

A motion by Kentucky and South Dakota to amend Section 502 of the Agreement to add definitions of “product categories” and “certify a product category”.

Section 502: STATE REVIEW AND APPROVAL OF CERTIFIED AUTOMATED SYSTEM SOFTWARE AND CERTAIN LIABILITY RELIEF

- 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 accurately reflects the taxability of the product categories included in the program. Upon approval by the state, the state shall certify to the governing board its acceptance of the determination of the taxability of the product categories included in the program.
- B. Each member state shall relieve CSPs and model 2 sellers from liability to the member state and local jurisdictions for not collecting sales or use taxes resulting from the CSP or model 2 seller relying on the certification provided by the member state.
- C. Each member state shall provide relief from liability to CSPs for not collecting sales and use taxes in the same manner as provided to sellers under the provisions of section 317.
- D. The governing board and the member states shall not be responsible for classification of an item or transaction within the 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 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.
- E. If a member state determines that an item or transaction is incorrectly classified as to its taxability, it shall notify the CSP or model 2 seller of the incorrect classification. The CSP or model 2 seller shall have ten (10) days to revise the classification after receipt of notice from the member state of the determination. Upon expiration of the ten (10) days, CSP or model 2 seller shall be liable for the failure to collect the correct amount of sales or use taxes due and owing to the member state.

F. For purposes of this section:

1. “Product Category” means:

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- (a) Terms specifically defined in Appendix C, Parts II and III of the Agreement (e.g., clothing, durable medical equipment, food, drugs, soft drinks, disaster preparedness supplies);
- (b) Subcategories of terms specifically defined in (a) that may be taxed differently than the product category as a whole. This may vary on a state-by-state basis (e.g., oxygen delivery equipment, kidney dialysis equipment, prewritten computer software delivered electronically, prepared food that requires additional cooking by the consumer);
- (c) Terms representing groups of like products that do not fall within (a) and (b) (e.g., other digital products, building materials, furniture, motor vehicles); and
- (d) Subcategories of (c) that are taxed differently than the product category as a whole. This may vary on a state-by-state basis (e.g., printed materials, newspapers, catalogs).

2. “Product category” does not include:

- (a) Any individual product(s) that properly falls within any product category in a state (e.g., shirts, reusable thermometers, ultrasound machine, bread, tables, chairs, automobile, motorcycle) unless the individual product is taxed differently than any other products within that product category; or
- (b) “Tangible personal property.”

3. “Certify a product category” means the state reviews the product category and determines that the taxability of a product properly included in that product category is consistent with their state’s laws. The state certifies the taxability is based only on (1) the product-based exemptions or impositions provided by state law ~~that are available in their state~~; (2) the specific description provided by the seller or certified service provider; and (3) ~~not requiring either~~ if the purchaser or seller ~~is not required~~ to produce documentation to claim the exemption.

See Compiler’s Notes for History.