



STATE OF NEW JERSEY  
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August 19, 2011

Scott Peterson, Executive Director  
Streamlined Sales Tax Governing Board  
4219 Hillsboro Pike, Suite 234  
Nashville, TN 37215

Dear Scott:

This letter is submitted pursuant to the requirements of Section 803 of the Streamlined Sales and Use Tax Agreement (SSUTA). I attach New Jersey's Certificate of Compliance and Taxability Matrix.

New Jersey is in substantial compliance with the provisions of the SSUTA. Public Law 2011, Chapter 49 was signed into law on April 8, 2011 and became effective immediately except that sections 1 through 15 become operative on May 1, 2011. This new law makes various technical changes to the New Jersey Sales and Use Tax Act in order to maintain compliance with the Streamlined Sales and Use Tax Agreement.

For purposes of compliance, the bill removes the definition of, and eliminates references to, "digital property" and replaces it with "specified digital product," the defined term for electronically transferred digital products under the SSUTA. This change technically modifies but does not substantively affect the taxability of downloaded music, movies, books, and certain other products that have been subject to sales and use tax since October 1, 2006.

To conform the State's tax treatment of digital goods within the parameters of the defined term under the Agreement, other required changes were made. Specifically: (1) the law specifies that a digital code which provides a purchaser the right to obtain the product will be treated as a specified digital product for purposes of taxation (N.J.S.A. 54:32B-2(z)); (2) the law stipulates that specified digital products are subject to tax regardless of whether the sale of the product is for permanent or less than permanent use and regardless of whether continued payment for the product is required (N.J.S.A. 54:32B-3(a)); and (3) the law carves out a specific statutory exemption for all video programming services, including video on demand television services, and broadcasting services, including content to provide such services, to ensure that sales of those services are not taxable as specified digital products.(N.J.S.A. 54:32B-8.61) The former "digital property" definition excluded video programming services, so this exemption is necessary to maintain treatment under prior law.

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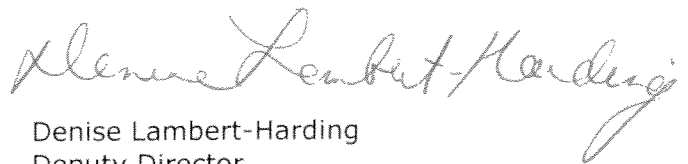
The new law also provides a separate statutory exemption for specified digital products that are accessed but not delivered electronically to the consumer (see N.J.S.A. 54:32B-8.62). Previously, New Jersey did not impose tax on digital property that was streamed or uploaded to a consumer to allow access to digital content. However, the SSUTA term "specified digital products" includes electronically transferred digital audio-visual works, digital audio works, and digital books, where "transferred electronically" means obtained by the purchaser by means other than tangible storage media. Since "transferred electronically" includes instances where specified digital products are streamed or uploaded, the new exemption was necessary to ensure that merely accessing a specified digital product is not the basis for imposing tax. This exemption was necessary to maintain the tax treatment under prior law.

New sections were added to incorporate SSUTA provisions that relieve certain sellers from liability due to changes in the sales and use tax rate and the Division may not hold a seller liable for failure to collect tax that may be due at a new tax rate, if less than 30 days is provided between the date a change in rate is enacted and the date that change takes effect. The relief from liability is limited and further described in the law. (N.J.S.A. 54:32B-14(j)).

Unrelated to compliance with the SSUTA, the law also makes technical changes and clarifications to the statute by removing remaining references to the previously defined term "vendor," and replacing it with "seller" and removing installation charges from the enumerated charges included in the definition of "sales price." A separate statutory provision specifies that the installation of tangible personal property and digital products is a service subject to the sales and use tax, regardless of how "sales price" is defined. This revision merely clarifies the treatment of installation charges, which have always been and continue to be subject to tax.

There is one area where the Division is not in compliance and that is with regard to SSUTA Section 318C. The state does not currently have a system in place for sellers other than Model 1 sellers to file the SER. We have been working with the appropriate state agency as far as developing the framework to allow the SER to be submitted by sellers other than those using CSPs. I will keep the Governing Board advised of our progress.

Very truly yours,



Denise Lambert-Harding  
Deputy Director  
Division of Taxation

DLH/bac