

A motion by Ohio to amend the SSUTA relating to associate and contingent membership:

Section 310.1: ELECTION FOR ORIGIN-BASED SOURCING

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

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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

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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. A An associate member 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 were not full member states on December 31, 2007, have been are found to be in substantial compliance with this section and each of the other provisions of the Agreement as required by section 805 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. An associate member state qualifying to become a full member state under this subsection is effective the first day of the calendar quarter after the Governing Board votes to find the requisite states' met the substantial compliance and threshold requirements of this section. The voting procedures in this subsection shall be the same as specified in section 804 of the Agreement. Any subsequent state seeking full member state status under this section shall use the same procedures.~~

~~3. E.~~ The provisions of this section shall be fully effective for all purposes on or after January 1, 2010.

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

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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.~~ If a contingent state's laws, regulations or other authorities change in any way to potentially impact the state meeting the qualifications to be a full member state on the date the state is scheduled to become a full member state, the executive committee of the Governing Board shall make the initial determination on whether such state still becomes a full member state or if the state, based on its changes, should become an associate member or an advisor state. The Governing Board shall subsequently vote on the executive committee's determination within sixty days of the executive committee's action. The Governing Board may change the state's membership status effective at the beginning of the next calendar quarter. The voting procedures in this subsection shall be the same as specified in section 804 of the Agreement.

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 section 310 or 310.1 of the Agreement and otherwise in substantial compliance with the terms requirements of the Agreement taken as a whole, but not necessarily each provision as required by Section 805,

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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.

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

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