

STREAMLINED SALES TAX GOVERNING BOARD

To: Compliance Review and Interpretations Committee

From: Scott Peterson and Pam Cook

Re: Second report on 2010 Annual Recertification

Date: October 5, 2010

Pursuant to Governing Board Rule 905 this constitutes the second initial report to the Compliance Review and Interpretations Committee listing potential compliance issues for the remaining ten member states.

Indiana

The statutes relieving sellers and CSPs from liability for errors in the taxability matrix or rate information do not provide the relief for all sellers, just sellers using a CAS.

The statute taxing prepaid calling arrangements uses the terms prepaid telephone calling cards and prepaid telephone authorization numbers. These terms are not defined. The Streamlined Sales and Use Tax Agreement (SSUTA) defines prepaid calling service and prepaid wireless calling service. Also, the taxability matrix indicates that interstate and intrastate prepaid calling service and prepaid wireless calling service are taxable but shows international prepaid services as exempt. The taxing statute mentioned above does not indicate any jurisdictional restrictions.

The statute cited for customer refund procedures only addresses requests for refunds from the department. The statute does not address the provisions relating to cause of action against the seller or the presumption of a reasonable business practice.

Michigan

The taxability matrix indicates that telecommunications nonrecurring charges are taxable, but the statute specifically excludes them.

There is no provision for relief from liability if a state has a rate change take effect in less than 30 days.

There is no provision in the statute cited for sourcing private communications service.

The statute sourcing mobile services uses the term “mobile wireless service” instead of “mobile telecommunications service” which is the term used in the SSUTA. These two terms do not have the meaning because “mobile telecommunications service” has a wider application.

The bad debt statute provides that payments of amounts previously written off as uncollectible should be applied “proportionately first” to the sales price and sales tax thereon and second to interest and other charges. The Agreement provides that such payments should be applied “first proportionately” to sales price and sales tax thereon and second to interest and other charges. The computations are not equal.

The “sales price” definition does not have a provision excluding non-third party discounts nor does it have the language for inclusion of third party discounts.

The statute for taxing interstate telecommunications service excludes one-way paging service. Paging service is defined in the SSUTA and includes both one-way and two-way service. This was an issue from the 2009 review that was referred to the Governing Board. The Governing Board ruled in their August 2010 meeting that they would have to be all taxable or all exempt.

New Jersey

The statute taxes “digital products” which it defines as “electronically delivered music, ringtones, movies, books, audio and video works and similar products, where the customer is granted a right or license to use, retain or make a copy of such item.” The statute does not specifically address whether it taxes sales for less than permanent use or based on continued payment. Legislation has been introduced to tax specified digital products instead of “digital products” and to specify the taxability of sales for less than permanent use or based on continued payment.

There is no provision for relief from liability if a state has a rate change take effect in less than 30 days. The proposed legislation also addresses this issue.

The taxability matrix shows computer software maintenance contracts that only provide support services as 100% taxable. The rule and technical bulletin indicate they are not taxable.

The rules for acceptance of exemption certificates require “good faith.”

North Dakota

The state taxes communication service which is defined to include telecommunications service. Under the statute one-way communication services are not taxable. Paging services are a defined product under telecommunications service and there are one-way and two-way paging services. This was an issue from the 2009 review that was referred to the Governing Board. The Governing Board ruled in their August 2010 meeting that they would have to be all taxable or all exempt.

The definition for “fixed wireless service” is incorrect. It is defined using the definition for “mobile wireless service.”

Ohio

A number of provisions in the SSUTA 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 (Section 304); 2) sourcing for Internet access and ancillary services (Section 314); 3) relief from liability for purchasers (Section 331); 4) sellers and CSPs relief and 10 day rule (Section 502); and 5) definitions and taxability of computer software maintenance contracts (an information release issued September, 2010 does provide the information) (Section 330 and definitions).

The statute exempts durable medical equipment for home use in one section and the exemption for hospital beds sold to hospitals and other medical facilities is provided in another section. Hospital beds are durable medical equipment and the exemption should be for all durable medical equipment to such facilities.

The taxability matrix indicates that international, interstate and intrastate 900 services are taxable. The statute exempts 900 services.

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.

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.

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.

Section 321 of the certificate of compliance is blank. Statutes covering confidentiality were found in the statutes.

Oklahoma

There is no provision for relief from liability if a state has a rate change take effect in less than 30 days.

The taxability matrix shows dental prosthesis with a prescription as taxable. The definition in the statute excludes eyeglasses, contact lenses and hearing aids, but not dental prosthesis.

The sourcing statutes require that prepaid wireless calling service be sourced to the location associated with the mobile telephone number under paragraph 5. The use of the mobile telephone number is optional in the SSUTA.

The rules for exemption administration require “good faith.” Good faith requires that the seller strictly comply with the statutory requirements. Does this mean obtaining the required information, within 90 days of the sale, and the seller doesn’t fraudulently fail to collect the tax, etc.?

The rule for telecommunications services excludes from taxation “Regulatory assessments and charges, including charges to fund the Oklahoma Universal Service Fund, the Oklahoma Lifeline

Fund and the Oklahoma High Cost Fund”. This is an issue from the 2009 that the Governing Board has referred to SLAC.

Utah

The taxability matrix indicates that oxygen delivery equipment with a prescription is exempt. The statute cited is an exemption for drugs, syringes and stoma supplies. The durable medical equipment exemption restricts it to “for home use.”

The state taxes utilities at a special rate. The local taxes are not imposed on utilities. The SSUTA allows a difference in the tax base only with respect to motor vehicles, aircraft, watercraft, modular homes, etc.

The definition for “conference bridging” says that a telephone number is provided. The SSUTA definition says that a telephone number may be provided.

Vermont

The following appear to be errors in the taxability matrix: 1) Direct mail delivery charges are marked as taxable. The statute appears to exempt them. This was an issue last year and the state changed the matrix to show them as exempt. 2) Taxable/exempt boxes are marked with “x” for clothing, computers and prewritten software. The state does not have a sales tax holiday. 3) Optional software maintenance contracts for prewritten software that only provide support services are marked 100% taxable. The regulation indicates that they are exempt.

The following relief from liability provisions are not in the regulations: 1) relief for liability if a state rate change takes effect in less than 30 days (Section 304); 2) purchaser relief from liability (Section 331); and 3) relief from liability when relying on the certification of software (Section 502).

Specified digital products are now taxable, but the sourcing provisions do not address them in A.5 of the general sourcing rules (Section 310) or in the definition of “receive” or “receipt” (Section 311). Also, in Section 328 of the certificate of compliance, it is marked “N/A” instead of “yes” for whether the taxability matrix has been marked for these items. The treatment of digital codes is marked “N/A” instead of “yes” in Section 332.

Wisconsin

No issues

Wyoming

The following relief from liability provisions are not in the regulations: 1) exemption administration 90 day and 120 day rules (Section 317); 2) relief from liability for relying on erroneous information in the taxability matrix for sellers and CSPs (rule cited is for rates, boundaries and jurisdiction information errors) (Section 328); 3) purchaser relief from liability (Section 331); and 4) relief from liability when relying on the certification of software (Section 502). Also, the statute for customer refund procedures providing for when a cause of action accrues does not contain the presumption of reasonable business practice provision. The citation column for these items indicates administrative practice.

The state does not appear to be following the requirements for effective dates for rate changes with respect to services covering periods starting before and ending after the statutory effective date. The comment states “Vendor must charge rate in effect when service was provided, not rate in effect when bill was presented. If the service provider engages in periodic billings this would trigger separate remittance points. Each payment would be taxed at the rate in effect when the periodic payment is due.”

The statute imposing tax on specified digital products does not specify treatment of sales of digital codes. The citation column indicates administrative practice.

The response to Section 333 indicates that products delivered electronically are included in the definition of tangible personal property which is prohibited by the SSUTA effective 1/1/2010. What products are included?

The taxability matrix indicates that bottled water is taxable and that prepared food is not taxable. The definition of “food” in the rule does not exclude bottled water and does exclude prepared food.

The state taxes intrastate telecommunications service. The taxability matrix indicates that interstate and international prepaid calling service and prepaid wireless calling service are

taxable. The rule cited says that “pre-paid calling cards, telephone debit cards...shall be considered tangible...personal property. The SSUTA considers these to be telecommunications service.

The taxability matrix shows intrastate paging as not taxable and has a comment that paging is not included in the definition of taxable communication service. The statute taxes intrastate telecommunications service and paging is included in the definition of telecommunications service in the SSUTA. This was an issue from the 2009 review that was referred to the Governing Board. The Governing Board ruled in their August 2010 meeting that they would have to be all taxable or all exempt.