedures to facilitate payment of compensation shall be approved by the Governing Board prior to any member state exercising its collection authority.

6. All rules relating to compensation or changes to the minimum compensation amounts shall be reviewed ~~biannually~~ every two years by the Governing Board in time for member states to incorporate any changes into their next legislative session.

7. Member states may restrict sellers from altering the number of returns filed in order to enhance their own compensation or that of another person.

8. Compensation, addressed by this amendment, is applicable only to sales and use taxes.

9. Compensation shall be paid for any ~~month~~ period that a return is timely filed and fully paid. No member state is required to pay compensation for an untimely or partially paid return. Absent fraud, a return filed and fully paid in good faith does not constitute a partially paid return if it is subsequently determined that additional tax is due from the seller. A member state is not required to provide compensation on additional tax found due.

10. Member states will not be required to pay compensation on sales for which a seller is using a Certified Service Provider and such Certified Service Provider is being compensated for that service by the state.

11. Member states are not required to provide compensation for transactions in which the seller is not responsible for collecting and remitting the tax, and for persons with direct pay permits.

12. Member states shall not assess penalty or interest on tax due pursuant to II.B.1.c. on remote sales transactions occurring during the first six months following commencement of remote seller collection authority.

13. Each member state, at its option, shall be permitted to lower, reduce, or eliminate the amount or rate of compensation otherwise provided for by this section paid to public utilities providing gas, electric, water or sewer services.

D. Obligation to Pay

1. Member states shall begin paying compensation to a "new remote seller" upon submission of the seller's initial return filed after the effective date of the member state's authorization for compensation that meets the standards of II.C. Notwithstanding the rates of compensation established by a member state pursuant to II. C, compensation paid to "new remote sellers" for a six months period beginning with the first month that such sellers collect a Member State's tax shall be calculated based on the following rates: Rate 1 shall be three percent(3%), Rate 2 shall be one and one-half percent(1.5%) and Rate3 shall three-fourths of one percent (0.75%). After such six month period, the rates used to calculate compensation for such sellers shall be those rates established by the Member State pursuant to II.C.

A seller subsequently found not to meet the qualifications of a "new remote seller" may be denied and assessed, including any applicable penalties and interest, for any compensation it was not qualified to claim.

2. If a member state determines that a "new remote seller" had previously been registered in that state, compensation for that seller may be delayed until the state is required to pay compensation for all "in-state sellers" as set forth in D.3.

3. A member state shall elect one of the following methods for commencing payment of compensation for "in-state sellers" or "new remote sellers" previously registered in that state.

a. Option 1. Pay "in-state sellers" and "new remote sellers" previously registered in that state when tax collections from "new remote sellers" reaches the dollar threshold established by the following method:

1) A state utilizing this option shall track and report its total collections from "new remote sellers to the Governing Board. 2) When the amount of monthly collections received from such sellers for each of four consecutive months occurring sometime after the date remote seller collection authority began meets or exceeds the amount that would be required to pay the approved average monthly level of compensation for all other sellers, then compensation will be due and owing beginning the first day of the following quarter and thereafter for all sellers. 3)In a state that is already compensating its sellers, only the difference above the currently paid amount and the amount that would be required to pay the approved average monthly level of compensation for all other sellers will be required to accumulate before implementing the approved compensation; or

b. Option 2. Begin paying "in-state sellers" and "remote sellers" that had been previously registered in that state on the next return remitted fifteen months following the grant of collection authority; or

c. Option 3. Continue paying compensation to all the sellers previously receiving such payment as long as such compensation meets the requirements of this section.

4. A member state that does not receive sufficient sales and use tax collections from remote sellers to justify the state's continued participation may notify the Governing Board that its remote collection authority should expire and may terminate its obligation to pay compensation at the Governing Board-approved rate. A member state which exercises this option shall give not less than 60 days' notice of its intent to relinquish remote collection authority.

**III. Small Seller Exception**

A. The Governing Board shall develop a sales volume threshold for determining which small "remote sellers" qualify for an exemption from the requirement to collect sales or use taxes on "remote sales." In making such a determination the Governing Board shall consider whether:

1. The sales are occasional or isolated;
2. The sales are of such low volume that the administrative expense of collection imposes too great a burden on both seller and member state;
3. The collection burden on the remote seller is offset by compensation;
4. The remote seller has a monthly filing requirement in a member state;
5. Certified Service Providers for sellers in that industry group are readily available; and
6. Technology solutions are available to mitigate the filing burden.

In making such determination, the Governing Board shall identify the total annual dollar volume of gross remote sales nationwide of the seller above which would trigger a collection responsibility for remote sellers. The exemption threshold shall be set at a relatively low level and over time adjusted downward so that only sellers making isolated or occasional sales are excluded from the collection requirement.

The threshold shall be based on national remote sales volume.

B. ~~For the first year after remote seller collection authority is authorized by Congress, any remote seller with less than $100,000.00 in gross national remote sales volume in the preceding 12 months is exempt from the collection requirement~~. ~~That exemption is valid until the following year, when the seller would again have to~~ After the Governing board makes an initial determination of the sales volume exemption threshold, it shall annually review such threshold and may, with not less than 90 days notice, modify such threshold. Remote sellers shall be required to annually determine if the small seller exemption applies based on (1) sales volume of the seller and (2) the annual policy determination of the Governing Board. To determine whether a remote seller qualifies for the Small Seller Exception, the seller computes the total gross national remote sales volume for the most recent 12-month period of beginning July 1 of one calendar year and ending June 30 of the next calendar year. If the total gross national remote sales volume for such period exceeds the ~~small seller~~ exemption threshold amount in effect for such period, then the remote seller shall begin collection and remittance of sales and use tax on remote sales on January 1 of the following year.

C. Once a seller has exceeded the exemption threshold, the seller must be allowed until the beginning of the first calendar quarter commencing within 60 days following the date such threshold is exceeded in order to prepare before the collection obligation becomes effective. If gross national remote sales volume for a seller that is currently collecting and remitting sales and use tax on remote sales falls below the small seller exemption threshold amount then in effect, such seller shall continue to collect and remit such taxes until the end of the following calendar quarter.

D. In determining whether a remote seller has exceeded the small seller exemption threshold, the remote sales of such seller should be totaled with the remote sales of any affiliated business owned in whole or substantial part by another remote seller selling the same or substantially similar products and doing business under the same or substantially similar business. No remote seller that is part of an affiliated group with a gross national remote sales volume above the small seller exemption threshold is eligible to qualify for the small seller exemption, even if such seller's gross national remote sales volume is below such threshold.

E. The Governing Board shall post information about the Small Seller Exception on its website at least 90 days prior to the date on which it becomes effective on the first day of a calendar quarter.

F. The Governing Board shall review the small seller exemption threshold ~~annually~~ every two years, and such threshold may be adjusted no more frequently than annually. Remote sellers claiming the small seller exemption must file an exemption certificate with the online registration system, stating that they qualify for the ~~small seller exemption~~ Small Seller Exception and meet such threshold.

IV. Repeal
This Section shall be automatically repealed twenty four months after its adoption by the Governing Board if federal authority has not granted states authority to require remote sellers to collect sales and use tax.

V. Voluntary Compensation for Remote Sellers
States may choose to compensate remote sellers as a measure of good faith, and offer such compensation as an inducement to registering to collect through the SST registration system.

VI. Optional Compensation for Remote Sellers
States may choose to not compensate remote sellers until such time federal legislation authorizes states to require remote sellers to collect sales and use tax.

VII. Amendment and Repeal of Existing Sections
A. The Title of Article VI is hereby amended to read:
MONETARY ALLOWANCES FOR NEW TECHNOLOGICAL MODELS AND FOR ORIGIN SOURCING COMPENSATION FOR ALL SELLERS
B. These sections are repealed: Section 603: MONETARY ALLOWANCE FOR MODEL 3 SELLERS AND ALL
OTHER SELLERS THAT ARE NOT UNDER MODELS 1 OR 2
Section 604: ADDITIONAL MONETARY ALLOWANCE REQUIRED FOR MEMBERS MAKING CERTAIN ELECTION (Effective January 1, 2010