



Department of
Taxation

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August 28, 2013

Craig Johnson, Executive Director
Streamlined Sales Tax Governing Board, Inc.
100 Majestic Drive, Suite 400
Westby, WI 54667

Dear Mr. Johnson:

This letter responds to the Preliminary Report on 2013 Annual Recertification dated August 27, 2013. The only outstanding issue relates to Ohio's exemption of hospital beds purchased by hospitals, nursing homes and other medical facilities in Ohio Rev. Code ("R.C.") 5739.02(B)(18). Hospital beds are durable medical equipment which is defined in the Streamlined Sales Tax Agreement ("Agreement"). The issue raised is whether this exemption violates the Agreement because it does not exempt the sale of all durable medical equipment to such facilities. Based on the information provided below, Ohio believes that it is not out of compliance on this issue.

Response

Section 316.C.2 of the Agreement allows a member state to enact an entity-based exemption. Ohio believes that its exemption for hospital beds is a permissible entity-based exemption under that provision. CRIC raised this exemption as an issue during the 2010 compliance review and ultimately found that Ohio was not out-of-compliance on this issue. See attached 2010 CRIC Compliance Review Report at page 12. The background of this exemption follows.

R.C. 5739.02(B)(18) exempts hospital beds purchased by hospitals, nursing homes, or other medical facilities. As originally enacted in Amended Substitute House Bill 703 effective January 16, 1981, that provision exempted "hospital beds when purchased for use by persons with medical problems for medical purposes." Am. Sub. H.B. 703 also added R.C. 5739.02(B)(19) which exempted prosthetic devices, braces or other devices for supporting weakened or non-functioning parts of the human body, devices to aid human perambulation and other items of tangible personal property used to supplement impaired functions of the human body. Effective June 26, 2003 House Bill 95 amended R.C. 5739.02(B)(19) to read as it currently does to exempt:

Sales of prosthetic devices, durable medical equipment for home use, or mobility enhancing equipment, when made pursuant to a prescription and when such devices or equipment are for use by a human being.

H.B. 95 also adopted the Agreement's definitions for these items.

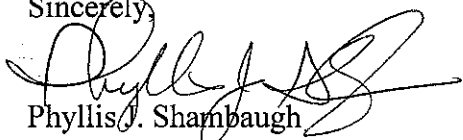
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Subsequently, Am. Sub. H.B. 66 effective June 30, 2005, amended R.C. 5739.02(B)(18) to exempt hospital beds purchased by hospitals, nursing homes, or other medical facilities. Per the Legislative Service Commission's analysis of that bill the change was intended to limit the exemption "so that sales of hospital beds . . . are exempt only when purchased by hospitals, nursing homes, or other medical facilities." On June 2, 2006 the Issue Resolution Committee completed Appendix L, Health Care Item List. That list designates various types of hospital beds as "durable medical equipment."

At the time the Ohio General Assembly enacted H.B. 95 Ohio was in compliance with the Agreement. Now, however, Ohio finds itself in an extremely difficult position. It must either exempt all "durable medical equipment" including sales of such equipment to hospitals, or tax all "durable medical equipment." Neither option is desirable, or likely to be supported by the Ohio General Assembly or Ohio consumers.

The exemption for hospital beds sold to individuals with medical conditions has been law since 1981. Further, the exemption for purchases of hospital beds by hospitals, nursing homes and medical facilities has been in effect since 2005. Expanding the exemption for "durable medical equipment" to include purchases by hospitals, nursing homes and medical facilities would impact state revenue and is not likely to win support in the General Assembly. Likewise, eliminating an exemption for individuals that has been in effect since 1981 is likely to draw much opposition.

Sincerely,



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2010 CRIC Compliance Review Report

North Dakota Response:

The state agreed that they are out-of-compliance with respect to issue 2.

Ohio

Finding: CRIC recommends that Ohio be found out-of-compliance with the Agreement regarding issues 5 and 6. Issues 1, 2, 3, 4, and 7 were resolved.

Vote: 5-1: Yes: Vosberg, Jennrich, Peters, Atchley, Cram; No: Mastin

Issues Raised:

1. A number of provisions in the Agreement are in pending rules that the state's website indicates were to be presented on August 31, 2010. These are: 1) relief from liability provisions for rate changes taking effect in less than 30 days (s. 304); 2) sourcing for Internet access and ancillary services (s. 314); 3) relief from liability for purchasers (s. 331); 4) sellers and CSPs relief and 10 day rule (s. 502); and 5) definitions and taxability of computer software maintenance contracts (an information release issued September, 2010 does provide the information) (s.330 and definitions).
2. The statute exempts durable medical equipment for home use in one section and exempts hospital beds sold to hospitals and other medical facilities in another section. Hospital beds are durable medical equipment and the exemption should be for all durable medical equipment to such facilities.
3. The taxability matrix indicates that international, interstate and intrastate 900 services are taxable. The statute exempts 900 services.
4. The statutes for sourcing and the definition of "receive" and "receipt" do not contain the provisions relating to digital goods. The state taxes electronic information services and electronic publishing services.
5. The pending rule that provides for sourcing Internet access and ancillary service strikes all of the language in the current rule. The current rule contains the definitions of "communications channel" and "customer channel termination point" that are needed for sourcing private communications service.
6. The provision for bad debt (provided in a rule) provided that amounts collected that were previously written off be applied first to sales price and tax thereon. The word "proportionately" is left out.
7. Section 321 of the certificate of compliance is blank. Statutes covering confidentiality were found in the statutes.

Ohio Response:

The state said the rules have been filed and become effective November 29, 2010 (issue 1). The state said the hospital bed exemption (issue 2) is an entity exemption and meets s. 316 C 3. The state corrected the taxability matrix (issue 3). The state said it doesn't need receive/receipt language for digital goods as they are not taxed and electronic information services are taxed as services (issue 4). The state said it will need to amend rules on Internet sourcing and bad debts (issues 5 and 6) as they do not administer these sections in conformance with the Agreement. The state said it will correct the certificate of compliance to add the needed cites for confidentiality (issue 7).