

Report of the 2009 Streamlined Sales and Use Tax Agreement (SSUTA) amendments and rules

This document contains the amendments and rules related thereto adopted by the Streamlined Sales Tax Governing Board during 2009. While some amendments include a specific future effective date, most are adopted without a specific effective date. Absent a specific effective date the date by which a state must adapt to an amendment is the date upon which a state may be sanctioned. Pursuant to Section of 809 of the SSUTA, a state may not be sanctioned for failure to comply with the amendments and rules “until the later of the first day of January at least two years after the adoption of the amendment ... or the first day of a calendar quarter following the end of one full session of the state’s legislature.”

Amendments and Rules Adopted in February 2009

Definition for Essential Clothing:

“**Essential clothing**” means any article of “clothing” with a sales price below a dollar threshold set by a member state if that state chooses to tax “essential clothing” differently from “clothing.” A state electing to tax “essential clothing” differently from “clothing” may not exempt the portion of the price of any individual item of clothing below its dollar threshold and shall administer the “essential clothing” threshold consistent with the provisions of Section 322, subsections B, C3, C4 and C7.

Amendments and Rules Adopted in May 2009

Definition of Delivery Charges

“**Delivery charges**” means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.

~~A. A member state may exclude from “delivery charges” any of the following, if the charges are separately stated on an invoice or similar billing document given to the purchaser~~ all delivery charges from the sales price of all personal property and services, or choose to exclude from the sales price of personal property or services one or more of the following components, and may amend the definition of delivery charges accordingly:

~~A.1. Handling, crating, packing, preparation for mailing or delivery, and similar charges;~~
A.1. Handling, crating, packing, preparation for mailing or delivery, and similar charges;
~~or~~

~~B.2. Transportation, shipping, postage, and similar charges, or~~

~~C. The “delivery charges” for “direct mail.” The exclusion of “delivery charges” for “direct mail” shall apply to any sale involving the delivery or mailing of “direct mail” or~~

~~printed material that would otherwise be direct mail that results from a transaction that a state considers the sales of a service.~~

B. In addition, a member state may treat “delivery charges” for “direct mail” differently than it treats “delivery charges” for other personal property or services. A member state may exclude all “delivery charges” from the “sales price” for “direct mail” or choose to exclude from the “sales price” of “direct mail” one or more of the following components, and may amend the definition of “delivery charges” accordingly:

1. Handling, crating, packing, preparation for mailing or delivery, and similar charges;
2. Transportation, shipping, and similar charges; or
3. Postage.

C. Unless a seller separately states the “delivery charges” or components of “delivery charges” on the invoice or similar billing document given to the purchaser, those non-separately stated charges will not qualify for the exclusion from “sales price.” No member state may require a seller to separately state any “delivery charge” or component thereof.

D. The exclusion of “delivery charges” for “direct mail” shall apply to any sale involving the delivery or mailing of: “direct mail;” printed material that would otherwise be “direct mail” that results from a transaction that a state considers the sale of a service; or printed material delivered or mailed to a mass audience when the costs of the printed materials are not billed directly to the recipients and is the result of a transaction that includes the development of billing information or the provision of data processing services.

E. If a shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using:

- ~~A. 1.~~ 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. 2.~~ 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 exempt property.

Rule 327.4 Delivery Charges:

A. “Delivery charges” is defined in Part I of the Library of Definitions, conjunctively with the definitions of “sales price” and “purchase price.” “Sales price” and “purchase price” include “delivery charges” unless a member state elects to exclude ~~them~~ all delivery charges from the computation of sales and purchase price. A member state may choose to exclude from ~~“delivery charges”~~ the computation of “sales price” and “purchase price” of all personal property and services other than direct mail any of the following components of delivery charges, if the charges are separately stated on an invoice or similar billing document given to the purchaser:

1. handling, crating, packing, preparation for mailing or delivery, and similar charges for activities necessary for preparing personal property or a service for delivery to a location designated by the purchaser of the personal property or service; or

2. transportation, shipping, postage, and similar charges for movement of personal property or a service from possession by the seller to possession by the purchaser or the purchaser's designee, ~~or;~~

~~C. the "delivery charges" for "direct mail."~~

B. A member state may choose to exclude from the computation of "sales price" and "purchase price" of direct mail all or any of the following components of delivery charges, if the charges are separately stated on an invoice or similar billing document given to the purchaser.

1. handling, crating, packing, preparation for mailing or delivery, and similar charges for activities necessary for preparing direct mail for delivery to a location designated by the purchaser of direct mail; or
2. transportation, shipping, and similar charges for movement of direct mail from possession by the seller to possession by the purchaser or the purchaser's designee; or
3. postage.

C. Direct mail.

~~A state that does not choose to exclude "delivery charges" in their entirety from the definitions of "sales price" and "purchase price" may opt to exclude from "delivery charges" all "delivery charges" for "direct mail," as that term is defined in Part I of the Library of Definitions, if such charges are separately stated on an invoice or similar billing document given to the purchaser. If elected, this option would establish the treatment of "delivery charges," excluding those properly separately stated "delivery charges" for "direct mail," may treat the "delivery charges" for sales of personal property or services that meet the definition of "direct mail", including both "advertising and promotional direct mail" and "other direct mail" differently than with respect to sales of other personal property or services. Thus, a state may generally require that "sales price" include all "delivery charges" (or one or more components thereof) but exclude "delivery charges" (or one or more components thereof) from the computation of "sales price" of sales of products that meet the definition of "direct mail." In order for a seller to exclude "delivery charges for direct mail" (or component thereof) from the computation of "sales price" with respect to direct mail such charge must be separately stated on an invoice or similar billing document given to the purchaser.~~

The exclusion for delivery charges for direct mail applies only to sales of personal property and services that meet the definition of "direct mail." In addition, the exclusion includes separately stated delivery charges for:

- 1) retail sales that include both the printing and delivery of "direct mail," including sales characterized under state law as the sale of a service when that sale results in printed material that meets the definition of "direct mail;"
- 2) retail sales of services for only mailing or delivering of "direct mail" not printed or sold by the delivery or mailing service provider, and
- 3) retail sales of services for the development of billing information or data processing services that results in printed materials delivered or mailed to a

mass audience where the costs of the printed materials are not directly billed to the recipients.

Prior to its adoption of the definitions of “sales price” and “purchase price,” a state may have excluded “delivery charges” (or one or more components thereof) from “sales price” with respect to sales of personal property or services that meet the definition of “direct mail” while at the same time including “delivery charges” (or one or more components thereof) with respect to sales of other personal property or services. Such a state may continue to exclude “delivery charges” (or one or more components thereof) with respect to sales of personal property or services that meet the definition of “direct mail” by (1) adopting the definitions of “delivery charges” and “direct mail” and (2) excluding from the definition of “delivery charges”, “delivery charges” (or one or more components thereof) with respect to “direct mail”.

Example 1: State A has adopted the definition of “direct mail” from Part I of the Library of Definition. Its definition of “delivery charges” reads as follows: “Delivery charges” means all of the charges (including but not limited to charges for transportation, shipping, postage, handling, crating and packing) by the seller of personal property or services for preparation and delivery thereof to a location designated by the purchaser. “Delivery charges” does not include any charge by the seller with respect to direct mail delivery charges.

State A’s definition of “delivery charges” is sufficient to exclude all “delivery charges” from the computation of “sales price” with respect to sales of personal property or services that meet the definition of “direct mail” so long as such charges are separately stated on the invoice or bill given to the purchaser.

Example 2: State B has adopted the definition of “direct mail” found in Part I of the Library of Definition. State B’s definition of “delivery charges” reads a follows:

“Delivery charges” means all of the charges (including but not limited to charges for transportation, shipping, postage handling, crating and packing) by the seller of personal property or services for preparation and delivery thereof to a location designated by the purchaser. “Delivery charges” does not include postage for delivering personal property or a service that meets the definition of “direct mail.”

State B’s definition of “delivery charges” is sufficient to exclude from the computation of “sales price” charges for postage for delivery of personal property or a service that meets the definition of “direct mail” so long as such charges are separately stated on the invoice or other billing document given to the purchaser.

~~A state that, prior to adoption of the definitions of “sales price” and “purchase price” in Part I of the Library of Definitions, excluded elements of delivery charges (including postage) from the sales/purchase price of printed material, such as advertising material,~~

~~while including delivery charges in the sales price or purchase price of other products, may exclude delivery charges for direct mail by adopting the definitions for “delivery charges” and “direct mail” and excluding from “delivery charges” the “delivery charges” for “direct mail.”~~

The following illustrations demonstrate the applicability of the direct mail delivery charge exclusion from sales price and purchase price in a state that has adopted that exclusion.

Illustration 1: State A excludes all components of direct mail delivery charges from the computation of sales price. A printer enters into a contract to print and mail advertising and promotional material to a mass audience. The material is printed, sorted, inserted into an envelope, addressed, and mailed via the United States Postal Service to a mass audience at the direction of the purchaser. The advertising and promotional direct mail sale qualifies for the direct mail delivery charge exclusion. Charges separately stated on the customer’s bill or invoice for preparation for delivery, transportation and postage with respect to the direct mail is excluded from the computation of “sales price.”

Illustration 2: State B excludes the handling and postage components of direct mail delivery charges from the computation of sales price. A purchaser contracts with a printer to perform data processing services, print billing invoices, prepare the invoices for mailing, and deliver them to the U. S. Postal Service for delivery to the address on each invoice. Each envelope is mailed to a residential address and contains an invoice and an advertising insert. The mailing qualifies for the direct mail delivery charge exclusion. Separately stated charge(s) on the customer’s bill or invoice for preparing the mailing for delivery and postage for delivery to the residential addresses are excluded from the computation of “sales price.”

Illustration 3: State C excludes the transportation and postage components of direct mail delivery charges from the computation of sales price. A mail service provider enters into a contract with a customer to perform mailing services for advertising flyers which have been printed by a third party. The flyers are to be distributed to a mass audience at the direction of the customer. The mail service provider folds and sorts the flyers according to the jurisdictions to which they will be delivered, applies the appropriate postage to each flyer and delivers the flyers to the United States Postal Service. This mailing service sale qualifies for the direct mail delivery charge exclusion. Separately stated charge(s) for transporting the mailing to the United States Postal Service and postage are excluded from the computation of “sales price.”

Illustration 4: State W excludes only the postage component of direct mail delivery charges from the computation of sales price. Company B is a hair products company that just released a new shampoo product. As part of a nationwide campaign to inform the public about its new shampoo, it acquires a mailing list of potential customers and hires a company that does printing and mailing to print and mail promotional materials to all of the people on the

mailing list. Included with the promotional materials is a free sample of the shampoo. The promotional materials qualify as direct mail because the recipient is not charged for the sample of the shampoo or other materials in the mailing and therefore separately stated charge(s) for the postage paid with respect to mailing the promotional materials and free sample are excluded from the computation of sales price.

Illustration 5: *State X excludes only the postage component of direct mail delivery charges from sale price.* A purchaser contracts with a service provider to perform data processing services, print paychecks and pay stubs, prepare the checks and stubs for mailing, and deliver them to the U. S. Postal Service or other delivery service for delivery to the address on each. Each envelope containing a check and pay stub is mailed to each of the purchaser's employees' home addresses. This sale will qualify for the exclusion of the postage component of the direct mail delivery charge depending on whether the U.S. Post Office delivers the direct mail or whether some other delivery service is used. If the mailing is sent through the U.S. Postal Service, then the exclusion for postage will apply if the postage is separately stated on the invoice given to the purchaser. If some other delivery service is used to deliver the checks and pay stubs, then the exclusion for postage will not apply.

Illustration 6: *Same facts as in Illustration 4 [above] except that State X, in addition to postage, also excludes the transportation, shipping and similar charges components of direct mail delivery charges from sales price.* With this broader exclusion, whether the sale will qualify for the exclusion of direct mail delivery charges will not depend on whether the U.S. Post Office delivers the direct mail or whether some other delivery service is used; the delivery charge exclusion will apply regardless of which mode of delivery is used, as long as the charges are separately stated on the invoice."

Illustration 7: *State Y excludes only the "transportation, shipping, and similar charges" component of direct mail delivery charges from the computation of sales price.* Company A sells men's clothing and markets its products through catalogs and through an Internet website. Customer orders a sweater that will be shipped using a courier service. Company A includes with the package containing the sweater one of its catalogs and other promotional materials. The catalog and other promotional materials included in the package do not qualify as direct mail since it is not being mailed to a mass audience and since Customer is being billed for the sweater. Therefore, the fees charged by the courier service for delivering the package are not excluded from the computation of sales price.

Illustration 8: *State A excludes all components of direct mail delivery charges from the computation of sales price.* A printer produces 10,000 copies of an advertising brochure. Under the contract, the printer is required to shrink-wrap the pallet containing the brochures and deliver the pallet to the custody of a mailing service provider contracted by the purchaser. The sale of the brochures is not "direct mail" and does not qualify for the direct mail delivery charge exclusion, since the seller/printer is not delivering or distributing the printed

material to a mass audience or to addressees on a mailing list at the direction of the purchaser.

Illustration 9: State A excludes all components of direct mail delivery charges from the computation of sales price. A printer produces 100,000 advertising flyers for a purchaser. For this print job, the purchaser requires the printer to ship 1,000 copies of the flyer to 100 stores located in various states that are owned by the purchaser. The flyers will be made available to customers as they enter the store. The sale of the flyers is not “direct mail,” and does not qualify for the direct mail delivery charge exclusion, because multiple items of the same printed material are delivered or shipped to a single address and because the printed materials are delivered to and billed to the recipient (store owner).

D. Handling, crating, packing, preparation for mailing or delivery, and similar charges. A state may opt to exclude from “delivery charges” the component for handling, crating, packing, preparation for mailing or delivery, and similar charges for activities necessary for preparing personal property or a service for delivery to a location designated by the purchaser of the personal property or service. In order for a seller to exclude the component of delivery charges for activities necessary for preparing personal property or a service from the computation of “sales price” with respect to the sale of any product or service such charge must be separately stated on an invoice or similar billing document given to the purchaser. ***Election of this option would permit inclusion in sales/purchase price of charges for movement of personal property or a service from possession by the seller to possession by the purchaser or the purchaser’s designee (including but not limited to transportation, shipping, and postage) while excluding from sales/purchase price charges for activities necessary for preparing personal property or a service for delivery to a location designated by the purchaser of personal property or a service (including but not limited to handling, crating, packing, and preparation for mailing or delivery).***

Illustration 1: State D adopts the definition of “delivery charges,” but excludes handling, crating, packing, preparation for mailing or delivery, and similar charges. Charges for transportation, shipping, and postage are included as part of sales/purchase price. Charges for handling, packing, crating, preparation for mailing or delivery, and similar charges for activities necessary for preparing personal property or a service for delivery to a location designated by the purchaser of the personal property or service, if separately stated on an invoice or similar billing document given to the purchaser, are not part of the sales/purchase price of a product or service. A separate charge for storage or warehousing prior to shipment is not a charge for movement of personal property or a service from possession by the seller to possession by the purchaser or the purchaser’s designee.

Illustration 2: State E adopts the definition of “delivery charges” and “direct mail,” but excludes handling, crating, packing, preparation for mailing or delivery, and similar charges as well as the “delivery charges” for “direct mail.” For items other than “direct mail,” “delivery charges” (which do not include

handling, crating, packing, preparation for mailing or delivery, and similar charges separately stated on an invoice or similar billing document given to the purchaser) are included as part of the sales/purchase price of a product or service. "Delivery charges" separately stated on an invoice or similar billing document given to the purchaser are not part of the sales/purchase price of a product or service that meets the definition of direct mail described in subsection C of this Rule.

E. Transportation, shipping, postage, and similar charges.

A state may opt to exclude from "delivery charges" the component for transportation, shipping, postage, and similar charges for movement of personal property or a service from possession by the seller to possession by the purchaser or the purchaser's designee. In order for a seller to exclude this component of delivery charges from the computation of "sales price" with respect to the sale of any product or service such charge must be separately stated on an invoice or similar billing document given to the purchaser. ***Election of this option would permit inclusion in sales/purchase price of charges for activities necessary for preparing personal property or a service for delivery to a location designated by the purchaser of the personal property or service (including but not limited to handling, crating, packing, and preparation for mailing or delivery), while excluding from sales/purchase price charges for movement of personal property or a service from possession by the seller to possession by the purchaser or the purchaser's designee (including but not limited to transportation, shipping, and postage).***

Illustration 1: State F adopts the definition of "delivery charges," but excludes transportation, shipping, postage, and similar charges. Charges for handling, crating, packing, and preparation for mailing or delivery are included as part of sales/purchase price. Charges for transportation, shipping, postage, and similar charges for movement of personal property or a service from possession by the seller to possession by the purchaser or the purchaser's designee, if separately stated on an invoice or similar billing document given to the purchaser, are not part of the sales/purchase price of a product or service.

Illustration 2: State G adopts the definition of "delivery charges" and "direct mail," but excludes transportation, shipping, postage, and similar charges as well as the "delivery charges" for "direct mail." For items other than "direct mail," "delivery charges" (which do not include transportation, shipping, postage, and similar charges separately stated on an invoice or similar billing document given to the purchaser) are included as part of the sales/purchase price of a product or service. "Delivery charges" separately stated on an invoice or similar billing document given to the purchaser are not part of the sales/purchase price of a product or service that meets the definition of "direct mail" described in subsection C of this Rule.

F. Reasonable and customary mark-up.

A state which excludes from the sales/purchase price of a product or service properly separately stated “delivery charges” for “direct mail,” properly separately stated handling, crating, packing, preparation for mailing or delivery, and similar charges, or properly separately stated transportation, shipping, postage, and similar charges, shall allow as excluded from the sales/purchase price of a product or service, in addition to the seller’s actual cost for such charges, such mark-up as is reasonable and customary in the seller’s industry.

G. Seller’s billing practices.

Where the seller does not separately state on an invoice or similar billing document given to the purchaser the “delivery charges” for “direct mail,” handling, crating, packing, preparation for mailing or delivery, and similar charges, or transportation, shipping, postage, and similar charges, such charges shall not be excluded from “delivery charges,” and shall be included in or excluded from the sales/purchase price in the same manner as “delivery charges.’ A seller’s decision not to separately state on an invoice or similar billing document given to a purchaser any such charge which, if so separately stated, could have been excluded from the sales/purchase price, shall be resumed to be a reasonable business practice.

Replacement Taxes

Section 334: PROHIBITED REPLACEMENT TAXES No state may have a prohibited replacement tax on any product defined in Part II or Part III(B) of the Library of Definitions which has the effect of avoiding the intent of this Agreement.

Rule 334 – Prohibition of Replacement Taxes (new)

1. This rule provides guidance in applying the prohibition against replacement taxes in Section 334 of the Agreement. A “prohibited replacement tax” is a tax imposed outside a state’s general sales and use tax, on or with respect to a product or products that are defined in Part II or Part III(B) of the Library of Definitions (except alcoholic beverages or tobacco), that has the effect of avoiding the intent of the Agreement. A Governing Board determination whether a particular replacement tax is a “prohibited replacement tax” shall be based upon an examination of all the facts and circumstances according to the procedure established herein.

2. To determine that a tax is a replacement tax, the following must be found by the Governing Board by affirmative vote of three-fourths of the full member states, excluding the member state that is the subject of the question which shall not vote on the question:

- a. at the time of the adoption of the tax, the tax was specifically imposed on or with respect to a product that was defined in Part II or Part III(B) of the Library of Definitions, or on products subsumed within such definitions, except alcoholic beverages and tobacco, and;
- b. either:
 - i. at the time the state initiated action to become a member state, a tax was imposed upon such product by statutes which are

subject to the requirements of the Agreement as identified in the state's petition for membership filed with the Governing Board, or;

- ii. after the state became a member state, a tax was imposed upon such product by statutes which are subject to the requirements of the Agreement as identified in the state's petition for membership filed with the Governing Board, and;
- c. the tax imposes an additional administrative burden on sellers of the product which would not be imposed if such tax were subject to all of the requirements of the Agreement with regard to sales and use taxes.

3. To determine that a replacement tax, as provided in subsection 2, is a prohibited replacement tax, as provided in Section 334 of the Agreement, the Governing Board must find that the replacement tax has the effect of avoiding the intent of the Agreement, considering the following factors:

- a. whether the tax contains both a sales and a use tax component;
- b. any other factors related to the fundamental purpose expressed in Section 102 of the Agreement that the Board considers relevant.

Such finding shall be by affirmative vote of three-fourths of the full member states, excluding the member state that is the subject of the question which shall not vote on the question.

4. Taxes that are not prohibited replacement taxes include, but are not limited to:

- a. taxes on alcoholic beverages or tobacco;
- b. in general, taxes based on measures other than price, such as weight or volume;
- c. lodging or hotel occupancy taxes;
- d. in general, broad-based business activity or privilege taxes, and;
- e. taxes existing prior to the state initiating action to become a member state.

5. Examples:

Example 1 – Prior to joining SST, a member state imposed its sales tax on formal wear, but exempted clothing generally. As part of its legislation to conform to the Agreement, the state made the decision to exempt all clothing. After being approved as a member state, the state imposes a tax specifically on the sale of formal wear at the same or a different rate than the state's general rate of sales and use taxation. "Formal wear" is included within the definition of "clothing" in Part II of the Library of Definitions. The new tax has a use tax component and requires sellers to file a separate return. This tax is a prohibited replacement tax.

Example 2 – A state authorizes local governments to impose a separate restaurant tax on "all prepared food or beverages sold by restaurants," as defined by ordinance. The restaurant tax has no use tax component. The local government also imposed its generally applicable sales tax on prepared food. Prior to the state's admission to the Governing Board, the sales tax definition of "prepared food" was modified to conform to the SST definition. The additional tax, however, continues to be imposed by local jurisdictions within the state just on sales by restaurants. Thus, restaurants still pay both the generally applicable

sales tax and the restaurant tax on their meals. Grocery stores, however, and other non-restaurants, just pay the sales tax on any prepared food they sell. The restaurant tax is not a prohibited replacement tax.

Agreement Administration

Section 806: AGREEMENT ADMINISTRATION

Authority to administer the Agreement shall rest with the governing board comprised of representatives of each member state. Each member state may appoint up to four representatives to the governing board. The representatives shall be members of the executive or legislative branches of the state or of a local government of that state. Each member state shall be entitled to one vote on the governing board. Except as otherwise provided in the Agreement, all actions taken by the governing board shall require an affirmative vote of a majority of the governing board present and voting. The governing board shall determine its meeting schedule, but shall meet at least once annually. The governing board shall provide a public comment period at each meeting to provide members of the public an opportunity to address the board on matters relevant to the administration or operation of the Agreement. The governing board shall provide public notice of its meetings at least thirty days in advance of such meetings. The governing board shall promulgate rules establishing the public notice requirements for holding emergency meetings on less than thirty day's notice. The governing board may meet electronically.

The governing board is responsible for the administration and operation of the Agreement, including the appointment of all manner of committees. The governing board may employ staff, advisors, consultants or agents. The governing board may issue interpretive opinions and promulgate such rules it deems necessary to carry out its responsibilities. Rules may take one of two forms: procedural rules, which shall require an affirmative vote of a majority of the governing board present and voting to adopt; and interpretative rules which shall require an affirmative vote of three-fourths of the entire governing board to adopt. The governing board may take any action that is necessary and proper to fulfill the purposes of the Agreement. The governing board may allocate the cost of administration of the Agreement among the member states.

The governing board may assign committees certain duties, including, but not limited to:

- A. Responding to questions regarding the administration of the Agreement;
- B. Preparing certification requirements and coordinating the certification process for CSPs;
- C. Coordinating joint audits;
- D. Issuing requests for proposals;
- E. Coordinating contracts with member states and providers; and
- F. Maintaining records for the governing board.

Travel Guidelines and Reimbursements

J. Travel Guidelines and Reimbursements

1. The Finance Committee shall establish a travel request form that will include estimated costs of proposed travel as well as a travel reimbursement form on which claims for reimbursement are made.
2. Reimbursement for travel by Governing Board representatives may be authorized under the following conditions. No reimbursement from the Governing Board will be authorized unless the travel has been pre-approved.

The President or First Vice President may approve Governing Board representative travel in the following circumstances.

- a. The representative is representing the Governing Board, rather than his or her respective state, at a meeting or event that is not a meeting of the Governing Board or a Governing Board committee.
- b. The representative is representing the Governing Board, rather than his or her respective state, at a meeting of a Governing Board Committee for which the representative is not a member of the Committee.
- c. Such reimbursement shall only be allowed in instances where the meeting or event is not being held in conjunction with another Governing Board meeting or event at which the representative may attend and represent his or her state.
- d. Notwithstanding the foregoing, the President or First Vice President may approve representative travel in the interest of justice in exceptional circumstances.

Neither the President nor First Vice President may approve a request for his or her own travel. In approving a request for reimbursement, consideration shall be given to funds available and budgeted for this purpose.

3. Travel reimbursements will be based on the Federal mileage and per diem rates as published by the U.S. General Services Administration in effect during the period of travel. If anticipated expenses exceed the federal rate, the traveler may request in writing pre-authorization for reimbursement based on actual expenses. The request must include a justification for exceeding the Federal per diem lodging allowance such as:
 - a. Lodging and/or meals are procured at a prearranged place such as a hotel where a meeting, conference or training session is held;
 - b. Costs have escalated because of special events (e.g. missile launching periods, sporting events, World's Fair, conventions, natural disasters); lodging and meal expenses within prescribed allowances cannot be obtained nearby; and costs to commute to/from the nearby location consume most or all of the savings achieved from occupying less expensive lodging;
 - c. Because of mission requirements; or
 - d. Any other reason approved by the proper authority.
4. Reimbursement of Actual Expenses

a. The approved request will be attached to the traveler's reimbursement voucher. In the case of emergency circumstances in which advance approval could not be obtained, the traveler must attach a signed statement to the voucher detailing the justification and circumstances prohibiting advance approval.

b. The traveler must itemize all expenses, including meals, (each meal must be itemized separately) for which he or she will be reimbursed under actual expense. However, expenses that do not accrue daily (e.g. laundry, dry cleaning, etc.) may be averaged over the number of days for which the traveler is approved reimbursement for actual expenses. Receipts are required for lodging, regardless of amount and any individual meal when the cost exceeds \$25.00. The approver may require receipts for other allowable per diem expenses, but must inform the traveler of this requirement in advance of travel. The approval for reimbursement based on actual expense may limit meal and incidental expenses (M&IE) reimbursement to either the prescribed maximum M&IE rate for the locality concerned or a reduced M&IE rate, and it may or may not require M&IE itemization at the approver's discretion.

5. All travel reimbursement requests will be submitted to the Executive Director for approval, and copies will be forwarded to either the President or the Secretary/Treasurer for inspection. The President or Secretary/Treasurer shall approve travel reimbursement for the Executive Director.

6. The Executive Director is authorized to travel to all Governing Board meetings (including committee meetings) without pre-approval. Whenever the Executive Director is representing the Governing Board at other meetings, he or she shall first receive approval from the President or First Vice-President. The Executive Director shall approve necessary travel for employees of the Governing Board.

7. Requests for travel approvals and signed authorizations may be submitted and returned via facsimile or via email, if the approver uses his or her own email account to establish authenticity of the approval.

8. In addition to the travel reimbursements authorized by J 2, the Governing Board shall may reimburse the travel and meeting expenses for one legislative delegate from each state to attend for the travel expense of sending one state legislator attending to Governing Board annual meetings.

Simplified Electronic Return

The Streamlined Sales Tax Governing Board has adopted an amendment to the Agreement (the amendment must be voted on a second time before it can go into effect) that makes changes to the Simplified Electronic Return (SER). This amendment provides that the SER will have two parts. Part 1 of the SER contains the information that states need to properly allocate sales tax revenues. The previously approved SER will become Part 1. The Governing Board approved adding 2 new fields to Part 1. These fields will allow for the addition of a state specific ID # and accommodate states that have a different sales tax rate for food or drugs. The changes have been implemented in the SER schema.

Once the amendment goes into effect, Part 2 of the SER will contain information on exempt sales, however the identifying data fields have yet to be adopted. The fields that have been identified for inclusion in Part 2 are:

Agriculture Exemption Amount

Direct Pay Exemption Amount

Government Organization Exemption Amount

Manufacturing Exemption Amount

Resale Exemption Amount

Other Exemption Amount

Vendor Database Certification (new)

1) Definitions

a) An *address-based database* ("database") is a system by which a user of such system can determine whether an address is within the boundaries of a state and one or more local tax jurisdictions. A "system" can be one or more software applications and/or other electronic processes by which the provider (vendor) determines which state and local sales tax jurisdictions apply to a particular address. The vendor supports the address-based database.

b) A *tax jurisdiction* is any governmental entity or special tax district located within a state that levies a sales and/or use tax. "Special tax districts" include, but are not limited to, rural transportation authority districts, local marketing districts, mass transit districts, multi-jurisdictional housing authority districts, regional library districts, and local improvement districts. Tax jurisdictions can be classified into the following four categories: state, county, city, or special tax district.

2) Procedures for Database Certification

a) In accordance with Section 305, sub-section (H) of the Streamlined Sales and Use Tax Agreement (SSUTA), states may elect to certify vendor-provided address-based databases. A vendor requesting certification of its database shall give authorization for a certifying agency (state) to access its address-based database for the sole purpose of verifying the accuracy of the database in determining the proper tax jurisdiction.

b) A vendor application for certification may be made to each individual state in accordance with state procedures.

c) For purposes of certification, a state may require that the address database file structure be the same as described in the SST Rates and Boundary Database Instructional Paper. This document is available on the Streamlined SalesTax web site.

d) A certifying state will notify the vendor of the schedule for recertification. A certification cycle shall not exceed two years.

3) Certification Criteria. The Database must satisfy the certification criteria set forth below.

a) *Accuracy*. The state will provide the vendor with its required minimum acceptable level of accuracy. A database will not be certified if it does not achieve the acceptable level of accuracy for all associated tax jurisdictions that are assigned to a particular address.

b) Relief of liability due to incorrect identification of tax jurisdiction(s) is at the discretion of the certifying state and not a condition of the Streamlined Sales and Use Tax Agreement .

c) *Identifiably of Tax Jurisdictions*. The taxing jurisdiction categories include: state, county, city, or special tax district. A database will not be certified if it is not capable of identifying all tax jurisdictions within each of the categories.

d) *Response*. Each address lookup shall include a response for each assigned category: state, county, city, or special tax district. Failure to provide a response to any category shall be deemed an error with respect to that category. A response in a tax category is deemed incorrect if the response identifies incorrectly or fails to identify a tax jurisdiction in which a given address is located.

e) *Access to Database For Verification of Address Locations*. The state must have a way to conveniently and quickly determine whether a database correctly places a given address within the correct jurisdiction. Consequently, as a condition of certification, the vendor must make available a means by which representatives of the state can determine whether the database places a given address within the correct state and taxing jurisdictions. The vendor shall work cooperatively with the state to facilitate the validation of addresses against the database.

f) *Prompt Updating of Information*. Should the certifying state determine that a given address is incorrectly identified, there must be a convenient means to inform the vendor of the error. Furthermore, a vendor shall have in place a documented process for promptly and regularly updating and correcting its database, including those circumstances when information concerning errors and omissions is received from the state. Consequently, a condition of database certification is that:

1.) The certifying state provides a reliable process for notifying the vendor that the database is in error with respect to one or more addresses, and

2.) The vendor agrees to promptly update its database with the corrected information provided by the state. Updates can only occur at the beginning of each quarter.

g) *Version Designation – Record Retention*. A condition of database certification is that vendors provide a convenient means by which a certifying state can identify the version of the address database that was in effect on any given date while certified under these rules. The vendor must maintain such records for no less than five years from the beginning of the initial certification period.

h) *Test Data*. A principal responsibility of the certifying state is to provide test data and verify the accuracy of the database in determining the proper tax jurisdiction. When creating the test data, each state should adhere to the formats in place and described in

Appendix E of Article V, Rules and Procedures of the Streamlined Sales and Use Tax Agreement.

4) Denial or Revocation of Certification. A certifying state may deny a request to certify or may revoke the certification of a vendor-provided address database for just cause. The certifying state may reassess at any time whether the database should continue to be certified. "Just cause" for denial or revocation of certification shall include, without limitation, that the database is not in compliance with the requirements and procedures established in this document.

- a) The state shall give written notice to the vendor of intent to revoke or deny database certification.
- b) The vendor shall have 30 days from the date of mailing of said notice in which to provide the state a written response explaining in detail why certification should be granted.
- c) If certifying state statute allows and there are disputed issues of fact, the certifying state shall provide the vendor a hearing on said notice of denial or revocation.
- d) Vendors shall provide users notice of revocation within an agreed upon period of time.. The vendor shall immediately remove any advertising from its webpage and all other media that indicated it was certified by the state that has revoked its certification. Failure of a vendor to provide such notice and remove such advertising may be sole reason to deny future application for database certification.

BYLAWS:

Article Five – Officers

Section 2. Election and Term of Office. The four officers shall be directly elected by the Governing Board at the annual meeting from a slate put forth by the Nominating Committee. They shall serve a one-year term, but may serve three additional one-year terms as officers, but not more than four years consecutively in any office or combination of offices. The term of office shall begin on January 1 following the annual meeting. They shall hold office until their successors are selected, notwithstanding the term limits set forth herein.

Amendments and Rules Adopted in September 2009

Uniform Tax Returns:

Section 205: MODEL 1 SELLER A seller registered under the Agreement that has selected a CSP as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

Section 206: MODEL 2 SELLER A seller registered under the Agreement that has selected a CAS to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

Section 207: MODEL 3 SELLER A seller registered under the Agreement that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system

Section 207.1: MODEL 4 SELLER A seller that is registered under the Agreement and is not a Model 1 Seller, a Model 2 Seller or a Model 3 Seller.

Section 303: SELLER REGISTRATION Each member state shall participate in an online sales and use tax registration system in cooperation with the other member states.

Under this system:

A. A seller registering under the Agreement ~~is~~ shall be registered in each of the member states.

B. A model 2, model 3, or model 4 seller may elect to be registered in one or more states as a seller which anticipates making no sales into such state(s) if it has not had sales into such state(s) for the preceding 12 months. Such election does not relieve the seller of its agreement pursuant to Section 401 (B) to collect taxes on all sales into such states or its liability for remitting to the proper states any taxes collected.

~~B~~C. The member states agree not to require the payment of any registration fees or other charges for a seller to register in a state in which the seller has no legal requirement to register.

~~C~~D. A written signature from the seller is not required.

~~D~~E. An agent may register a seller under uniform procedures adopted by the member states.

~~E~~F. A seller may cancel its registration under the system at any time under uniform procedures adopted by the governing board. Cancellation does not relieve the seller of its liability for remitting to the proper states any taxes collected.

G. Nothing in this section shall be construed to relieve a seller or any legal obligation it may have under a state's laws to register in that state or its obligation to collect and remit taxes for at least thirty-six months in a state and meet all other requirements for amnesty set out in Section 402 of this Agreement in order to be eligible for amnesty in such state.

H. Whenever a state joins the Agreement, sellers registered under the Agreement shall be registered in the new state as follows:

1. Model 1 sellers will be automatically registered in such state.

2. Model 2, model 3 and model 4 sellers will be automatically registered in the new state but may elect to be registered as a seller which anticipates making no sales into the new state.

I. Upon registration, the governing board shall provide to the seller information regarding the requirements and options for filing a simplified electronic return and for filing remittances in any member state. Member states may provide information to sellers concerning other tax return filing options in that state.

J. The governing board shall cause the system for registering under the Agreement to include a feature that allows sellers registered under the Agreement to update relevant registration data in the system and have such updated data provided to all member states. The governing board shall establish conditions and procedures to allow states which are not members of the Agreement to participate in the registration system.

K. The provisions of Subsections B and H of this section shall become effective on January 1, 2010.

Section 318 UNIFORM TAX RETURNS Each member state shall:

A. Require that only ~~one~~ a single tax return for each taxing period for each seller be filed for the member state and to include all the taxing jurisdictions within the member state.

B. Require that returns be due no sooner than the twentieth day of the month following the month in which the transaction occurred.

~~C. Allow any Model 1, Model 2, or Model 3 seller to submit its sales and use tax returns in a simplified format that does not include more data fields than permitted by the governing board. A member state may require additional informational returns to be submitted not more frequently than every six months under a staggered system developed by the governing board.~~ Make available to all sellers, whether or not registered under the Agreement, except sellers of products qualifying for exclusion from the provisions of Section 308 of this Agreement, a simplified return that is filed electronically as follows:

1. The simplified electronic return (hereinafter SER) shall be in a form approved by the governing board and shall contain only those fields approved by the governing board. The SER shall contain two parts. Part 1 shall contain information relating to remittances and allocations and part 2 shall contain information relating to exempt sales.

2. Each member state must notify the governing board if it requires the submission of the part 2 information. Provided, no state may require the submission of part 2 information from a model 4 seller which has no legal requirement to register in such state.

3. Returns shall be required as follows:

a) Certified service providers must file a SER in all member states on behalf of model 1 sellers. Certified service providers, on behalf of such sellers, shall file the audit reports provided for in Article V of the governing board's rules and procedures for such states, and in addition, shall be required to file part 1 of the SER each month for each member state. A state shall allow a model 1 seller to file both part 1 and the part 2 of the SER. A model 1 seller which chooses to file both part 1 and the part 2 of the SER shall still be required to file the audit reports provided for in Article V of the governing board's rules and procedures.

b) Model 2 and model 3 sellers must file a SER in all member states other than states for which they have indicated that they anticipate making no sales. Such sellers shall file

part 1 or the SER every month for all states in which they anticipate making sales. Such sellers need not file part 2 information until January 1, 2012. After such date they shall have the following options for meeting their obligation to furnish part 2 information:

i. File part 2 of the SER together with part 1 of the SER every month; or December is due. Part 2 information filed pursuant to this option shall cover the month of December and all previous months of the same calendar year and shall only require annual and not monthly totals.

Such sellers shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information pursuant to paragraph 2 of this subsection.

C. No later than January 1, 2011, every member state shall allow model 4 sellers to file a SER. Such sellers shall file part 1 of the SER every month unless a state allows less frequent filing. Model 4 sellers which have a legal requirement to register in such state shall have the following options for meeting their obligation to furnish part 2 information:

i) File part 2 of the SER together with part 1 of the SER; or

ii) File part 2 of the SER at the same time part 1 of the SER for the month of December is due. Part 2 information filed pursuant to this option shall cover the months of December and all previous months of the same calendar year and shall only require annual and not monthly totals.

Such sellers shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information pursuant to paragraph 2 of this subsection. Model 4 sellers which elect not to file a SER shall file returns in the form and pursuant to schedules afforded to sellers not registered under the Agreement according to the requirements of each member state.

d. No later than January 1, 2013 every member state shall allow sellers not registered under the Agreement that are registered in the state to file a SER. Such sellers shall file part 1 of the SER every month unless a state allows less frequent filing and shall have the following options for meeting their obligation to furnish part 2 information:

i) File part 2 of the SER together with part 1 of the SER; or

ii) File part 2 of the SER at the same time part 1 of the SER for the month of December is due. Part 2 information filed pursuant to this option shall cover the month of December and all previous months of the same calendar year and shall only require annual and not monthly totals.

Such seller shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information pursuant to paragraph 2 of this subsection.

4. A state which requires the submission of part 2 information pursuant to paragraph 2 of this subsection may provide an exemption from this requirement to a seller under terms and conditions set out by the state.

5. A state may require a seller which elects to file a SER to give at least three months notice of the seller's intent to discontinue filing a SER.

D. ~~Allow any~~ Not after January 1, 2010 require the filing of a return from a seller that is registered under the Agreement which has indicated at the time of registration that it

anticipates making no sales which would be sourced to the state under the Agreement. A seller shall lose such exemption upon making any taxable sales into such state and shall file a return in the month following such sale. A state may, but is not required to, allow a seller to regain such filing exemption upon such terms and condition as the state may impose, ~~which does not have a legal requirement to register in the member state, and is not a Model 1, 2, or 3 seller, to submit its sales and use tax returns as follows:~~

~~1. Upon registration, a member state shall provide to the seller the returns required by that state.~~

~~2. A member state may require a seller to file a return anytime within one year of the month of initial registration, and future returns may be required on an annual basis in succeeding years.~~

~~3. In addition to the returns required in subsection (D)(2), a member state may require sellers to submit returns in the month following any month in which they have accumulated state and local tax funds for the state in the amount of one thousand dollars or more.~~

E. Adopt a standardized transmission process to allow for receipt of uniform sales and use tax return that, when completed, would be available to all sellers returns and other formatted information as approved by the governing board. Such a process will provide for the filing of separate returns for multiple legal entities in a single transmission for each state and will not include any requirement for manual entry or input by the seller of any of the aforementioned information. This process will allow a certified service provider, a tax preparer, or any other person authorized to do so, to file returns for more than one seller in a single electronic transmission. However, sellers filing returns for multiple legal entities may only do so for affiliated legal entities.

F. ~~Require, at each member state's discretion, all Model 1, 2, and 3 sellers to file returns electronically. It is the intent of the member states that all member states have the capability of receiving electronically filed returns by January 1, 2004~~ After January 1, 2010 give notice to a seller registered under this Agreement which has no legal requirement to register in the state, or a failure to file a required return and a minimum of thirty days to file thereafter prior to establishing a liability amount for taxes based solely on the seller's failure to timely file a return. Provided, a member state may establish a liability amount for taxes based solely on the seller's failure to timely file a return if such seller has a history of non-filing or late filing.

G. Nothing in this section shall prohibit a state from allowing additional return options or the filing of returns less frequently.

Section 319: UNIFORM RULES FOR REMITTANCES OF FUNDS Each member state shall:

A. Require only one remittance for each return except as provided in this subsection. If any additional remittance is required, it may only be required from sellers that collect more than thirty thousand dollars in sales and use taxes in the member state during the preceding calendar year as provided herein. The state shall allow the amount of any additional remittance to be determined through a calculation method rather than actual collections. Any additional remittances shall not require the filing of an additional return.

- B. Require, at each member state's discretion, all remittances in payment of taxes reported on the approved simplified return format to be remitted electronically.
- C. Allow for electronic payments by all remitters by both ACH Credit and ACH Debit.
- D. Provide an alternative method for making "same day" payments if an electronic funds transfer fails.
- E. Provide that if a due date falls on a legal banking holiday in a member state, the taxes are due to that state on the next succeeding business day.
- F. Require that any data that accompanies a remittance be formatted using uniform tax type and payment type codes approved by the governing board.
- G. Adopt a standardized transmission process approved by the governing board that allows for the remittance in a single electronic transmission of a single (bulk) payment for taxes reported on multiple SERs by affiliated entities, certified service providers or preparers. Each state shall comply with this provision no later than two years after the governing board approves such a standardized transmission process.

Disaster Preparedness Definitions

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).

B. Product Definitions

"Disaster Preparedness Supply" means an item purchased in preparation or response to a disaster, including any fire, flood, storm, tidal wave, earthquake, or similar public calamity, whether man-made, resulting from war, or resulting from natural causes.

"Disaster Preparedness Supply" shall include the following categories of items: 1) general disaster preparedness supplies; 2) disaster preparedness safety supplies; 3) disaster preparedness food-related supplies; and 4) disaster preparedness fastening supplies.

A member state that wishes to exempt "disaster preparedness supplies" during a sales tax holiday may:

1. exempt all disaster preparedness qualified supplies; or
2. exempt specified classifications of supplies

A member state may not exempt specific items within a classification, without exempting the entire classification of supplies.

"Disaster Preparedness General Supply" is a general purpose item that may be used in preparation or response to a disaster. The term is mutually exclusive of the terms "disaster preparedness safety supplies," "disaster preparedness food-related supplies," and "disaster preparedness fastening supplies," and may be taxed differently. The following is an all-inclusive list:

1. Batteries (excluding automobile and marine batteries) AAA, AA, C, D, 6 volt or 9 volt;
2. Cellular telephone batteries and chargers;
3. Satellite phones;
4. Self-powered light sources;

5. Portable self-powered radios, two-way radios, weather-band radios and NOAA weather radios;
6. Gas or diesel fuel containers;
7. Non-electric food storage coolers;
8. Portable generators; and
9. Storm shutter devices.

“Disaster Preparedness Safety Supply” is a safety item that may be used in preparation or response to a disaster. The term is mutually exclusive of the terms “disaster preparedness general supplies,” “disaster preparedness food-related supplies,” and “disaster preparedness fastening supplies,” and may be taxed differently. The following is an all-inclusive list:

1. Carbon monoxide detectors;
2. Smoke detectors;
3. Fire extinguishers; and
4. First aid kits.

“Disaster Preparedness Food-Related Supply” is a food or food related item that may be used in preparation or response to a disaster. The term is mutually exclusive of the terms “disaster preparedness general supplies,” “disaster preparedness safety supplies,” and “disaster preparedness fastening supplies,” and may be taxed differently. The following is an all-inclusive list:

1. Artificial ice;
2. Water storage container;
3. Manual can opener; and
4. Bottled water.

“Disaster Preparedness Fastening Supply” is a fastening item or an item used for securing property or covering property that may be used in preparation or response to a disaster. The term is mutually exclusive of the terms “disaster preparedness general supplies,” “disaster preparedness safety supplies,” and “disaster preparedness food-related supplies,” and may be taxed differently. The following is an all-inclusive list:

1. Bungee cords;
2. Rope;
3. Ratchet straps;
4. Duct tape;
5. Boat anchor;
6. Fender, anchor chain, dock line or similar device;
7. Tarpaulins and other flexible waterproof sheeting; and
8. Ground anchor or tie down kits.

Origin Based Sourcing

Section 310.1: ELECTION FOR ORIGIN-BASED SOURCING (Effective January 1, 2010)

A. A member state that has local jurisdictions that levy or receive sales or use taxes may elect to source the retail sale of tangible personal property and digital goods pursuant to the provisions of this section in lieu of the provisions of subsection A (2), (3) and (4) of

Section 310 if they comply with all provisions of subsection C of this section and the only exception to Section 310 is the exception provided for in subsection B of this section.

B. A member state may source retail sales, excluding lease or rental, of tangible personal property or digital goods to the location where the order is received by the seller if:

1. The order is received in the same state by the seller where receipt of the product by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs;
2. Location where receipt of the product by the purchaser occurs is determined pursuant to Section 310A (2), (3) and (4); and
3. At the time the order is received, the recordkeeping system of the seller used to calculate the proper amount of sales or use tax to be imposed captures the location where the order is received.

C. A member state electing to source sales pursuant to this section shall comply with all of the following:

1. When the location where the order is received by the seller and the location where the receipt of the product by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs as determined pursuant to Section 310A (2), (3) and (4) are in different states, the sale must be sourced pursuant to the provisions of Section 310.
2. When the product is sourced pursuant to this section to the location where the order is received by the seller, only the sales tax for the location where the order is received by the seller may be levied. No additional sales or use tax based on the location where the product is delivered to the purchaser may be levied. The purchaser shall not be entitled to any refund if the combined state and local rate or rates at the location where the product is received by the purchaser is lower than the rate where the order is received by the seller.
3. A member state may not require a seller to utilize a recordkeeping system which captures the location where an order is received to calculate the proper amount of sales or use tax to be imposed.
4. A purchaser shall have no additional liability to the state for tax, penalty or interest on a sale for which the purchaser remits tax to the seller in the amount invoiced by the seller if such invoice amount is calculated at either the rate applicable to the location where receipt by the purchaser occurs or at the rate applicable to the location where the order is received by the seller. A purchaser may rely on a written representation by the seller as to the location where the order for such sale was received by the seller. When the purchaser does not have a written representation by the seller as to the location where the order for such sale was received by the seller, the purchaser may use a location indicated by a business address for the seller that is available from the business records of the purchaser that are maintained in the ordinary course of the purchaser's business to determine the rate applicable to the location where the order was received.
5. The location where the order is received by or on behalf of the seller means the physical location of a seller or third party such as an established outlet, office location or automated order receipt system operated by or on behalf of the seller where an order is initially received by or on behalf of the seller and not where the order may be

subsequently accepted, completed or fulfilled. An order is received when all of the information necessary to the determination whether the order can be accepted has been received by or on behalf of the seller. The location from which a product is shipped shall not be used in determining the location where the order is received by the seller.

6. Such member state shall provide for direct pay permits pursuant to Section 326 of this Agreement and the requirements of this subsection. Purchasers which remit sales and use tax pursuant to such a permit shall remit tax at the rate in effect for the location where receipt of the product by the purchaser occurs or the product is first used as determined by state law. A member state may establish reasonable thresholds at which level the member state will consider direct pay applications, provided the threshold must be based upon purchases with no distinction between taxable and non-taxable purchases. The member state shall establish a process for application for a direct pay permit as provided herein. The member state may require the applicant to demonstrate:

- a. Ability to comply with the sales and use tax laws of the state,
- b. A showing of a business purpose for seeking direct payment permit and how the permit will benefit tax compliance, and
- c. Proof of good standing under the tax laws of the state.

The member state shall review all permit applications in a timely manner so that applicants receive notification of authorization or denial within one hundred twenty (120) days. The member state may not limit direct pay applicants to businesses engaged in manufacturing or businesses that do not know the ultimate use of the product at the time of the purchase.

7. When taxable services are sold with tangible personal property or digital products pursuant to a single contract or in the same transaction, are billed on the same billing statement(s), and, because of the application of this section, would be sourced to different jurisdictions, a member state shall elect either origin sourcing or destination sourcing to determine a single situs for that transaction. Such member state election is required until such time as the governing board adopts a uniform methodology to address such sales.

8. A member state that elects to source the sale of tangible personal property and digital goods pursuant to the provisions of this section shall inform the governing board of such election.

D. Compliance with the provisions of this section shall satisfy a state's eligibility for membership in this Agreement as follows:

1. If a state is in substantial compliance with each of the provisions of this Agreement other than sourcing of sales of tangible personal property and digital goods as provided in Section 310 and elects to source sales of tangible personal property and digital goods pursuant to this section, such state may become an associate member state in the same manner as provided for states to become full member states pursuant to Article VIII of this Agreement.

2. ~~On or after January 1, 2010, a~~ A state which becomes an associate member state pursuant to this subsection shall automatically become a full member state, provided that at least five (5) states which are not full member states on December 31, 2007, have been found to be in substantial compliance with each of the provisions of the Agreement other than sourcing sales of tangible personal property and digital goods pursuant to Section 310 of the Agreement and have notified the governing board of an election pursuant to paragraph 8 of subsection C of this section to source sales pursuant to this section and have been found to be in substantial compliance with the provisions of this section.

3. The provisions of this section shall be fully effective for all purposes on or after January 1, 2010, ~~provided that at least five (5) states which are not full member states on December 31, 2007, have been found to be in substantial compliance with each of the provisions of the Agreement other than sourcing sales of tangible personal property and digital goods pursuant to Section 310 of the Agreement and have notified the governing board of an election pursuant to paragraph 8 of subsection C of this section to source sales pursuant to this section and have been found to be in substantial compliance with the provisions of this section. States electing to source sales under this section after that time may become full member states if all other requirements for membership are satisfied.~~

Section 705: ASSOCIATE MEMBERSHIP

A. An associate member shall have all the rights and privileges of a member state except that:

1. An associate member may not vote on amendments to or interpretations of the Agreement when the provisions of Section 701 have been met without the use of associate members; and
2. An associate member may not vote to determine if a petitioning state is in compliance with the Agreement pursuant to Section 804 of the Agreement.
3. A representative of an associate member state shall not be eligible to serve on the compliance review and interpretations committee.

B. A state which is an associate member on January 1, 2007, shall retain such status until:

1. the state rescinds its election under Section 310.1 and the governing board finds such state to be in compliance pursuant to Section 805, at which time the state shall become a full member state;

2. the state has become a full member state pursuant to Section 310.1.D.2; or

3. the governing board determines that the state is not in substantial compliance with the Agreement, as amended by Section 310.1 or July 1, 2009, whichever is earlier. Any such associate member that has not been found in compliance by July 1, 2009 at which time the state shall forfeit its status as an associate member. The president of the governing board shall provide an associate member state with the reasons why such state is not in compliance with the Agreement. Forfeiture of its status as an associate member does not preclude a state from re-petitioning for membership pursuant to Section 801.

C. Notwithstanding any provision of this Agreement to the contrary, a seller may, but is not required to collect sales or use tax on sales into an associate member state unless the seller is otherwise required to collect such taxes under applicable law.

Notwithstanding the provisions of Section 401 (B), a seller that volunteers to collect tax in an associate member state is not required to collect tax in any other associate member state. An associate member shall be responsible for payment of costs as provided in Article VI for those sellers that volunteer to collect tax in an associate member state.

D. Neither the governing board nor a member state may share or grant access to an associate member state any seller information from the seller's registration pursuant to Section 401. Neither the governing board nor a member state may share or grant access to an associate member state any seller information from an audit conducted by the governing board or a member state on behalf of the governing board unless the associate member state is a party to the audit.

E. An associate member shall be responsible for the payment of the petition fee and the annual cost allocation as determined by the Streamlined Sales Tax Implementing States or governing board.

F. An associate member state shall provide amnesty pursuant to the provisions of Section 402, provided, the amnesty shall be in effect from the date the associate member status is attained until 12 months after the associate member state becomes a full member state.

Direct Mail Sourcing (replaced in its entirety)

Section 313: DIRECT MAIL SOURCING

A. Notwithstanding Sections 310 and 310.1, the following provisions apply to sales of “advertising and promotional direct mail:”

1. A purchaser of “advertising and promotional direct mail” may provide the seller with either:

- a. A direct pay permit.
- b. An Agreement certificate of exemption claiming “direct mail” (or other written statement approved, authorized or accepted by the state); or
- c. Information showing the jurisdictions to which the “advertising and promotional direct mail” is to be delivered to recipients.

2. If the purchaser provides the permit, certificate or statement referred to in subparagraph a or b of paragraph 1 of subsection A of this section, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any tax on any transaction involving “advertising and promotional direct mail” to which the permit, certificate or statement applies. The purchaser shall source the sale to the jurisdictions to which the “advertising and promotional direct mail” is to be delivered to the recipients and shall report and pay any applicable tax due.

3. If the purchaser provides the seller information showing the jurisdictions to which the “advertising and promotional direct mail” is to be delivered to recipients, the seller shall source the sale to the jurisdictions to which the “advertising and promotional direct

mail” is to be delivered and shall collect and remit the applicable tax. In the absence of bad faith, the seller is relieved of any further obligation to collect any additional tax on the sale of “advertising and promotional direct mail” where the seller has sourced the sale according to the delivery information provided by the purchaser.

4. If the purchaser does not provide the seller with any of the items listed in subparagraphs a, b or c of paragraph 1 of subsection A of this section, the sale shall be sourced according to Section 310.A.

5. The state to which the “advertising and promotional direct mail” is delivered may disallow credit for tax paid on sales sourced under this paragraph.

B. Notwithstanding Sections 310 and 310.1, the following provisions apply to sales of “other direct mail.”

1. Except as otherwise provided in this paragraph, sales of “other direct mail” are sourced in accordance with Section 310.A.3.

2. A purchaser of “other direct mail” may provide the seller with either:

a. A direct pay permit; or

b. An Agreement certificate of exemption claiming “direct mail” (or other 9 written statement approved, authorized or accepted by the state).

3. If the purchaser provides the permit, certificate or statement referred to in subparagraph a or b of paragraph 2 of subsection B of this section, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay or remit any tax on any transaction involving “other direct mail” to which the permit, certificate or statement apply. Notwithstanding paragraph 1 subsection B, the sale shall be sourced to the jurisdictions to which the “other direct mail” is to be delivered to the recipients and the purchaser shall report and pay applicable tax due.

C. For purposes of this section:

1. “Advertising and promotional direct mail” means:

a. printed material that meets the definition of “direct mail,” in Appendix C, Part 1;

b. the primary purpose of which is to attract public attention to a product, person, business or organization, or to attempt to sell, popularize or secure financial support for a product, person, business or organization. As used in this subsection, the word “product” means tangible personal property, a product transferred electronically or a service.

2. “Other direct mail” means any direct mail that is not “advertising and promotional direct mail” regardless of whether “advertising and promotional direct mail” is included in the same mailing. The term includes, but is not limited to:

a. Transactional direct mail that contains personal information specific to the addressee including, but not limited to, invoices, bills, statements of account, payroll advices;

b. Any legally required mailings including, but not limited to, privacy notices, tax reports and stockholder reports; and

c. Other non-promotional direct mail delivered to existing or former shareholders, customers, employees, or agents including, but not limited to, newsletters and informational pieces. Other direct mail does not include the development of billing information or the provision or any data processing service that is more than incidental.

D. 1. a. This section applies to a transaction characterized under state law as the sale of services only if the service is an integral part of the production and distribution of printed material that meets the definition of “direct mail.”

b. This section does not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental regardless of whether “advertising and promotional direct mail” is included in the same mailing.

2. If a transaction is a “bundled transaction” that includes “advertising and promotional direct mail,” this section apply only if the primary purpose of the transaction is the sale of products or services that meet the definition of “advertising and promotional direct mail.”

3. Nothing in this section shall limit any purchaser’s:

a. Obligation for sales or use tax to any state to which the direct mail is delivered,

b. Right under local, state, federal or constitutional law, to a credit for sales or use taxes legally due and paid to other jurisdictions, or

c. Right to a refund of sales or use taxes overpaid to any jurisdiction.

4. This section applies for purposes of uniformly sourcing “direct mail” transactions and does not impose requirements on states regarding the taxation of products that meet the definition of “direct mail” or to the application of sales for resale or other exemptions.

Section 313.1: ELECTION FOR ORIGIN-BASED DIRECT MAIL SOURCING

A. Notwithstanding Sections 310, 310.1 and 313, a member state may elect to source the sale of all direct mail delivered or distributed from a location within the state and delivered or distributed to a location within the state pursuant to the provisions of this section.

B. If the purchaser provides the seller with a direct pay permit or ~~an exemption~~ an Agreement certificate of exemption claiming direct mail (or other written statement approved, authorized or accepted by the state), the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit the applicable tax and on any transaction involving “direct mail.” ~~the The purchaser is obligated to pay or remit the must report and pay any applicable tax on a direct pay basis due. An exemption~~ An Agreement certificate of exemption claiming direct mail shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

C. Except as provide in subsection (B) and the second sentence of this subsection, the seller shall collect the tax according to Section 310, ~~subsection (A)(5)~~ A.5. To the extent the seller knows that a portion of the sale of direct mail will be delivered or distributed to a location in another state, the seller shall collect the tax on that portion according to Section 313.

D. Notwithstanding subsection (C) of this section, a seller may elect to use the provisions of Section 313 to source all sales of “advertising and promotional direct mail.”

~~D~~E. Nothing in this section limits a purchaser’s obligation for sales or use tax to any state to which the direct mail is delivered, except that a purchaser whose direct mail is

sourced under the first sentence of subsection (C) of this section shall owe no additional sales or use tax to that state based on where the purchaser uses or delivers 14 the direct mail in the state.

FF. A member state that elects to source the sale of direct mail pursuant to the provisions of this section shall inform the governing board in writing at least sixty days prior to the beginning of the calendar quarter such election begins.

Rule 313.1 Sourcing Direct Mail (new)

A. Sourcing of “Advertising and Promotional Direct Mail”

1. Retail sales that include both the printing and delivery or mailing of “advertising and promotional direct mail” as defined in Section 313.C.1 are sourced under Section 313 (or 313.1 for states adopting the origin-based direct mail sourcing provision). This includes sales characterized under state law as the sale of a service when that sale results in printed material that meets the definition of “advertising and promotional direct mail.”
2. The purchaser may provide the seller with (a) a direct pay permit issued to the purchaser for the portion of the sale that is sourced to the state that issued the permit , (b) a fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption claiming “Direct Mail,” or other exemption certificate or written statement approved, authorized or accepted by the state where the sale is sourced notifying the seller that the purchaser will remit tax directly to a state, or (c) information showing the jurisdictions to which the “advertising and promotional direct mail” is delivered to recipients, hereinafter referred to as “jurisdictional information.”

a. Sourcing – Direct Pay Permits and Certificates

Purchasers providing a direct pay permit, certificate claiming “Direct Mail” or other approved, authorized or accepted statement for “advertising and promotional direct mail” delivered to recipients in a state must source the purchase of the “advertising and promotional direct mail” to the jurisdictions within the state to which the “advertising and promotional direct mail” is delivered to recipients or for states adopting Section 313.1 origin-based direct mail sourcing according to Section 310.A.5. Purchasers may use a reasonable summary or allocation of the distribution to the jurisdictions to which the “advertising and promotional direct mail” is delivered as described in subsection A.3.b of this rule for purposes of self-assessing and directly paying sales or use tax. In the absence of bad faith, the seller is relieved of an obligation to collect, pay, or remit any tax for that state on any transaction involving “advertising and promotional direct mail” to which the permit, certificate or statement applies.

b. Sourcing – Jurisdictional Information

When the purchaser provides “jurisdictional information,” for “advertising and promotional direct mail” delivered to a state, the seller is required to source the sale based on the “jurisdictional information,” and collect and remit tax provided the transaction is subject to sales or use tax in the state. The seller is relieved of any further obligation to collect tax for that state on the retail sale when the seller has

sourced and collected tax pursuant to the “jurisdictional information” provided by the purchaser.

Nothing in this rule requires the seller to collect or remit any applicable tax for states in which the seller is not registered to collect or remit tax, unless the seller is otherwise required to be registered in that state based on either state or federal law, or has registered through the Streamlined Sales Tax registration system. The purchaser remains obligated to remit any applicable tax on the “advertising and promotional direct mail” delivered to recipients in jurisdictions where the seller is not required to collect, or for any other reason, does not collect the tax for the appropriate jurisdictions.

c. Sourcing – Default

If the purchaser does not provide the seller with any of the items listed in Section 313.A.1 of the SSUTA, the seller shall source the retail sale to the address from which the direct mail was shipped in accordance with Section 310.A.5 of the SSUTA. The state to which “advertising and promotional direct mail” is delivered has the option of allowing or not allowing credit to the purchaser for tax paid to the seller when the “advertising and promotional direct mail” has been sourced according to Section 310.A.5.

3. Sourcing with “Jurisdictional Information”.

In order for the seller to properly source “advertising and promotional direct mail” the purchaser must provide the seller with information showing the jurisdictions where the “advertising and promotional direct mail” is to be delivered to recipients at the time of the sale.

The “jurisdictional information” provided by the purchaser must include sufficient information for the seller to source the retail sale of the “advertising and promotional direct mail” to the state and local jurisdiction(s), if applicable, in which the materials are delivered or distributed to recipients. The “jurisdictional information” must be in a form in which such information can be retained and retrieved by the seller for the purpose of sales or use tax reporting. The purchaser is not required to provide the seller with a list of the specific taxing jurisdictions which might exist with respect to any given address or group of addresses. The purchaser remains liable for the tax if incorrect or incomplete “jurisdictional information” is provided to the seller.

Example: A printer produces 5,000 advertising flyers and is responsible for delivering the flyers to addresses on a mailing list provided by the purchaser. 120 of the flyers are to be delivered to a specific zip code which is within a city and county imposing a local option sales tax. The purchaser may provide the seller with an allocation, by zip code, of where the 5,000 flyers are being delivered so that the seller can determine the appropriate jurisdictions for sourcing. The allocation would indicate that 120 flyers are to be delivered to a specific zip code. The seller will collect tax according to such allocation. The purchaser is not required to identify for the seller the name of the city, county, and state encompassing a specific zip code.

a. Access to Databases or Mailing Lists

Access to a database which contains address information or a mailing list provided by the purchaser or a third party that does not allow the seller to retain and retrieve the “jurisdictional information” identifying jurisdictions where the “advertising and promotional direct mail” was delivered to recipients does not constitute receiving “information showing the jurisdictions to which the “advertising and promotional direct mail” is delivered.” In such transactions, the seller will source the sale under Section 310.A.5. Sellers are deemed to have sufficient information to source the retail sale to the proper jurisdictions when the seller utilizes an address database or mailing list owned by the seller.

b. Distribution Summaries and Allocation Methods

A summary of the distribution or a reasonable allocation of the distribution generated at the time of the sale is acceptable “jurisdictional information” documenting the “advertising and promotional direct mail” sourcing for the purpose of sales or use tax reporting. Any reasonable, but consistent and uniform, method of allocation that fairly represents the state and local jurisdictions where delivery or distribution was made to recipients is acceptable. Acceptable allocation methods include:

- i. allocation based on population in a jurisdiction as a percentage of the total population of jurisdictions within the distribution area.
- ii. allocation based on the sales volume of the direct mail purchaser’s sales locations in a jurisdiction as a percentage of the total sales volume of sales locations within the distribution area.
- iii. allocation based on a percentage of the direct mail purchaser’s accounts in a jurisdiction to the total number of customer accounts within the distribution area.
- iv. allocation among jurisdictions using a system-generated summary distribution report or a purchase order for a mailing list that includes a zip code summary.
- v. allocation based on the sales volume of the direct mail purchaser in a jurisdiction as a percentage of the total sales volume within the distribution area.

The use of any of the above-listed methods of allocation will be presumed reasonable. The burden of proving that such an allocation method does not fairly represent the actual distribution of the printed material in any particular case is upon the state. A purchaser may not use more than one method to allocate a transaction between jurisdictions. However, a purchaser may use one method to allocate a transaction between states and may use a different method to further allocate a portion of the transaction to jurisdictions within a state.

Example: A transaction involves the distribution of 50,000 pieces of “advertising and promotional direct mail” to recipients in states A and B. The purchaser uses an allocation based on the relative populations of states A and B to provide jurisdictional information to the seller indicating that 30,000 pieces will be delivered to recipients in state A and 20,000 pieces to recipients in state B. State B has local taxing jurisdictions and purchaser uses the relative sales volumes of its stores in state B to provide jurisdictional information to the seller indicating how many of the

20,000 pieces to be delivered to recipients in that state are to be delivered to each local jurisdiction. Using state population as a method of allocating the transaction between states A and B and store sales volume to allocate the transaction to the jurisdictions in state B is reasonable.

Other allocation methods may be used but the burden of showing to a state that the allocation fairly represents the actual distribution of the printed material in that case will be on the purchaser.

B. Sourcing of “Other Direct Mail”

1. “Other direct mail” which is defined in Section 313.C.2 of the SSUTA is sourced under Section 310.A.3 (or 313.1 in states adopting the origin-based direct mail sourcing). This includes sales characterized under state law as the sale of a service when the service is an integral part of the production and distribution of printed material that meets the definition of “other direct mail.” Because transactions that include the development of billing information or the provision of data processing services that are more than incidental are not “other direct mail,” they are sourced under 310.A.
2. Notwithstanding the provisions in B.1 above, the purchaser of “other direct mail” has the option to provide the seller with either (a) a direct pay permit issued to the purchaser for the portion of the sale that is sourced to the state that issued the permit , or (b) a fully completed Streamlined Sales and Use Tax Certificate of Exemption claiming “Direct Mail,” or other exemption certificate or written statement approved, authorized or accepted by the state where the sale is sourced notifying the seller that the purchaser will remit tax directly to the state. In the absence of bad faith, the seller is relieved of an obligation to collect, pay, or remit any tax in that state on any transaction involving “other direct mail” to which the permit, certificate or statement applies.

a. Sourcing – Direct Pay Permits and Certificates

Purchasers providing a direct pay permit, certificate claiming “Direct Mail,” or other approved, authorized or accepted statement described in B.2 above must source the transaction to the jurisdictions within the state to which the “other direct mail” is delivered to recipients or for states adopting Section 313.1 origin-based direct mail sourcing according to Section 310.A.5. Purchasers may use a reasonable summary or allocation of the distribution to the jurisdictions to which the “other direct mail” is delivered as described in subsection A.3.b of this rule for purposes of self-assessing and directly paying sales or use tax. In the absence of bad faith, the seller is relieved of an obligation to collect, pay, or remit any tax in that state on any transaction involving “other direct mail” to which the permit, certificate or statement applies.

Example: A printer prints and places “other direct mail” on a common or contract carrier for delivery to the USPS, which in turn delivers the printed material to residents of various states. The purchaser of the printed material provides the printer with a direct pay permit or a fully completed Streamlined Sales and Use Tax Certificate of Exemption claiming “Direct Mail” as the reason for exemption from tax, or other written statement approved, authorized or accepted by the state. By doing so, the purchaser obligates itself to accrue and remit tax as required under the

law of the state to which the printed material is delivered. The seller is relieved of the obligation to collect or remit any applicable tax on the retail sale of the product.

C. Definitions

Definitions of “advertising and promotional direct mail” and “other direct mail” are found in Section 313.C of the SSUTA.

1. When both “advertising and promotional direct mail” and “other direct mail” are combined in a single mailing, the sale is sourced as “other direct mail” under Section 313.B (or 313.1 in states that have adopted the origin-based direct mail sourcing).
Example: A purchaser contracts with Company A to perform incidental data processing services, print billing invoices, prepare the invoices for mailing, and deliver them to the U. S. Postal Service or other delivery service for delivery to the address on each invoice. Each envelope is mailed to a residential address and contains an invoice and several advertising inserts. The transaction with Company A is sourced as “other direct mail” under 313.B, even though the mailings include “advertising and promotional direct mail.”
2. For purposes of Section 313.C.2, “other direct mail” does not include printed materials that result from data processing services in which data is generated, acquired, compiled, developed, or summarized where the data processing services are more than incidental. “Other direct mail” and “advertising and promotional direct mail” that include incidental data processing are direct mail.

D. Special Provisions

1. **a.** Sales of products characterized by state law as a service where the result of the service meets the definition of direct mail as provided in Rule 327.__.A.1 are sourced under Section 313 (or 313.1 for states adopting the origin-based direct mail sourcing).

For example, variable printing/imaging of information such as names, addresses, images and text may be characterized by a state as a service. However, because the performance of such variable printing/imaging is an integral part of the production or distribution of printed materials and when such printed materials meet the definition of direct mail, the sale is sourced under Section 313 or (313.1 for states adopting the origin-based direct mail sourcing).

b. As provided in Section 313.D.1 of the SSUTA and Section C.2 of this rule, “other direct mail” and “advertising and promotional direct mail” that include incidental data processing are direct mail.

For example, Variable printing/imaging is integral to performing or conducting printing of printed materials and such sales of printed materials that meet the definition of direct mail are sourced under Section 313 (or 313.1 for states adopting the origin-based direct mail sourcing). To the extent variable printing/imaging constitutes data processing, because it is not for purposes of generating, acquiring, compiling, developing or summarizing data, the data processing is incidental.

Example A: A printer in state A has been contracted to produce airline frequent flyer promotional pieces which will be distributed to recipients via mail. These printed pieces incorporate the individual recipient’s balance of frequent flyer miles, as well as customized promotional material and graphics based on data collected by the

airline (e.g. the targeted individuals have earned enough points to travel to Europe). The electronic data supplied to the printer includes custom images and text promoting European vacations along with the recipient's name and balance of frequent flyer miles. The variable printing/imaging performed by the printer is a component of, and is an integral part of the production and distribution of printed material that meets the definition of "advertising and promotional direct mail." The data processing performed by the printer is incidental to performing or conducting printing of the printed material. The sale is sourced using Section 313 (or 313.1 for states adopting origin-based direct mail sourcing).

Example B: A real estate agent in State A engages a printer to produce a direct mail campaign. The agent provides images of available homes as well as a database containing various demographic/economic data and mailing information. Using variable imaging technology the printer will produce printed pieces which contain images of homes which would be considered affordable by the recipient of the printed piece. Since the service performed by the printer is an integral part of the production and distribution of printed material that meets the definition of "advertising and promotional direct mail" and any data processing performed by the printer is only incidental, the sale would be sourced using Section 313 (or 313.1 for states adopting origin-based direct mail sourcing).

c. As provided in Section 313.D.1 of the SSUTA and Section C.2 of this rule, data processing that is incidental to the provision of mailing services provided by the printer is an integral part of the production and distribution of the printed material. Such sales of printed materials that meet the definition of direct mail are sourced using Section 313 (or 313.1 for states adopting the origin-based direct mail sourcing). Because the data processing is not for purposes of generating, acquiring, compiling, developing or summarizing the data, the data processing is incidental. For example, data processing that is for purposes of meeting United States Postal Service (USPS) standards is incidental.

Example C: A printer in State B has been contracted to prepare a "self-mailer" for mailing. The printer will fold and tab the printed piece for mailing, as well as address the printed piece with ink-jet imaging technology. The purchaser will provide mailing data. In order to meet USPS standards, the mailing data must be processed by the printer. This would include de-duping (eliminates duplicates), NCOA (national change of address) updates, as well as pre-sorting preparation and bar-coding to meet USPS rules for automated processing. The data processing performed by the printer to prepare the mailing list for USPS requirements is an integral part of the distribution of the "self-mailer" and therefore, the data processing is incidental. Such sales of printed materials that meet the definition of direct mail are sourced using Section 313 (or 313.1 for states adopting origin-based direct mail sourcing).

Example D: A printer has been contracted to produce an advertising flyer for a client. The advertising flyer will be printed, folded, bound, tabbed, and addressed by the printer. The printer will be provided a mailing list by the end-user. This list will be prepared to meet USPS rules for advertising flyer circulation. This would include de-duping (eliminates duplicates), NCOA (national change of address) updates, as well

as pre-sorting preparation and bar-coding to meet USPS guidelines for automated processing. The data processing performed to prepare the mailing list for USPS requirements is an integral part of the distribution of the advertising flyer and therefore, the data processing is incidental. Such sales of printed materials that meet the definition of “advertising and promotional direct mail” are sourced using Section 313 (or 313.1 for states adopting origin-based direct mail sourcing).

d. As provided in Section 313.D.1 of the SSUTA and Section C.2 of this rule, data processing that is for purposes of formatting information is an integral part of the production and distribution to complete the printing of the material. Such sales of printed materials that meet the definition of direct mail are sourced using Section 313 (or 313.1 for states adopting the origin-based direct mail sourcing). Because the data processing is not for purposes of generating, acquiring, compiling, developing or summarizing the data, the data processing is incidental.

Example E: An investment company has contracted with a printer to produce their client’s monthly investment statements. The printer is provided with account information that has been compiled and summarized, as well as mailing information in electronic format. The printer using print production software will format the data to print individualized statements as well as imprinting mailing information meeting USPS automated process guidelines. Since data processing performed to format the information for printing and to prepare the mailing list for USPS requirements is an integral part of the production and distribution of the investment statement and is incidental, such sales of printed materials that meet the definition of “other direct mail” are sourced using Section 313 (or 313.1 for states adopting origin-based direct mail sourcing).

e. As provided in Section 313.D.1 of the SSUTA and Section C.2 of this rule, data processing that is for purposes of development of billing information is not integral to the production or distribution of printed material that meets the definition of direct mail. The data processing is for purposes of generating, acquiring, compiling, developing or summarizing data and is more than incidental. Such sales are sourced using Section 310.A of the SSUTA.

Example F: A purchaser has contracted with a company to produce their client's monthly billing statements. The company is provided files of data containing the information necessary to determine opening balances, payment history, current charges and finance charges. The company must process this information to determine the monthly balance due and calculate any finance charges on the individual client accounts. After processing, the company uses print production software to format the data to print individualized statements as well as imprinting mailing information meeting USPS automated process guidelines. Since the company is processing purchaser's data to generate final billing information to be presented on individual client billing statements, the company is performing a data processing service that is more than incidental and the printed material is not considered "other direct mail." The sale is sourced using Section 310.A.

2. Nothing in this rule limits a purchaser's obligation for sales or use tax to any state to which the "direct mail" is delivered, nor limits a person's ability under law to claim a credit or refund for sales or use taxes legally due and paid to other jurisdictions.
3. The sourcing rules do not override or take precedence over exemptions provided by a state. Examples of state specific exemptions that may apply to "direct mail" include exemptions for advertising, promotional materials, shopper's guides, and printed material shipped out-of-state.
Example: A purchaser does not provide any of the documentation according to Section A.2 of this rule, makes no claim of exemption and does not provide jurisdictional information for the purchase of advertising flyers that qualify as "advertising and promotional direct mail." The sale is sourced in accordance with Section 310.A.5 as provided in Section 313.A.4. The state to which the sale is sourced exempts advertising distributed out-of-state. While in this case the seller does not have the jurisdictional information to source the sale under Section 313, the seller does receive enough information to determine the portion of the advertising materials that are shipped out-of-state. The seller collects tax on the portion of the sale that is delivered within the state. Since the sale is sourced under Section 310.A.5, the seller is not required to collect tax on advertising flyers delivered to other states. However, the purchaser may be obligated to remit tax on the use of the advertising in the other states.
4. As provided in Rule 317.1.A.8, the "Direct Mail" reason code on the Streamlined Sales and Use Tax Certificate of Exemption may be used by purchasers of printed materials that meet the definition of direct mail to claim exemption at the time of purchase and self assess and directly pay tax to the state in accordance with Section 313 (or 313.1 for states adopting the origin-based direct mail sourcing). A printer purchasing component materials such as ink or paper that is used to fabricate or produce printed materials shall not issue a Streamlined Sales and Use Tax Agreement Certificate of Exemption or other form of exemption certificate claiming "Direct Mail" as the reason for exemption from sales or use tax. An exemption certificate claiming "Direct Mail" may not be used by a purchaser to purchase printed materials from third parties that are to be included in a later mailing or distribution when the printed materials are shipped or delivered to a single address. Other reason codes such as "manufacturing" or "sales for resale" may be appropriate. Nothing in this provision changes provisions in Section 317 of the SSUTA for sellers obtaining exemption certificates or other documentation from purchasers.

Amendments and Rules Adopted in September 2009

Section 801: ENTRY INTO AGREEMENT

A. ~~After the effective date of the Agreement, a~~ A state may apply to become a full member, a contingent member, or an associate member of party to the Agreement governing board by submitting a petition for membership and certificate of compliance to the governing board. ~~The petition for membership shall include such state's proposed date of entry. The petitioning state's proposed date of entry shall be on the first day of a calendar quarter. The proposed date of entry shall be a date on which all provisions~~

necessary for the state to be in compliance with the Agreement are in place and effective. The Co-Chairs president shall provide the public with an opportunity to comment prior to any vote on a state's petition for membership.

B. The ~~petitioning state~~ governing board shall provide a copy of ~~it's a petitioning state's~~ petition for membership and the certificate of compliance to ~~each all member state~~ states when the petitioning state submits its petition for membership to the governing board. A petitioning state shall ~~also~~ post a copy of its petition for membership and certificate of compliance on that state's web site. The governing board shall post a copy of the state's petition for membership and certificate of compliance on the governing board's web site.

C. A state that petitions for membership after January 1, 2007, that is found to be in compliance pursuant to Sections 804 and 805 of the Agreement except that the changes to their statutes, rules, regulations or other authorities necessary to bring them into compliance are not yet in effect, shall be designated an associate member effective on the first day of the calendar quarter that is not more than twelve months before its proposed date of entry as a member state. Such twelve month period may be extended to eighteen months if the governing board, by unanimous vote approves such extension. Such extension shall be granted only if the petitioning state can present adequate justification of the necessity for the future effective date and that the application of the future effective date beyond twelve months is limited to the provisions of the law for which such necessity is demonstrated. Such states shall be subject to the annual recertification requirement set forth in Section 803 of this Agreement for all issues other than the delayed effective date issues identified at the time the state becomes an associate member. Extensions of effective date delays beyond those identified at the time the state becomes an associate member shall require the state to submit a statement of non-compliance pursuant to Section 803. Provided the statutes, rules, regulations or other authorities remain in effect, the state shall automatically become a member state on the state's proposed date of entry.

D. A state which becomes an associate member after January 1, 2007 shall forfeit its status as an associate member on the date provided for compliance pursuant to subsection C of this section, if the state's laws are not in compliance at that time. A state that forfeits its status as an associate member because it has extended its effective date for required law changes beyond the date set forth in its petition for membership may not file another petition for membership for a period of twelve months after such state forfeits its status as an associate member.

Section 801.1: FULL MEMBERSHIP

A full member is a state that has been found in compliance pursuant to Sections 804 and 805 and the changes to their statutes, rules, regulations or other authorities necessary to bring them into compliance are in effect. The petition for full membership shall include such state's proposed date of entry. The petitioning state's proposed date of entry shall be on the first day of a calendar quarter. The proposed date of entry shall be a date on which all provisions necessary for the state to be in compliance with the Agreement are in place and effective.

Section 801.2: CONTINGENT MEMBERSHIP

A. A contingent member is a state that is found to be in compliance pursuant to Sections 804 and 805 of the Agreement except that the changes to their statutes, rules, regulations or other authorities necessary to bring them into compliance are not yet in effect. Such state shall be admitted as a contingent member if their statutes, rules, regulations or other authorities necessary to bring them into compliance are scheduled to become effective no later than the first day of a calendar quarter that is not more than twelve months subsequent to its proposed date of entry as a contingent member state. The petition for contingent membership shall include such state's proposed dates of entry as a contingent member and a full member. Its proposed date of entry as a contingent member shall be on the first day of a calendar quarter that is no more than twelve months prior to the date on which all provisions necessary for the state to be in compliance with the Agreement are in place and effective. Provided the statutes, rules, regulations or other authorities remain in effect and the statutes, rules, regulations or other authorities with delayed effective dates go into effect, the state shall automatically become a full member state on the state's proposed date of entry as a full member. A state which is admitted as a contingent member shall become an associate member on such proposed date of entry if the state's statutes, rules, regulations or other authorities are not in compliance at that time.

B. A contingent member shall have all the rights and privileges of a full member state, except as provided in this subsection. A contingent member shall be responsible for the payment of the petition fee and the annual cost allocation as determined by the governing board. Notwithstanding any provision of this Agreement to the contrary, a seller may, but is not required to collect sales or use tax on sales into a contingent member state unless the seller is otherwise required to collect such taxes under applicable law. Notwithstanding the provisions of Section 401 (B), a seller that volunteers to collect tax in a contingent member state is not required to collect tax in any other contingent member state. A contingent member shall be responsible for payment of costs as provided in Article VI for those sellers that volunteer to collect tax in a contingent member state. Neither the governing board nor a member state may share or grant access to a contingent member state any seller information from the seller's registration pursuant to Section 401. Neither the governing board nor a member state may share or grant access to a contingent member state any seller information from an audit conducted by the governing board or a member state on behalf of the governing board unless the contingent member state is a party to the audit.

C. A contingent member state shall provide amnesty pursuant to the provisions of Section 402, provided, the amnesty shall be in effect from the date the contingent member status is attained until 12 months after the contingent member state becomes a full member state.

D. Contingent member states shall be subject to the annual recertification requirement set forth in Section 803 of this Agreement for all issues other than the delayed effective date issues identified at the time the state becomes a contingent member.

Section 801.3: ASSOCIATE MEMBERSHIP

An associate state is a state that has achieved substantial compliance with the terms of the Agreement taken as a whole, but not necessarily each provision as required by

Section 805, measured qualitatively. The petition for associate membership shall include such state's proposed date of entry. The petitioning state's proposed date of entry shall be on the first day of a calendar quarter. An associate member state shall become a full member when such state has been found in compliance pursuant to Sections 804 and 805 and the changes to their statutes, rules, regulations or other authorities necessary to bring them into compliance are in effect.

A. An associate member shall have all the rights and privileges of a member state except that:

1. An associate member may not vote on amendments to or interpretations of the Agreement;

2. An associate member may not vote to determine if a petitioning state is in compliance with the Agreement pursuant to Section 804 of the Agreement; and

3. A representative of an associate member state shall not be eligible to serve on the compliance review and interpretations committee.

B. Notwithstanding any other provision of the section or any lapse occurring after July 1, 2009, a state that was an associate member on January 1, 2007, shall be an associate state until or unless the governing board finds or has found such state to be in compliance pursuant to Section 805 or finds such state to no longer be eligible for associate member status.

C. Notwithstanding any provision of this Agreement to the contrary, a seller may, but is not required to collect sales or use tax on sales into an associate member state unless the seller is otherwise required to collect such taxes under applicable law.

Notwithstanding the provisions of Section 401 (B), a seller that volunteers to collect tax in an associate member state is not required to collect tax in any other associate member state. An associate member shall be responsible for payment of costs as provided in Article VI for those sellers that volunteer to collect tax in an associate member state.

D. Neither the governing board nor a member state may share or grant access to an associate member state any seller information from the seller's registration pursuant to Section 401. Neither the governing board nor a member state may share or grant access to an associate member state any seller information from an audit conducted by the governing board or a member state on behalf of the governing board unless the associate member state is a party to the audit.

E. An associate member shall be responsible for the payment of the petition fee and the annual cost allocation as determined by the governing board.

F. An associate member state shall provide amnesty pursuant to the provisions of Section 402, provided, the amnesty shall be in effect from the date the associate member status is attained until 12 months after the associate member state becomes a full member state.

G. An associate member state shall be subject to an annual recertification requirement set forth by the compliance review and interpretations committee.

Section 801.4: ADVISOR MEMBERSHIP

Any state that held Implementing State status before October 1, 2005 and has not become a full, contingent or associate state member shall become an advisor state to the governing board.

1. Advisor states shall serve in an *ex officio* capacity on the governing board, with non-voting status, but may speak to any matter presented to the governing board for consideration.

2. Each state's delegation to the former Streamlined Sales Tax Implementing States may serve as the state's delegation to the governing board as established herein or the state may appoint a new delegation, of up to four representatives, who shall be members of state or local government.

3. Representatives of advisor states may serve on standing committees of the governing board except they may not serve as officers or directors on the executive committee or as members on the finance committee or the compliance review and interpretations committee.

4. A state that was not previously an implementing state may become an advisor state by:

a. Enacting legislation authorizing the state's participation in interstate discussions to develop a simplified sales and use tax system; or

b. Executing a memorandum of understanding or similar written document by the governor and legislative leaders expressing the intent of the state to participate in interstate discussions to develop a simplified sales and use tax system.

Any question over whether or not a state qualifies as an advisor state shall be resolved by a majority vote of the governing board.

Neither the governing board nor a member state may share or grant any advisor state access to any seller information from the seller's registration pursuant to Section 401.

Neither the governing board nor a member state may share or grant any advisor state access to any seller information from an audit conducted by the governing board or a member state on behalf of the governing board.

An advisor state may not participate in a closed session of the governing board or a governing board committee.

Section 702: APPROVAL OF INITIAL STATES --REPEALED

Section 703: STREAMLINED SALES TAX IMPLEMENTING STATES --REPEALED

Section 704: CONSIDERATION OF PETITIONS --REPEALED

Section 705: ASSOCIATE MEMBERSHIP --REPEALED

Rule 801.1 Associate State Membership Requirements (New)

The Governing Board may not approve a state as an associate member pursuant to Section 801.3 of the Agreement unless such state has at a minimum the following in effect on the day they become an associate state:

1. Provide amnesty pursuant to Section 402 of the Agreement;
2. Pay certified service providers pursuant to the Governing Board's contract;
3. Have certified the service providers and automated systems;

4. Have adopted a majority of the definitions in the Agreement to the extent such definitions are relevant for such state's sales and use tax administration;
5. Have provided liability relief to sellers and purchasers as required by the Agreement;
6. Be able to accept registrations from the central registration system;
7. Have completed the Governing Board's taxability matrix;
8. Have completed the Governing Board's certificate of compliance;
9. Be able to accept the simplified electronic return as required by the Agreement;
10. Have complied with the exemption administration provisions as required by the Agreement; and
11. Have adopted a majority of the sourcing requirements as required by the Agreement.

Rule 803. Annual Recertification

A. Recertification Requirement. Pursuant to Section 803 of the Agreement, each member state shall annually recertify to the Governing Board by August 1 of each year that the state is in compliance with the Agreement. A state is in compliance with the Agreement if the effect of the state's laws, rules, regulations, and policies is substantially compliant with each of the requirements set forth in the Agreement.

1. Recertification Documents

a. On or before August 1 of each year, each member state shall submit to the Executive Director either a statement certifying that the state is in compliance with the Agreement as it exists on August first of the year or a statement of noncompliance.

b. With the statement, each member state shall submit:

(1.) The certificate of compliance issued for the recertification period that sets out the state's statutes, rules, regulations, and other authorities adopted to comply with the specific provisions of the Agreement as of August first of the year;

(2.) A list and the effective date of any of the state's statutes, regulations, or written policies to remain or come into compliance that have changed since August first of the prior year;

(3.) Its most current taxability matrix;

(4.) A statement disclosing any known items of noncompliance with a description of the action the state intends to take to remedy the noncompliance; and

(5.) A list of any significant administrative or judicial decisions (regardless of outcome) that impact the state's compliance since August first of the prior year.

2. Posting Documents. Each member state shall post its statement of recertification or its statement of noncompliance and all supporting recertification documents on the state's web site on or before August first of each year. The Executive Director shall post all recertification filings on the Governing Board's web site.

B. Review Responsibility. Pursuant to Article 7, Section 2 of the bylaws, the Compliance Review and Interpretations Committee (CRIC) is responsible for reviewing each state's annual recertification filings, determining any needs for re-assessment and recommending to the Governing Board findings of non-compliance.

C. CRIC Evaluation and Report

1. On or before September 30 of the recertification year, the Executive Director shall:
 - a. Review all statements and accompanying documents;
 - b. Conduct a state-by-state review of each state's compliance with the Agreement; and
 - c. Issue an initial written report to CRIC listing potential compliance issues for each member state or stating there are no compliance issues. The Executive Director shall publish the initial written report on the Governing Board's web site and CRIC shall hold at least one meeting to discuss the report and schedule dates for states and the public to submit comments.
2. Providing at least thirty days notice, CRIC shall give states and the public the opportunity to submit written comments to CRIC. Such responses and comments shall be delivered to the Executive Director who shall notify the public of their filing and publish those documents on the Governing Board's web site.
3. Providing at least ten days notice, CRIC shall give the states and the public the opportunity to submit written comments to CRIC solely to address any issues previously raised in CRIC's report or to address comments received from the states or the public. Such responses and comments shall be delivered to the Executive Director who shall notify the public of their filing and publish those documents on the Governing Board's web site.
4. On or before November 30 of the recertification year, CRIC shall issue its final report to the Governing Board. Such report shall:
 - a. Summarize, as practical, the comments received from the member states and the public;
 - b. Describe how CRIC addressed those comments; and
 - c. State how each CRIC member voted.
5. If any date provided in this rule falls on a weekend day, federal holiday or a banking holiday in a member state, such date shall be the next day that is not a weekend day, federal holiday or a banking holiday in a member state.
6. The CRIC chair, for due cause shown, may extend the September 30 or November 30 deadlines established in this section.

D. Review Standards

1. **Scope of Review.** The member states' annual recertification of compliance covers all aspects of the Agreement, including any applicable rules and interpretations, and is not limited to changes made in the prior year.
2. **Determination of Compliance**
 - a. A member state is presumed to be in compliance. Except as provided in subparagraph b of this paragraph, if documentation is provided to CRIC indicating a state is not in compliance, such state has an affirmative duty to explain how it is in compliance.
 - b. If an issue of a state's compliance has previously been raised against a state for which it was found in compliance that was the subject of a prior unsuccessful challenge under this paragraph, such state need only respond that it previously was held in compliance on that same issue. CRIC and the Governing Board, however, must take into consideration any documentations that supports such state is not in compliance.
3. **Reliance.** The determination of a member state being in compliance shall be based only on a review of the state's laws, regulations and written policies; such provisions

listed in order of preference and reliance. Legislation shall be relied upon only if it has passed both legislative chambers (or the legislative chamber for a unicameral state) and there is no known threat of a Governor's veto. A regulation shall be relied upon only if it has been fully adopted. A written policy shall be relied upon only if it is publically accessible through the state revenue agency's web site.

~~B. Compliance Review And Interpretations Committee.~~

~~1. Responsibility.~~ Pursuant to Article 7, Section 2 of the by laws, the Compliance Review and Interpretations Committee is responsible for reviewing compliance review reports to determine any needs for re-assessment and recommending findings of compliance and non-compliance to the Governing Board.

~~2. Recertification Documents.~~

~~a.~~ By August 1 of each year, each member state shall submit to the Executive Director a statement certifying that the state is in compliance with the Agreement or submit a statement of noncompliance. The Executive Director shall forward all statements and any accompanying documents to the Chair of the Compliance Review and Interpretations Committee. A member state shall indicate any known items of noncompliance that may occur at a date following its certification submission or action needed to be taken to comply with requirements of the Agreement with future effective dates.

~~b.~~ With the statement in subsection (a), each member state shall submit a certificate of compliance that sets out the state's statutes, rules, regulations, or other authorities that have been adopted to come into compliance with the specific provisions of the Agreement.

~~c.~~ Each member state shall post its statement of recertification or its statement of noncompliance and an updated certificate of compliance on the state's web site by August 1 of each year. The updated certificate of compliance shall reflect the state's compliance with the provisions of the Agreement through August 1 of the year of submission. The Executive Director shall post all recertification filings on the Governing Board's web site.

~~3. Evaluation~~

~~a.~~ The Compliance Review and Interpretations Committee and any designees that the chair of the Committee appoints to provide assistance shall review all statements and accompanying documents.

~~b.~~ The Compliance Review and Interpretations Committee shall submit to a member state any findings of noncompliance based on a review of a certificate of compliance or other documentation submitted with a member state's annual statement of recertification. Such member state shall have 30 days to respond to the findings in writing to the chair of the Compliance Review and Interpretations Committee. No sooner than 31 days after submission of the findings to the member state, the Compliance Review and Interpretations Committee shall determine if further action is warranted.

~~c.~~ If the Compliance Review and Certification Committee finds that a member state is in compliance with the Agreement, the committee shall report such findings to the

~~Governing Board. If the Compliance Review and Interpretations Committee determines that a member state is not in compliance with the Agreement, the committee shall submit such findings to the Governing Board.~~

~~E. C. Public Notice.~~ The Executive Director shall provide ~~a copy notice and copies of a statement~~ any statements of noncompliance ~~from the~~ received by a member state and any findings of noncompliance by the ~~Compliance Review and Interpretations Committee~~ CRIC to and shall solicit comments from the following parties:

1. the authorized representative of each member state;
2. the Chair of the State and Local Advisory ~~Committee~~ Council;
3. the Chair of the Business Advisory Council; and
4. the general public as provided in Rule 806.2.

~~F. D. Agenda. No sooner than 60 days after the solicitation of comment, the statement~~ If possible, by December 31 of the recertification year any statements of noncompliance from the a member state and any findings of noncompliance by the ~~Compliance Review and Interpretations Committee, the issue as to whether the member state is in compliance with the Agreement~~ CRIC shall be placed on the agenda of the Governing Board for either a regular meeting or a special meeting. In addition, upon a motion at that same meeting, the Governing Board shall determine if a state is out of compliance that did not have a finding of noncompliance by CRIC based on documentation reviewed by CRIC or submitted to the Governing Board. If a member state is found to be out of compliance by the Governing Board, the member state shall be subject to sanctions as authorized under Section 809 of the Agreement.

~~G. E. Appeal.~~ If ~~the subject state~~ any person disagrees with the Governing Board's determination, ~~the subject state~~ that person may invoke the ~~appeals~~ issue resolution process provided for in Section 1002 of the Agreement.

~~H. F. Publication of the Decision~~ Decisions. Once the decision of the Governing Board becomes final, either because no appeal is filed or the appeal procedures have been exhausted, the decision shall be sent to the subject state and a copy of the decision shall be posted on the Web. The Governing Board's web site shall list the following for each state found not in compliance:

1. The date a state was found not in compliance;
2. The noncompliance issue(s);
3. The sanction(s) imposed with any timeframes; and
4. When known, the date the state will return to compliance

Member states must comply with the following amendments to the Agreement by January 1, 2010.

Section 310.1 providing for origin based sourcing was added. States using origin based sourcing need to comply with the requirements of this section.

SECTION 310.1 ELECTION FOR ORIGIN-BASED SOURCING

- A.** A state that has local jurisdictions that levy or receive sales or use taxes may elect to source the retail sale of tangible personal property and digital goods pursuant to the provisions of this section in lieu of the provisions of Subsection A(2)(3) and (4) of Section 310 if they comply with all provisions of Subsection C of this section and the only exception to Section 310 is the exception provided for in subsection B of this Section.
- B.** A state may source retail sales, excluding lease or rental, of tangible personal property or digital goods to the location where the order is received by the seller if:
1. The order is received in the same state by the seller where receipt of the product by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs;
 2. Location where receipt of the product by the purchaser occurs is determined pursuant to Section 310A(2),(3) and (4); and
 3. At the time the order is received, the recordkeeping system of the seller used to calculate the proper amount of tax to be imposed captures the location where the order is received.
- C.** A state electing to source sales pursuant to this section shall comply with all of the following:
1. When the location where the order is received by the seller and the location where the receipt of the product by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs as determined pursuant to Section 310A(2),(3) and (4) are in different states, the sale must be sourced pursuant to the provisions of Section 310.
 2. When the product is sourced pursuant to this section to the location where the order is received by the seller, only the sales tax for the location where the order is received by the seller may be levied. No additional sales or use tax based on the location where the product is delivered to the purchaser may be levied. The purchaser shall not be entitled to any refund if the combined state and local rate or rates at the location where the product is received by the purchaser is lower than the rate where the order is received by the seller.
 3. A state may not require a seller to utilize a recordkeeping system which captures the location where an order is received to calculate the proper amount of tax to be imposed.
 4. A purchaser shall have no additional liability to the state for tax, penalty or interest on a sale for which the purchaser remits tax to the seller in the amount invoiced by the seller if such invoice amount is calculated at either the rate applicable to the location where receipt by the purchaser occurs or at the rate applicable to the location where the order is received by the seller. A purchaser may rely on a written representation by the seller as to the location where the order for such sale was received by the seller. When the purchaser does not have a written representation by the seller as to the location where the order for such sale was received by the seller, the purchaser may use a location indicated by a business address for the seller that is available from the business records of the purchaser that are

maintained in the ordinary course of the purchaser's business to determine the rate applicable to the location where the order was received.

5. The location where the order is received by or on behalf of the seller means the physical location of a seller or third party such as an established outlet, office or location or automated order receipt system operated by or on behalf of the seller where an order is initially received by or on behalf of the seller and not where the order may be subsequently accepted, completed or fulfilled. An order is received when all of the information necessary to the determination whether the order can be accepted has been received by or on behalf of the seller. The location from which a product is shipped shall not be used in determining the location where the order is received by the seller.
6. Such state shall provide for direct pay permits pursuant to Section 326 of this Agreement and the requirements of this subsection. Purchasers which remit sales and use tax pursuant to such a permit shall remit tax at the rate in effect for the location where receipt of the product by the purchaser occurs or the product is first used as determined by state law. A member state may establish reasonable thresholds at which level the state will consider direct pay applications, provided the threshold must be based upon purchases with no distinction between taxable and non-taxable purchases. The member state shall establish a process for application for a direct pay permit as provided herein. The member state may require the applicant to demonstrate:
 - a. Ability to comply with the sales and use tax laws of the state,
 - b. A showing of a business purpose for seeking direct payment permit and how the permit will benefit tax compliance, and
 - c. Proof of good standing under the tax laws of the state.The member state shall review all permit applications in a timely manner so that applicants receive notification of authorization or denial within one hundred twenty (120) days. The member state may not limit direct pay applicants to businesses engaged in manufacturing or businesses that do not know the ultimate use of the product at the time of the purchase.
7. When taxable services are sold with tangible personal property or digital products pursuant to a single contract or in the same transaction, are billed on the same billing statement(s), and, because of the application of this section, would be sourced to different jurisdictions, a State shall elect either origin sourcing or destination sourcing to determine a single situs for that transaction. Such state election is required until such time as the Governing Board adopts a uniform methodology to address such sales.
8. A member state that elects to source the sale of tangible personal property and digital goods pursuant to the provisions of this section shall inform the Governing Board of such election.

D. Compliance with the provisions of this section shall satisfy a state's eligibility for membership in this Agreement as follows:

1. If a state is in substantial compliance with all each of the provisions of this agreement other than sourcing of sales of tangible personal property and digital goods as provided in Section 310 and elects to source sales of tangible personal property and digital goods pursuant to this section, such state may become an associate member state in the same manner as provided for states to become full member states pursuant to Article VIII of this Agreement.
2. On or after January 1, 2010, a state which becomes an associate member state pursuant to this subsection shall automatically become a full member state, provided that at least three (3) five (5) states which are not substantial compliance with all each of the provisions of the agreement other than sourcing sales of tangible personal property and digital goods pursuant to Section 310 of the Agreement and have notified the governing board of an election pursuant to paragraph 8 of subsection C of this section to source sales pursuant to this section and have been found to be in substantial compliance with the provisions of this section.
3. The provisions of this section shall be fully effective for all purposes on or after January 1, 2010, provided that at least three (3) five (5) states which are not full member states on December 31, 2007, have been found to be in substantial compliance with all each of the provisions of the agreement other than sourcing sales of tangible personal property and digital goods pursuant to Section 310 of the Agreement and have notified the governing board of an election pursuant to paragraph 8 of subsection C of this section to source sales pursuant to this section and have been found to be in substantial compliance with the provisions of this section. States electing to source sales under this section after that time may become full member states if all other requirements for membership are satisfied.

Section 328 TAXABILITY MATRIX was amended as follows.

A. To ensure uniform application of terms defined in 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. Until such time as sufficient additional definitions are adopted to provide for a uniform application of the definition of tangible personal property, each member state shall certify to the Governing Board its tax treatment of photographs delivered electronically. This information shall be included in the taxability matrix. A uniform application of the definition of tangible personal property requires an amendment to Section 327 of this Agreement. Notice of changes in the taxability of such goods shall be

made in the same manner as required for notice of changes in the taxability of other products or services listed in the taxability matrix.

C. 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 or in the certification of the state's tax treatment of photographs delivered electronically.

D. 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.

E. 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.

Section 332: Section 332 providing rules relating to specified digital products was added:

Section 332: SPECIFIED DIGITAL PRODUCTS

A. A member state shall not include "specified digital products", "digital audio-visual works", "digital audio works" or "digital books" within its definition of "ancillary services", "computer software", "telecommunication services" or "tangible personal property." This restriction shall apply regardless of whether the "specified digital product" is sold to a purchaser who is an end user or with less than the right of permanent use granted by the seller or use which is conditioned upon continued payment from the purchaser. Until January 1, 2010, the exclusion of "specified digital products" from the definition of "tangible personal property" shall have no implication on the classification of products "transferred electronically" which are not included within the definition of "specified digital products" as being included in, or excluded from, the definition of "tangible personal property."

B. For purpose of Section 327(C) and the taxability matrix, "Digital Audio-Visual Works", "Digital Audio Works", and "Digital Books" are separate definitions.

C. If a state imposes a sales or use tax on products "transferred electronically" separately from its imposition of tax on "tangible personal property", that state will not be required to use the terms "specified digital products", "digital audio visual works", "digital audio works", or "digital books", or enact an additional or separate sales or use tax levy on any "specified digital product."

D. A statute imposing a tax on "specified digital products," "digital audio-visual works," "digital audio works" or "digital books" and, after January 1, 2010, on any other product "transferred electronically" shall be construed as only imposing the tax on a sale to a purchaser who is an end user unless the statute specifically imposes and separately enumerates the tax on a sale to a purchaser who is not an end user. For purposes of this paragraph, an "end user" includes any person other than a person who receives by contract a product "transferred electronically" for further commercial broadcast,

rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition of the product, in whole or in part, to another person or persons.

A person that purchases products “transferred electronically” or the code for “specified digital products” for the purpose of giving away such products or code shall not be considered to have engaged in the distribution or redistribution of such products or code and shall be treated as an end user.

2. A statute imposing a tax on “specified digital products,” “digital audio-visual works,” “digital audio works” or “digital books” and, after January 1, 2010, on any other product “transferred electronically” shall be construed as only imposing tax on a sale with the right of permanent use granted by the seller unless the statute specifically imposes and separately enumerates the tax on a sale with the right of less than permanent use granted by the seller. For purposes of this paragraph “permanent” means perpetual or for an indefinite or unspecified length of time. A right of permanent use shall be presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

3. A statute imposing a tax on “specified digital products,” “digital audio-visual works,” “digital audio works” or “digital books” and, after January 1, 2010, on any other product “transferred electronically” shall be construed as only imposing tax on a sale which is not conditioned upon continued payment from the purchaser unless the statute specifically imposes and separately enumerates the tax on a sale which is conditioned upon continued payment from the purchaser.

4. A member state which imposes a sales or use tax on the sale of a product “transferred electronically” to a person other than end user or on a sale with the right of less than permanent use granted by the seller or which is conditioned upon continued payment from the purchaser shall so indicate in its taxability matrix in a format approved by the Governing Board.

E. Nothing in this section or the definition of “specified digital products” shall limit a state’s right to impose a sales or use tax or exempt from sales or use tax any products or services that are outside the definition of “specified digital products.”

F. A state may treat a subscription to products “transferred electronically” differently than a non-subscription purchase of such product. For purposes of this section, “subscription” means an agreement with a seller that grants a consumer the right to obtain products transferred electronically from within one or more product categories having the same tax treatment, in a fixed quantity or for a fixed period of time, or both.

G. The tax treatment of a “digital code” shall be the same as the tax treatment of the “specified digital product” to which the “digital code” relates. The retail sale of the “digital code” shall be considered the transaction for purposes of the Agreement. For purposes of this section, “digital code” means a code, which provides a purchaser with a right to obtain one or more “specified digital products” from within one or more specified digital product categories having the same tax treatment. A “digital code” may

be obtained by any means, including email or by tangible means regardless of its designation as “song code”, “video code”, or “book code.”

H. Notwithstanding the provisions of Section 316 of this Agreement, a member state may provide a product based exemption for specific items within the definition of “specified digital products”, provided such items which are not “transferred electronically” must also be granted a product based exemption by the member state.

I. For purposes of this section, the term “transferred electronically” means obtained by the purchaser by means other than tangible storage media.

Section 333: Section 333 providing requirements for use of “specified digital products” was added.

Section 333: USE OF SPECIFIED DIGITAL PRODUCTS (Effective January 1, 2010)

A member state shall not include any product transferred electronically in its definition of “tangible personal property.” “Ancillary services”, “computer software”, and “telecommunication services” shall be excluded from the term “products transferred electronically.” For purposes of this section, the term “transferred electronically” means obtained by the purchaser by means other than tangible storage media.

Section 502: Subsections 502 A and D were amended as follows:

- A. Each member state shall review software submitted to the governing board for certification as a CAS under Section 501. Such review shall include a review to determine that the program ~~adequately classifies the state’s product based exemptions~~ accurately reflects the taxability of the product categories included in the program. Upon ~~completion of the review~~ approval by the state, the state shall certify to the governing board its acceptance of the ~~classifications made by the system~~ determination of the taxability of the product categories included in the program.

- D. The governing board and the member states shall not be responsible for classification of an item or transaction within the ~~product based exemptions~~ product categories certified. The relief from liability provided in this section shall not be available for a CSP or model 2 seller that has incorrectly classified an item or transaction into a ~~product based exemption~~ product category certified by a member state. This paragraph shall not apply to the individual listing of items or transactions within a product definition approved by the governing board or the member states.

Section 604: Section 604 providing for additional monetary allowance for states electing origin based sourcing was added:

Section 604: ADDITIONAL MONETARY ALLOWANCE REQUIRED FOR MEMBERS MAKING CERTAIN ELECTION (Effective January 1, 2010)

In addition to the monetary allowance provided pursuant to Sections 601, 602 and 603 of this Agreement, each state that makes the election by Section 310.1 of this Agreement, upon becoming a full member state, shall provide reasonable compensation for the incremental expenses incurred in establishing or maintaining a uniform origin system for administering, collection and remitting sales and use taxes on origin-based sales.

The following changes were made in the definitions:

DIGITAL PRODUCTS DEFINITIONS:

“Specified digital products”: Definitions were added for specified digital products.

“Specified digital products” means electronically transferred:

“Digital Audio-Visual Works” which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any, **“Digital Audio Works”** which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones, and **“Digital Books”** which means works that are generally recognized in the ordinary and usual sense as “books”.

For purposes of the definition of “digital audio works”, “ringtones” means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.

For purposes of the definitions of “specified digital products”, “transferred electronically” means obtained by the purchaser by means other than tangible storage media.

HEALTH-CARE Definitions:

“Durable medical equipment”: The definition of durable medical equipment was amended by adding:

“Repair and replacement parts as used in this definition include all components or attachments used in conjunction with the “durable medical equipment.” A member state may exclude from repair and replacement parts items which are for single patient use only.”

Sales Tax Holiday Definitions:

“Energy Star Qualified Product”: A definition was added for Energy Star Qualified Equipment.

“Energy Star Qualified Product” means a product that meets the energy efficient guidelines set by the United States Environmental Protection Agency and the United

States Department of Energy that are authorized to carry the Energy Star label. Covered products are those listed at www.energystar.gov or successor address. A member state that wishes to exempt “Energy Star qualified products” during a sales tax holiday may:

1. exempt all Energy Star Qualified Products, or
2. exempt specified Energy Star Qualified Products, or
3. exempt specified classifications as categorized on the Energy Star product listing.

Member states must comply with the following amendments to the Agreement by January 1, 2011.

Specified Digital Products:

Section 332.G.

The tax treatment of a “digital code” shall be the same as the tax treatment of the “specified digital product” or product “transferred electronically” to which the “digital code” relates. The retail sale of the “digital code” shall be considered the transaction for purposes of the Agreement. For purposes of this section, “digital code” means a code, which provides a purchaser with a right to obtain one or more such products ~~“specified digital products” from within one or more specified digital product categories~~ having the same tax treatment. A “digital code” may be obtained by any means, including email or by tangible means regardless of its designation as “song code”, “video code”, or “book code.”

Notice of state tax rate changes:

Section 304: NOTICE FOR STATE TAX CHANGES

- A. Each member state shall lessen the difficulties faced by sellers when there is a change in a state sales or use tax rate or base by making a reasonable effort to do all of the following:
 1. Provide sellers with as much advance notice as practicable of a rate change.
 2. Limit the effective date of a rate change to the first day of a calendar quarter.
 3. Notify sellers of legislative changes in the tax base and amendments to sales and use tax rules and regulations.
- B. Failure of a seller to receive notice or failure of a member state to provide notice or limit the effective date of a rate change shall not relieve the seller of its obligation to collect sales or use taxes for that member state.
- C. Each member state failing to provide for at least thirty days between the enactment of the statute providing for a rate change and the effective date of such rate change shall relieve the seller of liability for failing to collect tax at the new effective rate if:
 1. the seller collected tax at the immediately preceding effective rate; and
 2. the seller’s failure to collect at the newly effective rate does not extend beyond thirty days after the date of enactment of the new rate.

- D. Notwithstanding subsection C, if the member state establishes the seller fraudulently failed to collect at the new rate or solicits purchasers based on the immediately preceding effective rate this relief does not apply.
- E. Member states may provide for relief of liability for failing to collect tax as a result of a tax change beyond the liability relief required by subsection C.

Election for origin-based direct mail sourcing:

Section 313: DIRECT MAIL SOURCING

- A. Notwithstanding Sections 310, 310.1 and 313, a member state may elect to source the sale of all direct mail delivered or distributed from a location within the state and delivered or distributed to a location within the state pursuant to the provisions of this section.
- B. If the purchaser provides the seller with a direct pay permit or an exemption certificate claiming direct mail, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. An exemption certificate claiming direct mail shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.
- C. 1. Except as provided in subsections (B) and (C)(2) of this section, the seller shall collect the tax according to Section 310, subsection (A)(5).
2. To the extent the seller knows that a portion of the sale of direct mail will be delivered or distributed to locations in another state, the seller shall collect the tax on that portion according to Section 313.
- D. Nothing in this section limits a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered, except that a purchaser whose direct mail is sourced under subsection (C)(1) of this section shall owe no additional sales or use tax to that state based on where the purchaser uses or delivers the direct mail in the state.
- E. A member state that elects to source the sale of direct mail pursuant to the provisions of this section shall inform the Governing Board in writing at least sixty days prior to the beginning of the calendar quarter such election begins.

Confidentiality and privacy protections under Model 1:

Section 321: CONFIDENTIALITY AND PRIVACY PROTECTIONS UNDER MODEL 1

- A. The purpose of this section is to set forth the member states' policy for the protection of the confidentiality rights of all participants in the system and of the privacy interests of consumers who deal with Model 1 sellers.
- B. As used in this section, the term "confidential taxpayer information" means all information that is protected under a member state's laws, regulations, and privileges; the term "personally identifiable information" means information that identifies a person; and the term "anonymous data" means information that does not identify a person.

C. The member states agree that a fundamental precept in Model 1 is to preserve the privacy of consumers by protecting their anonymity. With very limited exceptions, a CSP shall perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers.

D. The governing board may certify a CSP only if that CSP certifies that:

1. Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected;

2. That personally identifiable information is only used and retained to the extent necessary for the administration of Model 1 with respect to exempt purchasers and proper identification of taxing jurisdictions;

3. It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information and whether it discloses the information to member states. Such notice shall be satisfied by a written privacy policy statement accessible by the public on the official web site of the CSP;

4. Its collection, use and retention of personally identifiable information will be limited to that required by the member states to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased and for documentation of the correct assignment of taxing jurisdictions; and

5. It provides adequate technical, physical, and administrative safeguards so as to protect personally identifiable information from unauthorized access and disclosure.

E. Each member state shall provide public notification to consumers, including their exempt purchasers, of the state's practices relating to the collection, use and retention of personally identifiable information.

F. When any personally identifiable information that has been collected and retained is no longer required for the purposes set forth in subsection (D)(4), such information shall no longer be retained by the member states.

G. When personally identifiable information regarding an individual is retained by or on behalf of a member state, such state shall provide reasonable access by such individual to his or her own information in the state's possession and a right to correct any inaccurately recorded information.

H. If anyone other than a member state, or a person authorized by that state's law or the Agreement, seeks to discover personally identifiable information, the state from whom the information is sought should make a reasonable and timely effort to notify the individual of such request.

I. This privacy policy is subject to enforcement by member states' attorneys general or other appropriate state government authority.

J. Each member states' laws and regulations regarding the collection, use, and maintenance of confidential taxpayer information remain fully applicable and binding. Without limitation, the Agreement does not enlarge or limit the member states' authority to:

1. Conduct audits or other review as provided under the Agreement and state law.

2. Provide records pursuant to a member state's Freedom of Information Act, disclosure laws with governmental agencies, or other regulations.
 3. Prevent, consistent with state law, disclosures of confidential taxpayer information.
 4. Prevent, consistent with federal law, disclosures or misuse of federal return information obtained under a disclosure agreement with the Internal Revenue Service.
 5. Collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.
- K. This privacy policy does not preclude the governing board from certifying a CSP whose privacy policy is more protective of confidential taxpayer information or personally identifiable information than is required by the Agreement.

Sales tax holiday exemption procedures:

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 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.
 3. Not apply an entity or use based exemption to items except a member state may limit a product based exemption to items purchased for personal or non-business use.
 4. Not require a seller to obtain an exemption certificate or other certification from a purchaser for items to be exempted during a sales tax holiday.

Bundling transactions relating to computer software maintenance contracts

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 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 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.

4. 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.

Definitions and sourcing of software maintenance contracts:

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. Computer 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.
5. Computer software maintenance contracts that only obligate a vendor of computer software to provide a customer with future updates or upgrades to computer software,
6. Computer software maintenance contracts that only obligate a vendor of computer software to provide a customer with support services with respect to computer software.

Rules relating to software maintenance contracts:

Rule 327.5. Computer Software Maintenance Contracts

The following related terms are defined in Part II of the Library of Definitions: computer software maintenance contracts, mandatory computer software maintenance contracts, optional computer software maintenance contracts, and prewritten computer software. In addition, Section 330 contains provisions addressing the treatment of bundled optional computer software maintenance contracts with respect to prewritten computer software. Compliance with Section 330D.3 requires the member state to select a uniform method of treatment for bundled optional computer software maintenance contracts when a state otherwise does not specifically impose tax on the sale of computer software maintenance contracts. Below are additional guidelines for the treatment of computer software maintenance contracts.

- (1) If the sales prices for a mandatory computer software maintenance contract and prewritten computer software are not separately itemized on the invoice or similar billing document, the price for the maintenance contract is treated as part of the sales price for the prewritten computer software.
- (2) If the sales prices for the customer support services and the upgrades and updates components of an optional prewritten computer software maintenance

- contract are separately itemized on the invoice or similar billing document, the price for the maintenance contract is characterized as follows:
- a. The amount stated on the invoice or similar billing document for support services shall be characterized as a sale of services; and
 - b. The amount stated on the invoice or similar billing document as the amount for updates and upgrades shall be characterized as the sale of prewritten software.
- (3) Renewal of a computer software maintenance contract where the customer is obligated to purchase the renewal as a condition to the continued use of prewritten computer software is a mandatory computer software maintenance contract. All other renewals of computer software maintenance contracts are optional computer software maintenance contracts.
- (4) Mandatory and optional computer software maintenance contracts relating to non-prewritten computer software are characterized the same as non-prewritten computer software.
- (5) Computer software maintenance provided by someone other than the vendor of the software that does not obligate the maintenance vendor to provide software updates or upgrades is characterized as a sale of services. Each state may select an appropriate percentage for allocating between taxable and nontaxable or exempt products under Section 330D.3(d). Each member state shall indicate within its Taxability Matrix the adoption of software maintenance contract definitions and whether there has been a selection for uniform taxable and nontaxable or exempt percentages pursuant to Section 330D.3.

Rule 330.3 Allocations with respect to Prewritten Computer Software Maintenance Contracts:

Each state may select one uniform percentage within the range allowed under Section 330D.3(d) for allocating between taxable and nontaxable or exempt products.

Rule 309.4. Sourcing ~~Software Post-Sale Support Agreements that Combine Both Prewritten Computer Software and Services (Software Post-Sale Support Agreements)~~ Computer Software Maintenance Contracts.

- (1) The initial retail sale of a ~~software post-sale support agreement~~ computer software maintenance contract sold by the seller of the software is sourced to the same address(es) as the retail sale of the underlying software.
- (2) a. The retail sale of a ~~software post-sale support agreement~~ computer software maintenance contract sold after the retail sale of the underlying software, the renewal of a ~~software post-sale support agreement~~ computer software maintenance contract, or the retail sale of a ~~software post-sale support agreement~~ computer software maintenance contract by a seller other than the seller of the software is treated separately from the retail sale of the underlying software and shall be sourced in accordance with Section 310(A) of the SSUTA.

b. Where Section 310(A)(1) and (2) of the SSUTA do not apply, sourcing a retail sale of a renewal of a ~~software post-sale support agreement~~ computer software maintenance contract to an address where the purchaser received the underlying software will not constitute bad faith so long as the seller has not received information from the purchaser indicating a change in the location of the underlying software.