

Report of the 2011 Streamlined Sales and Use Tax Agreement (SSUTA) amendments

This document contains the amendments and rules related thereto adopted by the Streamlined Sales Tax Governing Board during 2011. 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.”

Appendix C, LIBRARY OF DEFINITIONS

“**Sales price**” applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- A. The seller's cost of the property sold;
- B. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- D. Delivery charges;
- E. Installation charges; and
- F. Credit for any trade-in, as determined by state law.

Notwithstanding (B) above, a state may elect, by statute or administrative regulation, to exclude from sales price the following types of taxes, but only if that tax is separately stated on the invoice, bill of sale or similar document given to the purchaser:

1. Any or all state and local taxes on a retail sale that are imposed on the seller if the state statute authorizing or imposing the tax provides that the seller may, but is not required, to collect such tax from the consumer. If there is no state statute authorizing or imposing the local tax, the language in the local ordinance will determine if the local tax may, but is not required, to be collected from the consumer; and/or.
2. Tribal taxes on a retail sale that are imposed on the seller if the Tribal law authorizing or imposing the tax provides that the seller may, but is not required, to collect such tax from the consumer.

Such tax exclusion from sales price shall be listed on the state's taxability matrix. The exclusion of a specific tax from sales price may not be based on the type of consumer or product sold.

States may exclude from "sales price" the amounts received for charges included in paragraphs (C) through (F) above, if they are separately stated on the invoice, billing, or similar document given to the purchaser. States may exclude from (C) above, "telecommunications nonrecurring" charges if they are separately stated on the invoice, billing, or similar documents. A state doing so must define "telecommunications nonrecurring charges" as follows:

"Telecommunications nonrecurring charges" means an amount billed for the installation, connection, change or initiation of "telecommunications service" received by the customer.

"Sales price" shall not include:

A. Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

B. Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; and

C. Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.

"Sales price" shall include consideration received by the seller from third parties if:

A. The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

B. The seller has an obligation to pass the price reduction or discount through to the purchaser;

C. The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

D. One of the following criteria is met:

1. The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

2. The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a "preferred customer" card that is available to any patron does not constitute membership in such a group), or

3. The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

States may also exclude from “sales price” either employee discounts that are reimbursed by a third party on sales of motor vehicles, or manufacturer rebates on motor vehicles, or both.

RULES

Rule 311.4 – Receipt of Personal Care Services (New Rule)

A. 1. **Scope of rule.** This rule addresses receipt for sales of personal care services. In the context of this rule, “personal care services” refers to services that are performed on the physical human body.

2. **Personal care services covered by this rule.** This subsection provides a non-exclusive list of personal care services covered by this rule. The examples are not intended to describe any particular type of service activity as defined under state law. Personal care services include, but are not limited to:

- a. Beautician/barber services, such as hair, skin, and nail care services,
- b. Hair removal or replacement;
- c. Massage services;
- d. Tattoo and body piercing services;
- e. Healthcare services, such as
 - Physical, dental, or vision examinations
 - Surgery
 - Physical or occupational therapy
 - Speech pathology and audiology services
 - Hospice services
 - Taking of tissue/blood for testing purposes

3. **Services outside the scope of this rule.** Examples of services that are not addressed in this rule include:

- a. Medical services performed remotely
- b. Dating services
- c. Biopsy or other medical testing services on body tissue or fluids
- d. Preparing the dead for burial or interment
- e. Funeral services
- f. Dues and fees paid for a membership to a fitness club
- g. Instructions, lessons and physical fitness training
- h. Personal care services available at multiple locations pursuant to a single payment

B. 1. **Sourcing of personal care services.** Except as otherwise provided in the Streamlined Sales and Use Tax Agreement or the rules adopted by the Governing Board, a purchaser “receives” a personal care service within the meaning of section 311.B of the

Agreement at the location where the services are performed, which is the same location where the services are received by the purchaser (or the purchaser's donee). The services will be received by the purchaser (or the purchaser's donee) either at the seller's location, 310 (A)(1) or at the purchaser's (or the purchaser's donee) location, 310 (A)(2).

2. **Examples:** The following examples illustrate the location of "receipt" of personal care services.

a. **Sourcing to 310 (A)(1) – Seller's place of business.** Mark, a resident of State A, drops into a beautician's store location to have his hair cut and styled. The store location is in State B. The beautician is providing personal care services and the sale of these services must be sourced to the location where the services are received (place of first use). Mark makes first use of the services in State B where his hair is first cut and styled.

b. **Sourcing to 310 (A)(1) – Seller's place of business.** Janet has skin tissue samples removed at a medical clinic. The medical clinic is providing personal care services and the sale of these services must be sourced to the location of the medical clinic since this is where the services are received (place of first use). Any further testing of the skin samples is not personal care services and is not within the scope of this rule.

c. **Sourcing to 310 (A)(2) – Other place of receipt known to the seller.** Sarah, a resident of State A, contacts a massage therapist located in State B for a therapeutic massage. Sarah requests that the therapist perform the massage at her residence in State A. The therapist travels to Sarah's residence and performs the massage. The therapist is providing personal care services and the sale of these services must be sourced to the location where the services are received (place of first use). Sarah makes first use of the services in State A where the massage is performed.

Rule 327 Library of Definitions

Rule 327.2. Telecommunication Definitions.

[paragraphs (A) through (H) unchanged]

I. Construction of prepaid definitions. For purposes of the terms "prepaid calling service" and "prepaid wireless calling service," the term "predetermined unit" includes but is not limited to units measured by dollars, events, time, or combinations thereof.

Units of time include minutes, hours, days, weeks, or months. One or more units measured by time will be considered to decline with use in a known amount if such unit or units declines according to a predetermined basis. The predetermined basis may be a combination of different units measured by time.

Example 1: A vendor offers a wireless calling service that must be paid for in advance. For a purchase price of \$80, the purchaser can make and receive an unlimited number of voice calls during a one-month period. Under the terms of the service plan, the customer will not be entitled to use the service after the expiration of such one-month period unless the customer has paid in advance for additional service prior to the expiration of such period. This is the sale of a prepaid wireless calling service and illustrates the use of a single unit of time that is expressed in months.

Example 2: A vendor offers a wireless calling service that must be paid for in advance. For a purchase price of \$60, the purchaser can make or receive not more than 400 minutes of voice calls during a one-month period. Under the terms of the service plan, the customer will not be entitled to use the service after making or receiving 400 minutes of voice calls or the expiration of such one-month period, whichever occurs earlier, unless the customer has paid in advance for additional service prior to accumulating 400 minutes of voice usage or the expiration of such one-month period, whichever occurs earlier. This is the sale of a prepaid wireless calling service and illustrates the use of a combination of units of time, one expressed in minutes and one expressed in months.

Units may also be measured by events, such as sending or receiving a text message, and the terms of the prepaid service may include such event-based units in addition to units measured by time.

Example 1: A vendor offers a wireless calling service plan under which service must be paid for in advance. For a purchase price of \$100, the purchaser can, during a one-month period, (1) make and receive unlimited voice calls on nights and weekends, (2) make and receive not more than 500 minutes of other voice calls, and (3) send or receive not more than 250 text messages. Under the terms of the service plan, the customer (1) will not be entitled to use the voice service beyond the time limitation on voice calls, (2) will not be entitled to use the messaging service beyond the specified text message limitation, and (3) will not be able to use the service after the expiration of such one-month period, unless the customer, prior to the expiration of the earlier of such time periods or the occurrence of such event, has paid in advance for additional service. This example is the sale of a prepaid wireless calling service and illustrates the use a combination of (1) units of time that are expressed in a combination of measures, and (2) event-based units.

Rule 327.6 Food and Food Ingredients Definitions (New Rule)

“Food and food ingredients” is defined in Part II of the Library of Definitions, along with definitions of “candy,” “dietary supplements,” “soft drinks,” “bottled water,” and “prepared food,” which are categories of products that a member state may choose to exclude from the definition of “food and food ingredients.”

“Candy,” “dietary supplements,” “soft drinks,” and “bottled water” are intended to be mutually exclusive of each other.

Rule 327.6.1 Candy Definition

December 22, 2011

A. “Candy” is defined in Part II of the Library of Definitions to mean a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. “Candy” shall not include any preparation containing flour and shall require no refrigeration.

This definition is intended to be used when a person is trying to determine if a product that is commonly thought of as “candy” is in fact “candy.” For example, the definition would be applied in a situation where a person is trying to determine if a product is “candy” as opposed to a cookie. The definition is not intended to be applied to every type of food product sold. Many products, such as meat products, breakfast cereals, potato chips, and canned fruits and vegetables are not commonly thought of as “candy.” The candy definition is not applicable to products such as these since they are not commonly thought of as candy.

Each member state shall follow the classification of products as indicated in Appendix 1. If a specific product is not included in the list in Appendix 1, member states shall use the list as guidance in classifying products.

1) **Preparation.** Candy must be a “preparation” that contains certain ingredients, other than flour. A “preparation” is a product that is made by means of heating, coloring, molding, or otherwise processing any of the ingredients listed in the candy definition. For example, reducing maple syrup into pieces and adding coloring to make maple candy is a form of preparation.

2) **Bars, drops or pieces.** Candy must be sold in the form of bars, drops, or pieces.

a) A “bar” is a product that is sold in the form of a square, oblong, or similar form. Example – Company A sells one pound square blocks of chocolate. The blocks of chocolate are “bars.”

b) A “drop” is a product that is sold in a round, oval, pear-shaped, or similar form. Example – Company B sells chocolate chips in a bag. Each individual chocolate chip contains all of the ingredients indicated on the label. The chocolate chips are “drops.”

c) A “piece” is a portion that has the same make-up as the product as a whole. Individual ingredients and loose mixtures of items that make-up the product as a whole are not pieces. Exception: If a loose mixture of different items that make up the product as a whole are all individually considered candy and are sold as one product, that product is also candy.

Example 1 – Company C sells jellybeans in a bag. Each jellybean is made up of the ingredients indicated on the label. Each jellybean is a “piece” or “drop.”

Example 2 – Company D sells trail mix in a bag. The product being sold (e.g., trail mix), is made up of a mixture of carob chips, peanuts, raisins, and sunflower seeds. The individual items that make-up the trail mix are not “pieces,” but instead are the ingredients, which when combined, make up the trail mix. Therefore, the trail mix is not sold in the form of bars, drops, or pieces.

Example 3 – Company E sells a product called “candy lover’s mix.” “Candy lovers mix” is a product that is made up of a loose mixture of jellybeans, toffee, and caramels. Individually, the jellybeans, toffee, and caramels are all candy. The sale of the mixture is the sale of candy since all of the individual items that make up the product are individually considered to be candy.

3) **Flour.** In order for a product to be treated as containing “flour,” the product label must specifically list the word “flour” as one of the ingredients. There is no requirement that the “flour” be grain-based and it does not matter what the flour is made from.

Many products that are commonly thought of as “candy” contain flour, as indicated on the ingredient label and therefore are specifically excluded from the definition of “candy.” Ingredient labels must be examined to determine which products contain flour and which products do not contain flour. For example, a Twix® bar that contains flour is excluded from the definition of “candy.” See Appendix 1 for a list of other products and whether or not they meet the definition of “candy.”

Example 1 – The ingredient list for a breakfast bar lists “flour” as one of the ingredients. This breakfast bar is not “candy” since it contains flour.

Example 2 – The ingredient list for a breakfast bar lists “peanut flour” as one of the ingredients. This breakfast bar is not candy because it contains flour.

Example 3 - The ingredient list for a breakfast bar that otherwise meets the definition of “candy” lists “whole grain” as one of the ingredients, but does not specifically list “flour” as one of the ingredients. This breakfast bar is candy because the word “flour” is not included in the ingredient list.

Example 4 – Company E sells a box of chocolates that are not individually wrapped. The ingredient list on the label for the box of chocolates identifies flour as one of the ingredients. The box of chocolates is not candy since flour is identified as one of the ingredients on the label.

Example 5 – Company F sells a box of chocolates that are not individually wrapped. The ingredient list on the label for the box of chocolates, which otherwise meets the definition of “candy,” does not identify flour as one of the ingredients. The box of chocolates is candy.

4) **Other ingredients or flavorings.** “Other ingredients or flavorings” as used in this definition means other ingredients or flavorings that are similar to chocolate, fruits or nuts. This phrase includes candy coatings such as carob, vanilla and yogurt, flavorings or

extracts such as vanilla, maple, mint, and almond, and seeds and other items similar to the classes of ingredients or flavorings. This phrase does not include meats, spices, seasonings such as barbeque or cheddar flavor, or herbs which are not similar to the classes of ingredients or flavorings associated with chocolate, fruits, or nuts, unless the product otherwise meets the definition of “candy.”

Example 1 – Retailer A sells barbeque flavored peanuts. The ingredient label for the barbeque flavored peanuts indicates that the product contains peanuts, sugar and various other ingredients, including barbeque flavoring. Since the barbeque flavored peanuts contain a combination of sweeteners and nuts, and flour is not listed on the label and the nuts do not require refrigeration, they are candy.

Example 2 – Retailer B sells barbeque potato chips. Potato chips are potatoes, a vegetable, and are not commonly thought of as candy. The barbeque potato chips are food and food ingredients and not candy. The fact that the ingredient label for the barbeque potato chips indicates that the product contains barbeque seasoning which contains a sweetener does not change the fact that the barbeque potato chips are not commonly thought of as candy.

5) **Sweeteners.** The term “natural or artificial sweeteners” means an ingredient of a food product that adds a sugary sweetness to the taste of the food product and includes, but is not limited to, corn syrup, dextrose, invert sugar, sucrose, fructose, sucralose, saccharin, aspartame, stevia, fruit juice concentrates, molasses, evaporated cane juice, rice syrup, barley malt, honey, maltitol, agave, and artificial sweeteners.

6) **Refrigeration.** A product that otherwise meets the definition of “candy” is not “candy” if it requires refrigeration. A product “requires refrigeration” if it must be refrigerated at the time of sale or after being opened. In order for a product to be treated as requiring refrigeration, the product label must indicate that refrigeration is required. If the label on a product that contains multiple servings indicates that it “requires refrigeration,” smaller size packages of the same product are also considered to “require refrigeration.” A product that otherwise meets the definition of “candy” is “candy” if the product is not required to be refrigerated, but is sold refrigerated for the convenience or preference of the customer, retailer, or manufacturer.

Example 1 – Company A sells sweetened fruit snacks in a bag that contain multiple servings. The label on the bag indicates that after opening, the sweetened fruit snacks must be refrigerated. The sweetened fruit snacks “require refrigeration.”

Example 2 – Company A sells sweetened fruit snacks in single serving containers. Other than for packaging, the sweetened fruit snacks are identical to the sweetened fruit snacks in Example 1 above. However, since this container of sweetened fruit snacks only contains one serving, it is presumed that it will be used immediately, and the label does not indicate that after opening, the product must be refrigerated. Even though the label does not contain the statement that after opening the sweetened fruit snacks must be refrigerated, these sweetened fruit snacks are considered to “require refrigeration.”

Example 3 – Company A sells chocolate truffles. The label on the truffles indicates to keep the product cool and dry, but does not indicate that the product must be refrigerated. Since the chocolate truffles are not required to be refrigerated, even though the label indicates to keep them cool, the chocolate truffles do not “require refrigeration.”

B. Bundled transactions. “Bundled transaction” is defined in Part I of the Library of Definitions as the retail sale of two or more products, except real property and services to real property, where (1) the products are otherwise distinct and identifiable and (2) the products are sold for one non-itemized price.

1) Products that are a combination of items that are defined as “candy” and items that are defined as “food and food ingredients” are “bundled transactions” when the items are distinct and identifiable and are sold for one non-itemized price. For example, a bag of multiple types of individually wrapped bars that is sold for one price is two or more distinct and identifiable products sold for one nonitemized price. For purposes of determining whether such a bag of individually wrapped bars is a “bundled transaction” the following rules apply:

- a) 1. If a package contains individually wrapped bars, drops, or pieces and the product label on the package separately lists the ingredients for each type of bar, drop, or piece included in the package, those bars, drops, or pieces that have “flour” listed as an ingredient are “food and food ingredients” and those bars, drops, or pieces which do not have “flour” listed as an ingredient are “candy.” The determination of whether the package as a whole meets the definition of a bundled transaction is based on the percentage of bars, drops, or pieces that meet the definition of “food and food ingredient” as compared to the percentage of bars, drops, or pieces that meet the definition of “candy.”
2. For purposes of determining the percentage of the sales price or purchase price of the bars, drops, or pieces that meet the definition of “candy” as compared to all of the bars, drops, or pieces contained in the package, the retailer may presume that each bar, drop, or piece contained in the package has the same value.
3. A retailer may presume that there is an equal number of each type of product contained in the package, unless the package clearly indicates otherwise.

Example 1: Retailer A sells a package that contains 100 total pieces of food and food ingredients. There are 10 different types of foods and food ingredients in the package. Eight of the types of food and food ingredients included in the package meet the definition of “candy,” while two of the types included do not meet the definition of “candy.” It is a reasonable presumption that 20 (2/10 times 100) of the pieces are not “candy” and 80 (8/10 times 100) of the pieces are “candy.” Therefore, since 80 percent of the product is “candy,” the retailer shall treat the entire package as a bundled transaction containing primarily “candy.”

Example 2: Retailer B sells bulk food and food ingredients by the pound. Each food and food ingredient is in a separate bin or container. Some of the food and food ingredients

are “candy” and some of them are not because they contain flour. However, regardless of the items chosen, the retailer charges the customer \$3.49/lb. Customer C selects some items that are candy and some that are not and puts them in a bag. Since some of the items in the bag are “candy,” the retailer shall treat the entire package as a bundled transaction containing primarily “candy,” unless the retailer ascertains that 50 percent or less of the items in the bag are “candy.”

b) If a package contains individually wrapped bars, drops, or pieces and all of the ingredients for each of the products included in the packages are listed together, as opposed to being listed separately by each product included as explained in a., above, and even if the ingredient lists “flour” as an ingredient, the product will be treated as “candy,” unless the retailer is able to ascertain that 50 percent or less of the products are “candy.”

1. The retailer may presume that each bar, drop, or piece contained in the package has the same value.

2. The retailer may presume that there is an equal number of each type of product contained in the package, unless the package clearly indicates otherwise.

2) Products whose ingredients are a combination of various unwrapped food ingredients that alone are not candy, along with unwrapped food ingredients that alone are “candy,” such as breakfast cereal and trail mix with candy pieces, are considered “food and food ingredients,” but not “candy.” Sales of these products are not “bundled transactions” as that term is defined in Part I of the Library of Definitions, because there are not two or more distinct and identifiable products being sold. The combination of the ingredients results in a single product. Examples of combination products are included in the list in Appendix 1.

Rule 327.7 Sales Price – Employee Incentive Programs (New Rule)

A. The purpose of this section of the sales price definition rule is to clarify the treatment of employee incentive program points in accordance with sales price as defined in Appendix C, Library of Definitions. Employee incentive program credit, whether measured in a dollar or point value that is allowed by the seller to its employees on a sale, is included in the total consideration for which personal property or services are sold, leased, or rented. Employee incentive program credit is not an employee discount.

Example 1: A retailer offers an employee points program that serves as an incentive for employees to reach specific sales goals established by management. Employees receive bonus points for every dollar of sales that the employees make in a given month that exceed the predetermined quota. The points accumulated by the employees can be redeemed on purchases of tangible personal property sold through the retailer’s catalog or website. The allowance for the earned points on the sale to the employee is included in the consideration received by the retailer on the sale. An employee redeeming \$50 in points towards the purchase of a \$200 item must pay tax on the full selling price of \$200.

B. The purpose of this section of the sales price definition rule is to clarify the treatment of employee discounts in accordance with sales price as defined in Appendix C, Library

of Definitions. Employee discounts that are not reimbursed by third parties that are allowed by the seller and taken by the employees on a sale are discounts that are not included in sales price.

Example 1: A retailer offers all its employees a 20% discount on regularly priced merchandise it sells and a 10% discount on sale merchandise. Due to the fact the employee discounts are available to all employees by virtue of their employment with the retailer, the value of the discounts allowed on sales to the employees is excludable from the sales price.

Rule 327.7 Sales Price –Taxes Imposed on the Seller (New Rule)

A. The purpose of this section of the sales price definition rule is to clarify which taxes are included in or excluded from the sales price as defined in Appendix C, Part I, Library of Definitions.

1. Sales price is the measure that is subject to sales tax. Because purchase price, the measure that is subject to use tax, has the same meaning as sales price, this rule applies to use tax as well as to sales tax. The sales and use taxes covered by the Agreement that are applied to the sales price of the retail sale of a product are not included in the sales price of that product, regardless of who bears the legal incidence of tax.

2. A tax imposed on a product prior to the retail sale of that product is an element of the cost to the seller of the product and shall be included in the sales price (measure) for purposes of calculating the sales tax by member states.

Example 1: Federal excise tax imposed on the sale by a manufacturer, producer or importer of tires to resellers. 26 U.S.C. § 4071. The federal excise tax is imposed on the manufacturer, producer or importer and constitutes an element of cost of its tires that is passed down to the retailer and ultimately to the consumer in the selling price. This tax is included in the sales price of the tires.

3. The sales price definition states there is no deduction from the sales price for “The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller.” While provisions in the definition identifying the amounts that may not be deducted from the sales price are very broad, the exclusions from sales price are narrow and specific.

A state may elect to exclude from sales price the following types of taxes, but only if that tax is separately stated on the invoice, bill of sale or similar document given to the purchaser:

A. Any or all state and local taxes on a retail sale that are imposed on the seller if the state statute authorizing or imposing the tax provides that the seller may, but is not required, to collect such tax from the consumer. If there is no state statute authorizing or

imposing the local tax, the language in the local ordinance will determine if the local tax may, but is not required, to be collected from the consumer.

B. Tribal taxes on a retail sale that are imposed on the seller if the Tribal statute authorizing or imposing the tax provides that the seller may, but is not required, to collect such tax from the consumer.

A state making either exclusion must apply the exclusion to each tax by state statute or state administrative regulation. The exclusion of a specific tax from sales price may not be based on the type of consumer (such as a “residential” consumer) or product sold.

A state must list such tax exclusion from sales price on the state’s taxability matrix.

4. The sales price definition also states that the sales price shall not include “Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.” A tax imposed directly on the consumer that is not separately stated on the invoice, bill of sale or similar document given to the consumer is a cost or expense of the seller and is included in the sales price.

A tax is legally imposed directly on the consumer if the imposition statute specifies the tax is:

- a. imposed on the consumer;
- b. the seller is required to collect from or bill the consumer for the tax; or
- c. the tax is to be paid by or is due by the consumer.

Such tax shall be considered a tax imposed directly on the consumer regardless of whether the statute provides that the seller is liable for the tax if the consumer does not pay the tax to the seller.

A tax that does not meet the criteria as a tax imposed directly on the consumer as explained in this rule is a tax imposed on the seller or an expense of the seller.

Example 1: Federal Excise Tax on indoor tanning services. Chapter 49, Section 5000B, states the tax “imposed by this section shall be paid by the individual on whom the service is performed”. This tax is imposed directly on the consumer and when itemized on the invoice the tax is not included in the sales price.

Example 2: A municipality in State A imposes a 3% tax based on the retail sale of lodging services. The statutes in State A provide that the seller may collect this tax from the consumer and if the seller collects this tax from the consumer, it must be separately stated on the invoice the seller provides to the consumer. This tax is imposed on the seller and is included in the sales price. Such tax is excluded from sales price only in states electing the option available under the sales price definition and subsection A.3. of this rule.

5. State law that allows the local jurisdictions to impose a tax will be used to determine if the tax is imposed directly on the consumer or imposed on the seller. The state law controls whether those taxes are included or excluded from the sales price, regardless of whether the local jurisdiction's law or ordinance adopted provides that:

- a. The tax is imposed on the consumer;
- b. The tax must be collected from or billed to the consumer; or
- c. The tax may be collected from the consumer.

If the state law is silent as to the collection or imposition of tax, the tax is considered imposed on the seller and is included in the sales price.

If there is no state statute authorizing or imposing the tax, the language in the local ordinance will determine if the tax may, but is not required, to be collected from the consumer.

Example 1: State Law 1. Additional municipal non-ad valorem tax authorized--Rate. Any municipality may impose an additional municipal non-ad valorem tax at the rate of one percent upon the gross receipts of all leases or rentals of hotel, motel, campsites, or other lodging accommodations within the municipality for periods of less than twenty-eight consecutive days. Any person or retailer subject to taxation under this chapter may add the tax under this chapter, or the average equivalent thereof, to the price or charge.

Based on State Law 1, this tax is imposed on the seller and is included in the sales price. However, it is excluded from the sales price only in states electing the option available under the sales price definition and subsection A.3. of this rule, if the tax is separately stated on the invoice, bill of sale, or similar document given by the seller to the consumer, regardless of what the municipal ordinance says.

Example 2: State Law 2. The council shall have power to tax for revenue, license, and regulate pawnbrokers, peddlers, auctioneers, brokers, hawkers, commission merchants, showmen, jugglers, innkeepers, liquor dealers, toll bridges, ferries, insurance, telegraph and express companies and vendors of patents. Such tax may include both a tax for revenue and license. The city council shall have power to raise revenue by levying and collecting a tax on any occupation or business within the limits of the city and regulate the same by ordinance. All such taxes shall be uniform in respect to the class upon which they are imposed. It shall be the duty of the city clerk to deliver to the city treasurer the certified copy of the ordinance levying such tax, and the city clerk shall append thereto a warrant requiring the city treasurer to collect such tax.

Based on State Law 2, this tax is imposed on the seller and is included in the sales price since the state law is silent as to the collection or imposition of the tax.

Example 3: State Law 3 provides that municipalities may impose a local room tax. The state law indicates that these taxes may be passed on to or collected from the consumer, based on the ordinance passed by each municipality. Municipality A passes an ordinance

to impose the local room tax and that the tax may be passed on to or collected from the consumer. Municipality B passes an ordinance to impose the local room tax and that the tax may not be passed on to the consumer.

Based on State Law 3, these taxes are imposed on the seller and included in the sales price in both Municipality A and Municipality B. However, these taxes will be excluded from the sales price in those states electing the option available under the sales price definition and subsection A.3. of this rule, if the taxes are separately stated on the invoice, bill of sale, or similar document given by the seller to the consumer, regardless of what the municipal ordinance says.

6. Contracts between a seller and consumer will not alter upon whom the legal incidence of the tax is statutorily imposed.

7. As of January 1, 2011, Federal taxes that are legally imposed directly on the consumer based on the above rules are excluded from the “sales price” when separately stated on the invoice, bill of sale, or other similar document given by the seller to the consumer.

- A. Telecommunications Excise Tax. 26 U.S.C. § 4251.
- B. Transportation of Persons by Air. 26 U.S.C. § 4261.
- C. Transportation of Property by Air. 26 U.S.C. § 4271.
- D. Tanning Service. H.R. 3590, § 10907 Chapter 49, § 5000B.

8. As of January 1, 2011, the following are examples of Federal taxes and fees that are included in the sales price, regardless of whether they are separately stated on the invoice, bill of sale, or other similar document given by the seller to the consumer. These are imposed on the seller or are a cost of expense of the seller.

- A. Federal Universal Service Fund Fee
- B. Federal Subscriber Line Charge
- C. Federal Retail Tax on Heavy Trucks
- D. Federal Alcohol Tax
- E. Federal Tobacco Tax
- F. Federal Firearms and Ammunition Excise Tax
- G. Federal Gas Guzzler Tax
- H. Federal Motor Fuel Tax

B. The purpose of this section is to explain that a partial exclusion of a definition is prohibited.

1. A member state that has adopted the Sales Price definition shall use the definition contained in the Agreement and shall not exclude from the sales price any amount or measure that is included in the sales price definition unless the Agreement specifically permits such a variation.

Example 1: A state imposes an excise tax on the receipts from wireless telecommunication services. The law does not state the consumer is to pay the tax or that the seller is required to collect the tax from the consumer. The law is silent concerning an authorization to pass the tax on to or collect the tax from the consumer. A state passing a sales tax statute to exclude the excise tax on wireless telecommunication services from the sales price is not in compliance with the Agreement.

Example 2: A state law allows municipalities to enact an ordinance or resolution imposing a tax on the privilege of furnishing, at retail, rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations that are available to the public. The state law provides the tax imposed under this law is not subject to the sales tax imposed by their state sales tax statutes. There is no language stating the tax must be collected from or paid by the consumer and no language stating the seller may pass the tax on or collect the tax from the consumer. Instead, each municipality's ordinance or resolution indicates whether the tax may or may not be collected from the consumer.

Because the law is silent concerning an authorization to pass the tax on to or collect the tax from the consumer, this tax is imposed on the seller. The state excluding this tax from the sales price is not in compliance with the Agreement.

Rule 806.2. Notice Requirements

A. Forms of Notice

1. Written Notice. All notices required or provided for in the Agreement shall be in writing. The writing may be incorporated in a paper document or it may be in electronic form posted on the Website or contained in electronic mail. Telephonic voice communications do not constitute written notice.

2. Paper Form. Written notice may be sent in paper form through first-class mail or any private mail delivery service accredited by the Internal Revenue Service for tax return filing purposes. Notices to the Governing Board are properly addressed to the Executive Director at the address indicated on the Website and as set forth below.

*Scott Peterson
Executive Director
Streamlined Sales Tax Governing Board, Inc.
4205 4219 Hillsboro Pike, Suite 305-234
Nashville, TN 37215*

This name and address may be changed from time-to-time without amending these Rules of Procedure.]

3. Electronic Form. Written notice may be sent in electronic form to parties who have supplied an e-mail address, or by sending an e-mail to the Executive Director at the e-mail address indicated on the Website.

4. Facsimile transmission. Written notice may be sent by facsimile transmission. The Governing Board may be contacted by sending a fax to the Executive Director at the fax number indicated on the Website.

B. Notice to the Public

1. Publication. Notice to the public may be accomplished by publishing the notice on the Governing Board website (the “Website”) at [URL], under the section identified for public notice. Until the Website is established, public notice may be accomplished by publishing the notice on the Streamlined Sales Tax website at www.streamlinedsalestax.org. Public notices shall also be sent to registrants on the electronic mailing list.

2. Electronic mailing list. Interested parties may register with the Governing Board to be placed on an electronic mailing list, by sending a written request. The registration will be effective as soon as practicable, but in no event later than thirty days after the request is received. Any such registration will automatically terminate on December 31 of the first full calendar year following the request for registration and at the end of each year thereafter if the party fails to respond to a request for renewal of the registration in writing.

C. Notice to a Member State and to Advisory Councils

1. Authorized Representative. Each Member State shall designate the name, mailing address and electronic mail address of the person(s) authorized to receive written notice for that State on matters governed by the Agreement, referred to herein as the “authorized representative.” That name and address shall be published on the Governing Board Website.

2. Governing Board Members. Each Member State shall designate the name, mailing address and electronic mail address of the people (maximum of four) authorized to represent the Member State on the Governing Board. The name and address of such representatives shall be published on the Governing Board Website. Member States are responsible for updating their membership designations.

3. Advisory Councils. Each Member State shall designate the name, mailing address and electronic mail address of the person authorized to represent the Member State on the State and Local Advisory Council. That name and address shall be published on the Governing Board Website. Member States are responsible for updating their membership designations. Notice to the business advisory council shall be accomplished by providing same to the Chair and Vice Chair of the eCouncil. The name and address of the Chair and Vice Chair of the ~~b~~Business ~~a~~Advisory eCouncil shall be published on the Governing Board Website. The Chair and Vice Chair of the ~~b~~Business ~~a~~Advisory eCouncil are responsible for updating their names and addresses.

D. Written notice to a taxpayer, representative, or other non-governmental entity

1. Designation of address. A taxpayer, representative, or other nongovernmental party who initiates a proceeding before the Governing Board (collectively referred to as an “interested party”) may designate in the document initiating the proceedings or communication whether it wishes to receive notices or other communications via regular mail, electronic mail, or facsimile transmission.

2. Default rule. If the interested party does not designate the manner of notice or a designated address, the Governing Board shall use the same form of written notice used by the party in initiating the proceeding and shall use the address or fax number used by the party in initiating its notice. If no address or fax number is included or can be determined from the party's initial communication, the Governing Board shall have no obligation to provide a written response.

Rule 810.2. SLAC Membership, Officers and Steering Committee Membership.

A. State Membership:

1. Each state that is a participating member of the Streamlined Sales Tax Project (SSTP) will be a member of the Council. Each ~~member~~ participating state shall designate one representative who is a state employee to represent that state in decisions and votes. States may have more than one state employee attend and participate in the Council meetings and committees but will only have one vote as explained in Rule 810.3.A.2.

2. "Participating States" are those States that support the mission of the project and for which an elected official or body of elected officials has committed the State to participate in the Streamlined Sales Tax Project. A State may become a Participating State at any time. A commitment by a State to participate is evidenced by one or more of the following actions:

a. Enactment of legislation authorizing the State's participation in interstate discussions to develop a simplified sales and use tax system;

b. Passage of a legislative resolution expressing the intent of the State to participate in interstate discussions to develop a simplified sales and use tax system;

c. Issuance of an executive order, letter of intent or similar written document by a governor expressing the intent of the State to participate in interstate discussions to develop a simplified sales and use tax system;

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

e. Issuance of a resolution, executive order, letter of intent or similar written document by an elected official or body of elected officials charged under a State Constitution with the administration of the tax laws expressing the intent of the State to participate in interstate discussions to develop a simplified sales and use tax system;

f. Action by the Mayor or City Council of the District of Columbia comparable to any of the above actions.

3. Any question over whether or not a State qualifies as a Participating State shall be resolved by a majority vote of the Governing Board.

B. Local Government Membership:

December 22, 2011

1. The Governing Board shall appoint ~~three representatives~~ one representative from each of the following organizations to represent local government on the Council: U.S Conference of Mayors, National League of Cities, National Association of Counties, and the Government Finance Officers Association.

2. The representatives of these local government organizations will be local government employees, employees of the organizations, or employees of their state counterpart organizations.

3. Local governments or the local government organizations identified in this subsection may have additional employees attend and participate in the Council meetings and committees but will only have votes as identified in Rule 810.3.A.2.

C. Other Membership. The Governing Board may appoint other state and local officials to serve on the Council as the Governing Board deems appropriate or necessary.

D. Officers. The President of the Governing Board, with the consent of the Executive Committee of the Governing Board, shall appoint from among the membership described above a Chair and Vice Chair of the Council (the "Officers") to serve a one-year term. An individual may serve no more than two consecutive terms as Chair or Vice-Chair, except to fill an unexpired term. The Chair and Vice-Chair will serve as *ex officio* members of the Governing Board, without a vote. The Officers shall preside over all Steering Committee and Council meetings, shall ensure that public notice of meetings is provided in accordance with these rules, and shall fulfill such other responsibilities as delegated to them by the Governing Board.

E. Steering Committee.

1. The Council shall have a Steering Committee comprised of no more than nine (9) members. The Officers shall be members of and shall preside over the Steering Committee meetings. The Council shall annually elect from among the representatives of the membership the remaining members of the Steering Committee. At least two (2) and no more than three (3) of the nine Council Steering Committee members will be local government representatives.

2. Duties of Committee

- a. Planning agendas for meetings,
- b. Recommending to the Council the organization of work groups or project committees,
- c. Recommending to the Council such actions and procedures as are necessary for the Council to fulfill its mission, and
- d. Assisting and advising the Officers in fulfilling their responsibilities.

Rule 810.3. SLAC Meetings

A. Composition; Quorum; Authority and Voting Procedures

1. Quorum. A majority of the voting membership constitutes a quorum for a meeting of the Council. Any recommendations of Council work groups or committees are advisory

to the Council and are not binding on the Council except as may be specifically delegated or approved by a vote of the Council.

2. Voting. All matters shall be decided by a majority vote of the members with representatives present and voting at a Council meeting. In voting, each ~~member~~ participating state shall have one (1) vote and each representative of the local government organizations identified in Rule 810.2.B.1 shall have one (1) vote. In reporting votes to the Governing Board, the Council shall report votes by each ~~member~~ participating state and by each local government organization member.

B. Meetings

1. Open Meetings: Rule 807.1 shall govern meetings of the Council. Meetings of a work group, committee, or the Steering Committee are not required to be open to the public unless a quorum of the Council is present at the meeting.

2. Regular Meetings: The Council shall meet as often as is necessary to fulfill its mission. The Officers shall determine the time and place for regular meetings. The Steering Committee shall prepare an agenda for distribution to the Council Members. Written notice of the meeting must be given at least 30 days in advance of the meeting and must include the agenda, purpose of the meeting and all pertinent materials for discussion. Council Members wishing to add action or discussion items to the agenda may do so if submitted 10 days in advance of the meeting to the Officers. Those additional action or discussion items shall be considered by the Council and with the approval of a majority of those present and voting at the meeting.

3. Emergency Meetings: Emergency meetings of the Council may be called by the Officers, the Steering Committee, or by petition of forty percent of Council Members at a time and place determined by those who called the meeting. The purpose of the meeting and the agenda must be contained in the written notice and no other business may be transacted. The 30 day notice may be waived, but in no case shall less than 10 days' notice be given. Electronic participation will be allowed.

4. Rules of the Governing Board concerning Notice and Public Comment periods apply to the Council.

5. The Council may meet electronically.

Rule 806.3 – Administration of the Compliance Audit Process

Rule 806.3.1 – Authority

A. The Streamlined Sales Tax Governing Board has the authority to execute any policies it deems to be in the best interest of the organization within the parameters of the Streamlined Sales and Use Tax Agreement, bylaws, and federal, state and local law.

B. The Streamlined Sales Tax Governing Board or its designee has the authority to perform CSP contract compliance audits, CAS Provider contract compliance audits, and coordinate tax compliance audits for member states as authorized by the Governing

Board; and to develop and use standardized operating audit procedures and policies for performing both contract compliance and tax compliance audits.

C. The Streamlined Sales Tax Governing Board designates the Audit Core Team to perform contract compliance audits for member states and to coordinate the tax compliance audits of Model 1 sellers transactions processed by the CSP as authorized by the Governing Board.

Rule 806.3.2 – Definitions

A. Certified Service Provider (CSP)

As defined in the Agreement, Section 203, and any subsequent amendments, an agent certified under the Agreement to perform all the seller’s sales and use tax functions other than the seller’s obligation to remit tax on its own purchases.

B. Certified Automated System (CAS)

~~Software certified under the Agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.~~ As defined in the Agreement, Section 202, and any subsequent amendments, software certified under the Agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

C. CAS Provider

The vendor of CAS software

~~D.~~ Audit Committee

The Audit Committee was created by the Governing Board to advise the Governing Board pertaining to procedures on the audit of CSPs, CAS Providers systems, and Model 1, 2 and 3 sellers. The Audit Committee will develop procedures to be used in performing contract compliance audits for member states. The Audit Committee will also recommend audit procedures to be used by member states in performing tax compliance audits of CSPs and Model 1, 2 and 3 sellers.

~~E.~~ Audit Core Team

The Audit Core Team is a group of designated representatives from full member states who are responsible for coordinating compliance audits, performing contract compliance audits and compiling feedback reports for the Governing Board.

~~F.~~ Compliance Audit Process

The Compliance Audit ~~Process~~ includes the contract compliance audit ~~process~~ and the tax compliance audit ~~process~~.

~~G.~~ Contract Compliance Audit Process

The Contract Compliance Audit ~~Process~~ determines if the CSP performed according to the provisions of the contract with the member states.

~~H.~~ Tax Compliance Audit Process

The Tax Compliance Audit ~~Process~~ determines if transactions processed by the CSP were properly taxed, and that tax was reported and remitted to the correct jurisdiction when due.

~~I.~~ Member States

As defined in the Agreement, Section 801, and any subsequent amendments, Member states are states that are full, contingent or associate member states of the Streamlined Sales Tax Governing Board.

J. Simplified Electronic Return (SER), per Section 318(c)(1) of the Agreement

K. Audit Site Work File, per Appendix F

L. Testing Central

As defined in Article V, Rule 501.1(E).

Rule 806.3.3 – Audit Committee

A. Membership

Members of the Audit Committee are representatives of participating states and local government.

B. Committee Meetings – (open & closed meetings)

Rule 806.3.4 – Audit Core Team

A. Membership

The Audit Core Team is made up of representatives from full member states.

B. Reporting relationship

The Audit Core Team will report to the Streamlined Sales Tax Governing Board Executive Director or its designee for audit assignments, guidance and support.

C. Team Meetings – (closed meetings)

D. Responsibilities:

I. CSP Audits

1. The Audit Core Team is responsible for performing contract compliance audits and coordinating tax compliance audits with member states.

2. The Audit Core Team will:

a) Determine the CSP's level of compliance with the terms of the CSP contract.

(Questionnaires and specific tests will be used to assess the CSP's contract compliance.)

b) Evaluate the CSP's system and processes to verify compensation is calculated in accordance with the contract ~~Verify that compensation was calculated properly for all volunteer sellers.~~

c) Verify ~~that~~ appropriate procedures for mapping exist, are in conformance with the mapping requirements, and are followed in the initial mapping setup, as well as during updates and corrections to mapping.

d) Verify ~~that the~~ appropriate entity use exemption data elements are captured by the CSP system.

e) Verify ~~that~~ all tax collected was remitted ~~timely~~ to the appropriate tax authority.

f) Verify that sales were accurately reported by the CSP/Seller on simplified electronic returns (SERs).

g) Obtain a response from the member states of their intentions to participate in the current audit cycle for each CSP.

hg) Acquire a list of sellers represented by each CSP and provide this information to the Streamlined Sales Tax Governing Board member states.;

ih) Coordinate with state auditors ~~to ensure they have received~~ a download of the audit work files all sales processed by from the CSP for each seller, which will be available through access to a FTP site maintained by the SSTGB, Inc. to receive electronic records.

ji) Create a uniform audit plan with a timeline to establish the projected dates that various audit steps ~~should~~ are to be completed by the state audit representatives and the Audit Core Team.

kj) Compile the feedback reports from the member states, summarize the findings and report to the Executive Director of the Streamlined Sales Tax Governing Board. The summaries must comply with confidentiality restrictions that apply to the SST Governing Board regarding disclosure.

II. CAS Provider Contract Compliance Audits

1. The Audit Core Team is responsible for performing contract compliance audits.

2. The Audit Core Team will:

a) Determine the CAS provider's level of compliance with the terms of the CAS contract. (Questionnaires and specific tests will be used to assess the CAS Provider's contract compliance.)

b) Verify that the CAS is capable of capturing the appropriate entity use exemption data elements.

c) Acquire a list of known Model 2 Sellers represented by each CAS Provider and supply this information to the Streamlined Sales Tax Governing Board member states.

d) Compile the findings of the contract compliance audit of the CAS Provider and submit them to the Executive Director of the Streamlined Sales Tax Governing Board. The summaries must comply with confidentiality restrictions that apply to the SST Governing Board regarding disclosure.

Rule 806.3.5 – Compliance Audit of a CSP

A. The Compliance Audit of a CSP and its Model 1 sellers will include a contract compliance audit of the CSP and tax compliance audits of Model 1 sellers' transactions processed through the CSP's system.

B. The contract compliance audit of the CSP will be performed by the Audit Core Team. The tax compliance audits of the Model 1 sellers transactions will be performed by the member states under the coordination of the Audit Core Team.

Rule 806.3.5.1 – Communication with Model 1 sSellers dDuring the Tax Compliance Audit

A. There should be no direct communication with Model 1 sellers by member states concerning transactions processed by the CSP, except in response to questions from Model 1 sellers, in case of suspected fraud or to obtain information that the CSP cannot provide.

Rule 806.3.5.2 – Timeline for the Compliance Audit Process

The timeline for conducting the compliance audit may will vary for each audit cycle from year to year. The Audit Core Team will establish a timeline for each audit.

The Audit Core Team will have 30 days after receiving each member state's preliminary feedback audit report to compile a report on the findings of the contract compliance audit and the member states' tax compliance audits and submit the report to the CSP.

The CSP will have 30 days to review and comment on the preliminary findings of the compliance audit. Comments will be sent to the Audit Core Team and member states. The Audit Core Team and member states will have 10 business days to amend their findings, if necessary, before the final report is sent to the Executive Director of the Streamlined Sales Tax Governing Board.

The Audit Core Team may grant extensions as deemed appropriate to the above timelines.

Rule 806.3.5.3 – Report on Audit Findings

A. The Audit Core Team through the Executive Director will provide each member state with its findings of the contract compliance audit.

B. Member states ~~may~~will incorporate the findings of the contract compliance audit into their state's audit report for the tax compliance audit so the CSP receives only one audit report per state. (For example, if the Audit Core Team finds that a CSP has withheld more compensation than they should, the assessment for that additional tax ~~may~~ will be combined with the assessments, if any, for underreporting by the CSP's Model 1 sellers.)

C. The report on the audit findings ~~that goes~~ to the Executive Director will contain general information on the errors found and will not contain specific taxpayer information to ensure the confidentiality of taxpayer information.

Rule 806.3.5.4 – Contract Compliance Audit of CSP

Rule 806.3.5.4.1 – Transaction Documentation

The following documentation and records are required to be provided via an electronic download through an FTP site by Certified Service Providers to the Audit Core Team and SST member and associate member states. (~~This is required by Article V – Appendix F after 7/1/2008~~)

A. The CSP's response to the Audit Core Team Questionnaire and a listing of each member state's Model 1 sellers and the date each seller began processing transactions through the CSP's system will be provided by electronic means to the Audit Core Team.

B. Sales Transaction Information

1. Electronic ~~downloads~~ of sales data may be provided at either the invoice level or the line item level of an invoice.

2. For invoices that include taxable and exempt components, each item or bundled transaction must be clearly identified so tax calculation can be verified.

3. Sales transaction data ~~as required by Appendix F~~ must include

~~a. Order and billing dates for each seller's customer.~~

~~b. Sales records with a unique transaction number assigned to each sale.~~

~~c. Billing address and shipping location for each transaction for each seller's customer according to the appropriate sourcing rules.~~

~~d. Sales price, taxable amount and tax by jurisdiction for each transaction.~~

~~4e. For any discounts applied, the taxable base should be easily discernible.~~

~~5f. An audit trail to substantiate credits for transactions processed through the CSP's system.~~

C. Exemption Information

1. Exemption information on purchasers as required in the Streamlined Sales Tax Governing Board Rules and Procedures, Article III, Rule 317.1 Simplified Exemption Administration Paper.
 - ~~2. Exemption Information Report as stipulated in Section 501.6.B.2.b of Article V.~~
 - ~~23.~~ Detailed information providing a distinction between exempt transactions by product or entity/use based exemptions.
 - ~~34.~~ Exempted sales transactions must include the customer's name in addition to all other information required for each sales transaction.
 - ~~45.~~ Uniform exemption certificates and/or data, either in electronic or paper format, must be maintained by the CSP.
- D. Tax Collection and Remittance Information
1. CSPs must provide documentation to verify that all tax collected was appropriately remitted, and the tax return information is accurate.
 2. Tax reversals/credits must identify every tax jurisdiction credited.

Rule 806.3.5.5 – Tax Compliance Audit of Transactions Processed by the CSP

- A. Each member state's designated auditor(s) will handle its state's portion of the audit and is responsible to ensure conformance to the audit plan and timeline, according to each state's audit policies and procedures.
- B. The Audit Core Team will provide the CSP with a list of the member states' auditors who will be involved in the compliance audit process.
- C. Each CSP will provide a list of all sellers and the date each seller began processing transactions using its service to the Audit Core Team for distribution to the member states. Each member state will decide which Model I sellers' transactions to include in their tax compliance audit. ~~The state auditors will have access to a FTP site maintained by the SSTGB, Inc. to receive electronic records.~~ Each member state has the option to comprehensively review the electronic records or choose sampling methodology to perform ~~the~~ review of these transactions processed.
- D. Member state auditors ~~are~~ would be responsible for reviewing the seller's transactions to determine if they were taxed correctly. If errors exist, the auditors must determine if the errors were caused by any of the following reasons including but not limited to:
 1. Deviation from the state's rates and boundaries tables;
 2. Non-compliance with the state's taxability matrix;
 3. Non-compliance with state approved expanded matrix;
 4. Changes posted through Testing Central were not implemented in a timely manner (10 days); (This will be verified through the Audit Core~~ORE~~ Team);
 5. Seller overrides of the CSP system;
 6. Exemption information and/or certificates were not available or did not contain all of the required data elements;
 7. Calculations that were tested and approved during the certification process;
 8. Errors in computing tax were based on erroneous information from the states.
- E. Prior to the issuance of an audit adjustment, the CSP will be given an opportunity to review the audit results with the auditor(s) from each state wherein a tax liability exists in accordance with its laws, rules and regulations.
- F. Where audit findings indicate there is an outstanding tax liability owed by the CSP, any resulting deficiencies or demand for payment of additional taxes under the terms of

the contract will be generated by each member state. Accordingly, the laws of each state regarding the appeal process ~~and statute of limitations~~ would apply to the audit adjustments.

G. Upon completion of the tax compliance audit of the CSP, the member state shall provide either an audit report or close-out letter to the CSP finalizing the tax compliance audit.

Rule 806.3.6 – Compliance Audit of a CAS Provider Model 2 Seller (Reserved)

Rule 806.3.6.1 Audit Responsibilities

The contract compliance audit of the CAS Provider will be performed by the Audit Core Team.

Each state will be responsible for conducting its own tax compliance audit of Model 2 Sellers. Tax compliance audits may be conducted at the state's discretion.

Rule 806.3.6.2 Timeline for Contract Compliance Audit Process

The timeline for conducting the contract compliance audit may vary for each audit cycle. The CAS Provider will have 30 days to review and comment on the preliminary findings of the contract compliance audit. Comments will be sent to the Audit Core Team.

The Audit Core Team will have 10 business days to amend their findings, if necessary, before the final report is sent to the Executive Director of the Streamlined Sales Tax Governing Board.

The Audit Core Team may grant extensions as deemed appropriate to the above timelines.

Rule 806.3.6.3 Report on Audit Findings

A. The Audit Core Team through the Executive Director will provide each member state with its findings of the contract compliance audit.

B. The report on the audit findings that goes to the Executive Director will contain general information on the errors found and will not contain state specific information to ensure the confidentiality of taxpayer information.

Rule 806.3.6.4 Contract Compliance Audit of CAS Provider

Rule 806.3.6.4.1 Documentation

The following documentation and records are required to be provided via an electronic download through an FTP site to the Audit Core Team.

- A. The CAS Provider's response to the Audit Core Team Questionnaire and a listing of each member state's known Model 2 Sellers and the date each seller purchased the CAS Provider's software will be provided by electronic means to the Audit Core Team.

Rule 901. Amendments to Agreement

A. Requests of Amendments to the Agreement. Pursuant to Section 901 of the Agreement, any Member State may propose an amendment to the Agreement by submitting the proposed amendment, in writing and in electronic form, to the Executive Director. The proposed amendment will be considered at the next annual meeting or special meeting occurring so

that at least 30 days' notice of the proposed amendment has been provided in the manner provided herein.

B. Notice of Request. The Executive Director shall provide notice of the proposed amendment and the date of the meeting at which the proposed amendment will be considered to the following parties:

- (a) ~~the Governor and the presiding officer of each house of each Member State;~~
- (b) the authorized representative of each Member State;
- (c) the Chair of the State and Local Advisory Council;
- (d) the Chair of the ~~b~~Business ~~a~~Advisory ~~e~~Council;
- (e) the Chair of the Compliance Review and Interpretations Committee; and
- (f) the general public as provided in Rule 806.1.

C. Revisions to noticed amendments. Any person intending to revise a proposed amendment to the Agreement shall submit such revisions to the Executive Director no later than ten days prior to the Governing Board meeting at which such amendment will be discussed. The Executive Director shall provide notice of such revisions in the same format as required for amendments to the Agreement. Failure to provide revisions to the Executive Director as provided in this section may be used by the President to refer such revisions to a committee or advisory council for their recommendation for action at a future Governing Board meeting. The Governing Board may override the President's decision by a two-thirds vote of the Governing Board.

D. Public Comment

1. **Written Comments.** Any party may comment on the proposed amendment by sending written comments to the Executive Director with a copy to the authorized representative of the requesting state. Any such comments must be submitted ~~at least 30 days prior to~~ by the date of the meeting at which the proposed amendment will be considered.

2. **Response by Requesting State.** ~~The requesting state has the option of responding to any written comments by submitting the response to the Executive Director in electronic form, at least 10 days prior to the hearing date, with a copy, either in electronic form or in paper form, to the party originating the comments.~~

3. **Posting of Comments.** The Executive Director shall post all written comments received in electronic form and any response submitted by the requesting state to the Governing Board website. ~~The Executive Director may also post comments not received in electronic form to the extent resources are available.~~

4. **Request to Testify.** ~~Any party submitting written comments may include in its comments a request to testify before the Governing Board. The Executive Director shall grant those requests to the extent practicable but may limit the time for any single presentation. The Executive Director may limit total public testimony to a reasonable time, not to be less than one hour.~~

E. Public Meeting.

December 22, 2011

1. **Vote at Open Meeting.** The vote on the proposed amendment shall be held at an open meeting convened in accordance with Rule 807.

2. **Testimony by Advisory Councils.** The State and Local Advisory Council and the ~~b~~Business ~~a~~Advisory ~~e~~Council shall have the right to present oral testimony if they choose. ~~The Executive Director may limit the time for each Council to testify to a reasonable time, not to be less than 15 minutes each.~~

3. **Comments by Member States.** Any Member State has the right to make oral comments to the extent it deems appropriate, subject only to a motion by the Governing Board to cut off debate. Any Member State has the right to propose revisions to the proposed amendments to the extent those revisions are germane.

4. **Vote on Revisions to Proposed Amendments.** After discussion and receipt of testimony, the Governing Board shall vote on any revisions to the proposed amendment. Approval of the proposed revisions shall be by a simple majority vote of those Member States present

5. **Vote on Final Amendment.** After discussion and receipt of testimony, the Governing Board shall vote on adoption of the proposed amendment, whether or not revised. The proposed amendment will be adopted only if approved by a three-fourths vote of the entire Governing Board. Amendments to the Agreement of a policy nature must be approved at two separate Governing Board meetings. However, the requirement for a second vote may be waived after the first vote with the unanimous consent of those full members of the Governing Board present. For the purposes of this section, a "policy" amendment is one which imposes a requirement on a member state.

Rule 902.1. Interpretive Rules.

A. Purpose. Interpretive rules are distinguished from interpretive opinions in section 902 of the Streamlined Sales and Use Tax Agreement (“Agreement”). The intent of this procedural rule is to prescribe procedures applicable only to interpretive rules.

~~**B. Intent.** Section 902 of the Agreement provides that interpretations of the Agreement, including interpretive rules, can only be accomplished by action of the Governing Board. Article VIII A, Section 1 of the Bylaws of the Streamlined Sales Tax Governing Board, Inc. provides for establishment of the State and Local Advisory Council (“SLAC”) to advise the Governing Board on matters pertaining to the administration of the Agreement, including interpretations. Section 1 continues by stating that the Governing Board may work through its committees to solicit and consider SLAC positions on matters. SLAC is uniquely qualified and positioned to develop draft interpretive rules. Article VII of the Bylaws of the Streamlined Sales Tax Governing Board, Inc. provides for establishment of Standing Committees of the Governing Board. Section 2 of Article VII establishes the Compliance Review and Interpretations Committee (“CRIC”). Among the responsibilities given to CRIC is “... making recommendations to the Governing Board on matters involving interpretations ...” CRIC is uniquely qualified and positioned to provide commentary and recommendations to the Governing Board on interpretive rules developed and proposed by SLAC.~~

~~Article VIII B, Section 1 of the Bylaws of the Streamlined Sales Tax Governing Board, Inc. provides for establishment of a Business Advisory Council (“BAC”) to advise the Governing Board on matters pertaining to the administration of the Agreement, including interpretations. Section 1 continues by stating that the Governing Board and its committees shall solicit and consider BAC positions. Section 6 provides that BAC shall seek the advice of and respond to SLAC prior to formulating a recommendation to the Governing Board or its committees.~~

CB. Requests for Interpretive Rules. Pursuant to Section 902 of the Agreement, the Governing Board shall act on requests for interpretation of the Agreement, including interpretive rules, brought by any member state or any other person within a reasonable period of time and in a manner prescribed in the Governing Board rules. The Governing Board may choose to not issue an interpretative rule or it may choose to not act on a request for an interpretative rule. Where the Governing Board chooses to act on a request for an interpretive rule it will initiate the interpretive rule process by making a request of SLAC to develop a draft interpretive rule.

DC. State and Local Advisory Council.

1. Upon initiation of the interpretive rules process, the SLAC chair will provide public notice of the formation of an interpretive rule workgroup and will invite participation from all interested parties. SLAC will establish a workgroup comprised of interested state, local and business representative who will, using experts and assistance of the SLAC Steering Committee prepare a draft interpretive rule.
2. The SLAC Chair will provide the draft interpretive rule to SLAC delegates and the BAC with a reasonable opportunity for review, comment, and participation in continued development of the draft interpretive rule.
3. The SLAC Chair will have sole discretion to call for final comments on draft interpretive rules from states, BAC and other interested parties. Notice of such call for final comment shall be in accordance with Rule 806.2. Final comments shall be submitted to the SLAC Chair and Vice Chair within the specified time but in no case shall the period for submitting final comments be less than 20 days from the date of the notice for final comments on the draft interpretive rule. SLAC will finalize the draft interpretive rule and forward it to the Governing Board ~~and CRIC at least 35 days prior to the Governing Board meeting in which it will be considered.~~

E. Compliance Review and Interpretations Committee.

1. ~~CRIC will place the proposed interpretive rule on its next regularly scheduled public meeting agenda for discussion by CRIC members and for public comment by other interested parties. It is the intent of this rule that the time period for CRIC review be held to a minimum in light of the extensive review, discussion and comment previously provided through the SLAC process.~~
2. ~~CRIC may prepare advisory written commentary and recommendations for submission to the Governing Board for its consideration.~~

F. Business Advisory Council.

1. ~~BAC may participate in the review and comment process undertaken by SLAC concerning development and finalization of a draft interpretive rule to be forwarded to the Governing Board and CRIC.~~

~~2. BAC may provide comments on a draft interpretive rule to CRIC for consideration during its review.~~

~~3. BAC may provide written comments directly to the Governing Board on draft interpretive rules and comments forwarded to the Governing Board by CRIC.~~

GD. Agenda. A proposed interpretive rule together with all written comments shall be presented to the Governing Board and placed on the agenda of the Governing Board for either a regular or a special meeting. At least thirty days' notice to the member states and the public is required by Section 902 of the Agreement.

Rule 903.1. Requests for Additional Definitions.

~~**A. Requests for Additional Definitions.** Any Member State or person may request an additional definition in the Agreement by submitting the proposed definition, in writing, to the Executive Director.~~

~~**B. Compliance Review and Interpretations Committee.**~~

~~1. **Initial Evaluation.** The Executive Director shall circulate place the proposed definition to the Compliance and Interpretations Committee on the next Governing Board agenda for an initial evaluation and assignment. The Compliance Review and Interpretations Committee shall review the proposed definition to determine if further action is warranted.~~

~~2. **Determination as Unnecessary.** If the Compliance Review and Interpretations Committee determines that the definition is inappropriate, unwarranted or unnecessary for any reason, it shall notify the Executive Director who shall notify the requestor that the Governing Board declines to adopt the proposed definition. This action shall be reported to the Executive Committee and the Governing Board. If the requestor disagrees with the initial evaluation, the requestor may invoke the dispute resolution process provided for in Article X of the Agreement.~~

~~3. **Formal Definition.** If the Compliance Review and Interpretations Committee determines that additional consideration of the proposed definition is warranted, the Committee shall inform the Executive Director who shall publish the request for definition on the Website and solicit comment. The Compliance Review and Interpretations Committee shall consult with the State and Local Advisory Council and the business advisory council and shall formulate a recommendation to the Governing Board.~~

~~**C. Public Notice.** If the Compliance Review and Interpretations Committee has notified the Executive Director that additional consideration of the proposed definition is warranted, the Executive Director shall provide a copy of the request for definition to and shall solicit comment from the following parties:~~

- ~~(a) the authorized representative of each Member State;~~
- ~~(b) the Chair of the State and Local Advisory Council;~~
- ~~(c) the Chair of the business advisory council; and~~
- ~~(d) the general public as provided in Rule 806.1.~~

~~**D. Public Meeting.** No sooner than 60 days after solicitation of comment, the Compliance Review and Interpretations Committee shall meet in a public meeting convened in~~

accordance with Rule 807 to consider the request and shall issue a written recommendation. The decision may be in the form of (1) a recommendation of a proposed definition or (2) a determination not to propose a new definition. The recommendation shall be in writing and shall provide the Committee's rationale for the decision. A copy of the decision shall be sent to the requesting party, the Executive Committee and the Governing Board.

E. Agenda. Actions on definitions recommended by the Compliance Review and Interpretations Committee shall be placed on the agenda of the Governing Board for either a regular or a special meeting.

F. Appeal. If the decision is not to propose a new definition and the requestor disagrees with the decision, the requestor may invoke the appeals process provided for in Article X of the Agreement.

G. Publication of Decision. Once the decision becomes final, either because no appeal is filed or because the appeal procedures have been exhausted, the decision shall be sent to the requesting party and a copy of the decision shall be posted on the Website.

H. Proposal of Amendment. If the Compliance Review and Interpretations Committee proposes a new definition, it shall propose an Amendment to the Agreement and the provisions of Section 901 shall be followed.

Rule 1001. Rules and Procedures for Appeals.

A. Petition for Reconsideration

1. **Request for Reconsideration.** Any party dissatisfied with a decision of the Governing Board may file an appeal with the Governing Board to request reconsideration of the decision.

2. **Contents of the petition.** A petition shall set forth in reasonable detail the basis for the request being made, containing all facts, evidence and legal discussion necessary to allow for a disposition of the matter; a statement as to whether the petition relates to any matter pending in any state or local administrative or judicial process; a statement as to whether a hearing is requested; and an affidavit or affirmation that the facts contained therein are true and correct.

3. **Timing of the petition.** Unless otherwise stated in these rules, a petition for reconsideration shall be filed within sixty (60) days after the decision is issued.

4. **Fee.** There shall be no fee or charge for the initial filing of any petition, although the Governing Board retains the discretion to allocate the costs incurred by the Governing Board and the Issues Resolution Committee in determining the petition to the petitioner in whole or in part, and/or to other persons who have participated in the issue resolution process.

B. Publication of the Petition. On receipt of the petition, the Executive Director shall publish the petition on the website, and provide a copy of the petition to and solicit comment from the following parties:

- (a) the authorized representative of each Member State;
- (b) the Chair of the State and Local Advisory Council;
- (c) the Chair of the bBusiness aAdvisory cCouncil; and

(d) the general public as provided in Rule 806.1.

C. No Hearing Requested. If the petitioner has not requested a hearing, the Issues Resolution Committee shall meet to consider the petition and any comment received, and shall issue a recommendation to the Governing Board, no sooner than 60 days, and no later than 120 days, after solicitation of comment. The recommendation shall be in writing and shall provide the Issues Resolution Committee's rationale for the recommendation.

E. Hearing Requested. If the petitioner has requested a hearing, the Issues Resolution Committee shall, no sooner than 60 days, and no later than 120 days, after solicitation of comment, schedule a hearing on the petition and mail notice of the hearing to

- (a) the petitioner;
- (b) any other person who has submitted a comment on the petition;
- (c) the authorized representative of each Member State;
- (d) the Chair of the State and Local Advisory Council;
- (e) the Chair of the ~~B~~Business ~~a~~Advisory ~~e~~Council; and
- (f) the general public as provided in Rule 806.1.

The hearing shall take place at the office of the Governing Board, or another location designated by the Issues Resolution Committee. At the hearing, the Issues Resolution Committee will designate the amount of time the petitioner will be allotted to speak, with a minimum of fifteen minutes to be allotted. Other persons whose written requests to speak at the hearing have been received by the Issues Resolution Committee prior to the day of the hearing will be allotted time to speak at the discretion of the Issues Resolution Committee. Within 60 days of the hearing, the Issues Resolution Committee shall meet to consider the petition and any comment received and shall issue a recommendation to the Governing Board. The recommendation shall be in writing and shall provide the Issues Resolution Committee's rationale for the recommendation.

F. Governing Board Action. Within 60 days of receipt of a recommendation from the Issues Resolution Committee, the Governing Board shall meet to consider the recommendation and issue a decision. The decision shall be in writing and shall provide the Governing Board's rationale for the decision. The decision shall be sent to the petitioner and a copy of the decision shall be posted on the website.

G. Expedited Appeal. The time limitations in this rule may be shortened if the petitioner asks for expedited consideration in its request. In that case, the notice to interested parties shall request written comment within 10 days. The Issues Resolution Committee may meet any time after that 10-day period has expired.

INTERPRETIVE OPINIONS

Interpretative Opinion 2011-01 (Adopted December 19, 2011)

This Interpretative Opinion recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this day of December 1, 2011 in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

Mr. Ken Nogueira requested an interpretation on August 12, 2011.

Issue:

Mr. Nogueira asked whether wood chunks used for flavoring in cooking qualifies as “food and food ingredients.” According to the facts presented, the Company is a restaurant company that features “wood-grilled” items on its menu. The Company purchases Hickory wood chunks to use as an ingredient to flavor items on its menu. During the cooking process, the Hickory wood chunks are soaked in water and placed in a smoker under the grill. As the smoldering wood burns, it releases compounds that impart a unique flavor and are a key ingredient in a number of “wood grilled” items on its menu. Mr. Nogueira requests a ruling that the company’s sales of its wood chunks qualify as sales of “food and food ingredients” as that phrase is used in the Streamlined Sales and Use Tax Agreement (“SSUTA”), Appendix C.

Public Comment:

Three states recommended that the interpretation request not be approved.

Recommendation:

By a unanimous vote of the members present, the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that the interpretation proposed by the requester not be accepted and that wood chunks do not qualify as food and food ingredients.

Rationale:

The Agreement defines “food and food ingredients” as “substances, whether in liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.” SSUTA, Appendix C- Library of Definitions, Part II “Product Definitions.” The wood chunks, even those containing natural compounds or additives that emit a particular aroma or vapor, are not sold for ingestion or chewing by humans. The wood chunks, when heated, create smoke which flavors the food item that is smoked, but the wood chunks are not eaten by humans and do not become a component part of and are not added to the food product.

Based upon the forgoing, the wood chunks do not qualify as a “food and food ingredient” because it is not sold for ingestion or chewing by humans.

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Participating Committee Members:

Tom Atchley, Craig Johnson, Richard Cram, and Tim Jennrich

**Interpretative Opinion 2011-02
(Adopted December 19, 2010)**

This Interpretative Opinion recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this day of December 1, 2011 in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

Mr. Eric Wayne of North Carolina requested the interpretation on August 29, 2011.

Issue:

Mr. Wayne asked whether pencil leads and pen refills qualify as school supplies for sales tax holiday purposes. Mr. Wayne states that pencils and pens are on the list in Appendix B as school supplies but pencil leads and pen refills are not on the list. The Department was contacted before the recent August sales tax holiday and asked if pencil leads and pen refills were school supplies. Contact was made with Tennessee and Arkansas which also exempt school supplies during the their sales tax holiday and representatives for Tennessee and Arkansas were in agreement that pencil leads and pen refills should be included as school supplies and exempt items for sales tax holiday purposes. Oklahoma does not exempt school supplies for sales tax holiday purposes. Mr. Wayne requests a ruling that pencil leads and/or pen refills be considered “school supplies” as that phrase is used in the Streamlined Sales and Use Tax Agreement (“SSUTA”), Appendix C.

Public Comment:

Comments were received from one state recommending that the interpretation requested be accepted.

Recommendation:

By a vote of three to one of the members present, the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that the interpretation proposed by the requester be accepted.

Rationale:

Appendix C, Library of Definitions, Part III Sales Tax Holiday Definitions defines “school supply” as “an item commonly used by a student in a course of study.” Section B. Product Definitions provides an all-inclusive list of school supplies. Pencils and pens are on the list as school supplies but pencil leads and pen refills are not on the list. The Agreement does not define pens and pencils. However, pens and pencils cannot perform

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in their intended purpose without pen refills and pencil leads. Pen refills and pencil leads are components of pens and pencils and fall within the meaning of pens and pencils.

Participating Committee Members:

Tom Atchley, Craig Johnson, Richard Cram, and Tim Jennrich

**Interpretative Opinion 2011-03
(Adopted December 19, 2010)**

This Interpretative Opinion recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this day of December 1, 2011 in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

Mr. Bruce Christensen requested the interpretation on August 31, 2011.

Issue:

May a state include its statutory appeal period in the 120-day period required by Section 317 D (1) of the Agreement? In the following example, must State A wait until the 120-day period has expired before issuing the audit assessment (i.e., does State A have to wait until after June 28, 2011) or can the 60-day appeal period be included in the 120 days such that State A can issue the audit assessment at any time after April 28, 2011 since the seller will still have until at least June 28, 2011 (120 days after the request for substantiation was provided to the seller) to provide those exemption certificates?

Example:

- State A issues a request to a seller on March 1, 2011 to substantiate certain exempt sales the seller claimed.
- One hundred twenty days from March 1, 2011 is June 28, 2011.
- Sellers are allowed 60 days after receiving a Notice of Amount Due from State A to either pay the amount due or file an appeal.
- If an adjustment to the seller's sales tax liability is made because a seller is missing some exemption certificates at the time the Notice of Amount Due is issued, State A will allow the seller to submit those exemption certificates during the 60-day appeal period.
- State A will treat the receipt of those exemption certificates during the 60-day appeal period as an appeal, review the exemption certificates to confirm the seller received them in good faith, and adjust the Notice of Amount Due accordingly.

Public Comment:

One state recommended that the interpretation not be accepted unless including the appeals period is optional.

Recommendation:

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By a unanimous vote of the members present, the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that if a state will adjust the audit assessment during the appeal period if acceptable documentation is provided, the appeal period can be included as part of the 120 days allowed to provide exemption certificate information. However, if a state will not adjust the audit assessment during the appeal period for exemption certificates accepted in good faith, the state may not include the appeal period as part of the 120 days that must be allowed.

Rationale:

Section 317 D (1) of the Agreement states: “If the seller has not obtained an exemption certificate or all relevant data elements within 90 days subsequent to the date of sale as provided in Section 317, subsection (C), a member state shall provide the seller with 120 days subsequent to a request for substantiation by a member state, to either:

a. Obtain a fully completed exemption certificate from the purchaser, taken in good faith which means that the seller obtains a certificate that claims an exemption that:

- (i) was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced,
- (ii) could be applicable to the item being purchased, and
- (iii) is reasonable for the purchaser’s type of business; or

b. Obtain other information establishing that the transaction was not subject to the tax.

A member state may provide for a period longer than 120 days for sellers to obtain the necessary information.”

The Agreement is silent on the issue of whether a state’s appeals period can be included in the 120 day period. If the state allows a seller to provide substantiation during the appeals period and receive an assessment adjustment, then the requirements of the Agreement have been met as long as 120 days have been allowed since the request for substantiation. A member state has the option of using their state’s appeal period as part of the 120 day period if the state will willingly adjust the audit assessment during the appeal period if acceptable exemption documentation is provided.

Participating Committee Members:

Tom Atchley, Craig Johnson, Richard Cram, and Tim Jennrich